FOREWORD

These volumes contain the Acts of the First Regular Session and the First and Second Extraordinary Sessions of the 80th Legislature, 2011.

First Regular Session, 2011

The First Regular Session of the 80th Legislature convened on January 12, 2011. The Constitutional sixty-day limit on the duration of the session was midnight, March 12, 2011. The Governor issued a proclamation on March 9, 2011, extending the session for a period not to exceed three days for the purpose of considering the Budget and supplementary appropriation bills. A subsequent proclamation was issued on March 15, 2011, and the Legislature adjourned sine die on March 18, 2011.

Bills totaling 1,894 were introduced in the two houses during the session (1,273 House and 621 Senate). The Legislature passed 191 bills, 103 House and 88 Senate.

The Governor vetoed seventeen bills (Com. Sub. for H. B. 2345, Changing the membership of the PEIA Financial Board; Com. Sub. for H. B. 2438, Bringing older contradicting language still remaining in the code into conformity with §3-2-5(b)(3) and reestablishing a definition for “independent voter”; Com. Sub. for H. B. 2464, Adding additional requirements to the Ethics Act; Com. Sub. for H. B. 2525, Relating to the practice of social work; Com. Sub. for H. B. 2542, Clarifying requirements and procedures for access to cemeteries and grave sites located on private land; Com. Sub. for H. B. 2639, Authorizing miscellaneous boards and agencies to promulgate legislative rules; Com. Sub. for H. B. 2663, Relating to public service commissioners presiding at hearings; Com. Sub. for H. B. 2955, Authorizing the Division of Mining and Reclamation to assess certain fees to coal mine operators; Com. Sub. for H. B. 3196, Establishing a program and procedure for certifying medications assistive persons in the health industry; Com. Sub. for S. B. 121, Authorizing the DEP to promulgate legislative

There were 259 Concurrent Resolutions introduced during the session, 165 House and 94 Senate, of which 58 House and 37 Senate were adopted. Forty-one House Joint Resolutions and 14 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 1 Senate Joint Resolution (**S. J. R. 10**, Proposing an amendment to the Constitution designated Repeal The Two Consecutive Term Limitation for Sheriffs Amendment) was adopted. The House introduced 44 House Resolutions, and the Senate introduced 57 Senate Resolutions, of which 34 House and 55 Senate were adopted.

The Senate failed to pass 49 House bills passed by the House, and 66 Senate bills failed passage by the House. Three bills died in conference, 1 House and 2 Senate: **Com. Sub. for H. B. 2757**, Providing for evaluation of professional personnel in the public schools; **Com. Sub. for S. B. 242**, Dedicating portion of coal severance tax to county of origin; and **S. B. 331**, Correcting invalid code reference in definition of “eligible taxpayer”.

[IV]
First Extraordinary Session, 2011

The Proclamation calling the Legislature into Extraordinary Session at 12:00 NOON, August 1, 2011, contained nine items for consideration. A subsequent proclamation was issued on August 3, 2011, increasing the items for consideration to ten.

Nine bills were introduced and passed by the Legislature during the Extraordinary Session, 1 House Bill and 8 Senate Bills.

The Governor vetoed one bill (H. B. 106, Reapportioning the House of Delegates districts), leaving a net total of 8 Senate Bills which became law. The Senate adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned sine die on August 5, 2011.

Second Extraordinary Session, 2011

The Proclamation calling the Legislature into Extraordinary Session at 12:00 NOON, August 18, 2011, contained two items for consideration.

The Legislature passed 3 bills, 2 supplemental appropriation bills (S. B. 2001 and S. B. 2002) and the reapportionment of the House of Delegates (H. B. 201). The Senate also adopted 4 Senate Resolutions.

The Legislature completed the business of the Session and adjourned sine die on August 21, 2011.
These volumes will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

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

GREGORY M. GRAY  
*Clerk of the House and*  
*Keeper of the Rolls.*
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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR AND EXTRAORDINARY SESSIONS, 2011

OFFICERS
Speaker - Richard Thompson, Wayne
Clerk - Gregory M. Gray, Charleston
Sergeant at Arms - Oce Smith, Fairmont
Doorkeeper - John Roberts, Hedgesville

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* Appointed June 21, 2011, to fill the vacancy created by the death of her husband, the Honorable Lory W. Border.
** Appointed May 17, 2011, to fill the vacancy created by the death of her husband, the Honorable Dale Martin.

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(D) Democrats. ................. 65
(R) Republicans. .............. 35

TOTAL.......................... 100
MEMBERS OF THE SENATE

REGULAR AND EXTRAORDINARY SESSIONS, 2011

OFFICERS

President - Earl Ray Tomblin, Chapmanville
Acting President - Jeffrey V. Kessler, Glen Dale
Clerk - Darrell E. Holmes, Charleston
Sergeant at Arms - Howard Wellman, Bluefield
Doorkeeper - Billy L. Bevino, Charleston

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<td>Jeffrey V. Kessler (D)</td>
<td>Glen Dale</td>
<td>Appt. 11/1997, 73&quot;; 74&quot; - 80&quot;</td>
</tr>
<tr>
<td>Third</td>
<td>Dona J. Boley (R)</td>
<td>St. Marys</td>
<td>App. 5/1985, 67&quot; - 68&quot; - 80&quot;</td>
</tr>
<tr>
<td></td>
<td>David C. Nehe (R)</td>
<td>Vienna</td>
<td>80&quot;</td>
</tr>
<tr>
<td>Fourth</td>
<td>Karen L. Facemyer (R)</td>
<td>Ripley,</td>
<td>(House 71&quot; - 74&quot;); 75&quot; - 80&quot;</td>
</tr>
<tr>
<td></td>
<td>Mike Hall (R)</td>
<td>Hurricane</td>
<td>(House 72&quot; - 74&quot;); 78&quot; - 80&quot;</td>
</tr>
<tr>
<td>Fifth</td>
<td>Robert H. Plymale (D)</td>
<td>Ceredo</td>
<td>71&quot; - 80&quot;</td>
</tr>
<tr>
<td></td>
<td>Evan H. Jenkins (D)</td>
<td>Huntington</td>
<td>76&quot; - 80&quot;</td>
</tr>
<tr>
<td>Sixth</td>
<td>H. Truman Clifton (D)</td>
<td>Williamson</td>
<td>66&quot; - 80&quot;</td>
</tr>
<tr>
<td></td>
<td>John Pat Farming (D)</td>
<td>Jailer</td>
<td>58&quot; - 64&quot;, 67&quot; - 68&quot;, 73&quot; - 80&quot;</td>
</tr>
<tr>
<td>Seventh</td>
<td>Earl Ray Tomblin (D)</td>
<td>Chipmanville</td>
<td>(House 62&quot; - 64&quot;); 65&quot; - 80&quot;</td>
</tr>
<tr>
<td></td>
<td>Ron Stollings (D)</td>
<td>Madison</td>
<td>78&quot; - 80&quot;</td>
</tr>
<tr>
<td>Eighth</td>
<td>Corey Palumbo (D)</td>
<td>Charleston</td>
<td>(House 76&quot; - 78&quot;); 79&quot; - 83&quot;</td>
</tr>
<tr>
<td></td>
<td>Erik P. Wells (D)</td>
<td>Charleston</td>
<td>78&quot; - 80&quot;</td>
</tr>
<tr>
<td>Ninth</td>
<td>Richard Browning (D)</td>
<td>Oceana</td>
<td>(House 69&quot; - 72&quot;); 75&quot; - 78&quot;; 79&quot; - 80&quot;</td>
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<tr>
<td></td>
<td>Mike Green (D)</td>
<td>Daniels</td>
<td>78&quot; - 80&quot;</td>
</tr>
<tr>
<td>Tenth</td>
<td>Ronald F. Miller (D)</td>
<td>Lewisburg</td>
<td>80&quot;</td>
</tr>
<tr>
<td></td>
<td>Mark Wills (D)</td>
<td>Princeton</td>
<td>(House 74&quot; - 75&quot;); 80&quot;</td>
</tr>
<tr>
<td>Eleventh</td>
<td>William Lard IV (D)</td>
<td>Oak Hill</td>
<td>(House 73&quot; - 75&quot;); 79&quot; - 80&quot;</td>
</tr>
<tr>
<td></td>
<td>Gregory A. Tucker (D)</td>
<td>Summersville</td>
<td>80&quot;</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Douglas Facemyer (D)</td>
<td>Sutton</td>
<td>79&quot; - 86&quot;</td>
</tr>
<tr>
<td></td>
<td>Joseph M. Minard (D)</td>
<td>Clarksburg</td>
<td>(House Appt. 1/1983; 66&quot;; 67&quot; - 69&quot;; 70&quot; - 71&quot;; 75&quot; - 80&quot;)</td>
</tr>
<tr>
<td>Thirteenth</td>
<td>Robert D. Beach (D)</td>
<td>Morgantown</td>
<td>(House Appt. 5/1998, 73&quot;; 74&quot; - 79&quot;; 80&quot;)</td>
</tr>
<tr>
<td></td>
<td>Roman W. Precasio, Jr. (D)</td>
<td>Fairmont</td>
<td>(House 69&quot; - 72&quot;);73&quot; - 80&quot;</td>
</tr>
<tr>
<td>Fourteenth</td>
<td>Bob Williams (D)</td>
<td>Grafton</td>
<td>79&quot; - 80&quot;</td>
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<td></td>
<td>Dave Sypolt (R)</td>
<td>Kingwood</td>
<td>78&quot; - 80&quot;</td>
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<tr>
<td>Fifteenth</td>
<td>Clark Barnes (R)</td>
<td>Randolph</td>
<td>77&quot; - 80&quot;</td>
</tr>
<tr>
<td></td>
<td>Walt Helmick (D)</td>
<td>Marlinton</td>
<td>(House 1 yr. 69&quot;; App. 9/1989 69&quot;; 70&quot; - 80&quot;)</td>
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<tr>
<td>Sixteenth</td>
<td>Herb Snyder (D)</td>
<td>Shenandoah Junction</td>
<td>73&quot; - 76&quot;; 79&quot; - 80&quot;</td>
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<td></td>
<td>John R. Unger II (D)</td>
<td>Martinsburg</td>
<td>74&quot; - 80&quot;</td>
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<tr>
<td>Seventeenth</td>
<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
<td>(House 76&quot;&quot;); 77&quot; - 80&quot;</td>
</tr>
<tr>
<td></td>
<td>Da€ Foster (D)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(D) Democrats .................................. 28
(R) Republicans .................................. 6

TOTAL ......................................... 34
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2011

*STANDING

AGRICULTURE

Butcher (Chair), Walker (Vice Chair), Boggs, Guthrie, Hall, Manypenny, Martin, Morgan, L. Phillips, R. Phillips, M. Poling, Reynolds, Rodighiero, Swartzmiller, Wells, Williams, Evans (Minority Chair), Canterbury (Minority Vice Chair), Anderson, Border, Ireland, C. Miller, Overington, Romine and Storch.

BANKING AND INSURANCE

Moore (Chair of Banking), Reynolds (Vice Chair of Banking), Perry (Chair of Insurance), Hall (Vice Chair of Insurance), Cann, Ferns, Fragale, Frazier, Hartman, Hunt, Iaquinta, Mahan, Manchin, Michael, Morgan, Shaver, Stowers, Azinger (Minority Chair of Banking), J. Miller, (Minority Vice Chair of Banking), Ashley (Minority Chair of Insurance), Walters (Minority Vice Chair of Insurance), Carmichael, Nelson, O’Neal and Savilla.

CONSTITUTIONAL REVISION

Fleischauer (Chair), Guthrie (Vice Chair), Brown, Caputo, Doyle, Ferro, Fragale, Frazier, Hatfield, Hunt, Marshall, Moore, Morgan, Perdue, Poore, Varner, Wells, Overington (Minority Chair), Romine (Minority Vice Chair), Armstead, Ellem, Householder, Kump, Lane and Sobonya.

EDUCATION

M. Poling (Chair), Paxton (Vice Chair), Barill, D. Campbell, Craig, Crosier, Ennis, Fragale, Lawrence, Moye, Perry, Pethtel, Rodighiero, Shaver, Smith, Walker, Duke (Minority Chair), Sumner

*CLERK’S NOTE: Subsequent to adjournment of the 2011 Regular Session, two vacancies occurred as a result of death. This list reflects the composition of committees prior to the vacancies.

[XXXV]
HOUSE OF DELEGATES COMMITTEES

(Minority Vice Chair), Armstead, Ellington, Gearheart, Pasdon, Rowan, Savilla and Sigler.

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), L. Phillips (Vice Chair of Economic Development and Small Business), Barill, Brown, Butcher, Caputo, Fleischauer, Mahan, Manypenny, Marshall, Martin, Moye, Paxton, Skaff, Walker, Sobonya (Minority Chair of Energy, Industry and Labor), C. Miller (Minority Vice Chair of Energy, Industry and Labor), Andes (Minority Chair of Economic Development and Small Business), Carmichael (Vice Chair of Economic Development and Small Business), Savilla, Sigler, Snuffer and Storch.

FINANCE

White (Chair), T. Campbell (Vice Chair), Doyle, Guthrie, Iaquinta, Kominar, Mahan, Manchin, Marshall, Perdue, L. Phillips, D. Poling, M. Poling, Reynolds, Stowers, Varner, Williams, Anderson (Minority Chair), Carmichael (Minority Vice Chair), Ashley, Border, Canterbury, Cowles, Evans and Walters.

GOVERNMENT ORGANIZATION

Morgan (Chair), Stephens (Vice Chair), Boggs, Butcher, Cann, Ferns, Givens, Hall, Hartman, Hatfield, Jones, Martin, R. Phillips, Staggers, Swartzmiller, Talbott, Romine (Minority Chair), Azinger (Minority Vice Chair), Householder, Howell, Kump, Nelson, O’Neal, Snuffer and Storch.

[XXXVI]
HOUSE OF DELEGATES COMMITTEES

HEALTH AND HUMAN RESOURCES

Perdue (Chair), Hatfield (Vice Chair), Barill, T. Campbell, D. Campbell, Ferns, Fleischauer, Lawrence, Marshall, Moore, Moye, Perry, L. Phillips, Poore, Rodighiero, Staggers, Border (Minority Chair), J. Miller (Minority Vice Chair), Andes, Ellington, Householder, Lane, C. Miller, Pasdon and Rowan.

JUDICIARY

Miley (Chair), Hunt (Vice Chair), Barker, Brown, Caputo, Ferro, Fleischauer, Frazier, Longstreth, Manypenny, Michael, Moore, Pino, Poore, Skaff, Wells, Ellem (Minority Chair), Lane (Minority Vice Chair), Andes, Hamilton, Ireland, C. Miller, J. Miller, Overington and Sobonya.

NATURAL RESOURCES

Talbott (Chair), Crosier (Vice Chair), Fragile, Guthrie, Hall, Manypenny, Martin, L. Phillips, R. Phillips, Pino, Reynolds, Rodighiero, Shaver, Swartzmiller, Varner, Wells, Hamilton (Minority Chair), Ireland (Minority Vice Chair), Anderson, Canterbury, Duke, Ellem, Evans, Romine and Sigler.

PENSIONS AND RETIREMENT

Pethtel (Chair), Ennis (Vice Chair), Givens, Guthrie, D. Poling, Canterbury and Duke.

POLITICAL SUBDIVISIONS

Manchin (Chair), Lawrence (Vice Chair), Cann, Doyle, Frazier, Hartman, Jones, Longstreth, Morgan, R. Phillips, D. Poling, Poore, Smith, Stephens, Varner, Williams, Sumner (Minority Chair), Cowles (Minority Vice Chair), Duke, Ellington, Gearheart, Householder, Kump, O’Neal and Overington.

[XXXVII]
HOUSE OF DELEGATES COMMITTEES

ROADS AND TRANSPORTATION

Martin (Chair), Staggers (Vice Chair), Barker, Boggs, Butcher, T. Campbell, Crosier, Hall, Kominar, Michael, Skaff, Smith, Stephens, Stowers, Walker, Wells, Cowles (Minority Chair), Evans (Minority Vice Chair), Ellington, Gearheart, Howell, Nelson, Pasdon, Savilla and Snuffer.

SENIOR CITIZEN ISSUES

Williams (Chair), Moye (Vice Chair), Butcher, D. Campbell, Craig, Ferro, Hatfield, Longstreth, Manchin, Manypenny, Marshall, Moore, Pethtel, Pino, D. Poling, Stephens, Rowan (Minority Chair), Duke (Minority Vice Chair), Gearheart, Hamilton, Howell, Kump, Sigler, Snuffer 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), Smith (Vice Chair of Homeland Security), Cann, Craig, Ennis, Ferro, Fleischauer, Givens, Hatfield, Jones, Paxton, Pethtel, Staggers, Stephens, Azinger (Minority Chair of Veterans’ Affairs), Rowan (Minority Vice Chair of Veterans’ Affairs), Walters (Minority Chair of Homeland Security), Ashley (Minority Vice Chair of Homeland Security), Armstead, Howell, Nelson, O’ Neal and Pasdon.

[XXXVIII]
HOUSE OF DELEGATES COMMITTEES

ENROLLED BILLS

Poore (Chair), D. Poling (Vice Chair), Fragale and Overington.

LEGISLATIVE RULE-MAKING REVIEW

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

FOREST MANAGEMENT REVIEW

Michael (Chair) and Hartman (Vice Chair).

PARKS AND RECREATION

Wells (Co-Chair) and Manypenny (Co-Chair).

[XXXIX]
COMMITTEES OF THE SENATE
Regular Session, 2011

STANDING

AGRICULTURE

Williams (Chair), Beach (Vice Chair), Fanning, Helmick, Laird, Miller, Minard, Snyder, K. Facemyer, Nohe and Sypolt.

BANKING AND INSURANCE

Minard (Chair), Jenkins (Vice Chair), Chafin, Fanning, Green, Helmick, McCabe, Palumbo, Prezioso, Tucker, K. Facemyer, Hall and Nohe.

CONFIRMATIONS

Edgell (Chair), Chafin (Vice Chair), Browning, D. Facemire, Plymale, Prezioso, Snyder, Hall and Sypolt.

ECONOMIC DEVELOPMENT

Browning (Chair), Klempa (Vice Chair), Chafin, D. Facemire, Helmick, McCabe, Prezioso, Snyder, Stollings, Wells, Williams, K. Facemyer, Hall and Sypolt.

EDUCATION

Plymale (Chair), Wells (Vice Chair), Beach, Browning, Chafin, Edgell, Foster, Laird, Stollings, Tucker, Unger, Wills, Barnes and Boley.

ENERGY, INDUSTRY AND MINING

Green (Chair), D. Facemire (Vice Chair), Beach, Fanning, Helmick, Jenkins, Klempa, Minard, Stollings, Yost, K. Facemyer, Nohe and Sypolt.
SENATE COMMITTEES

ENROLLED BILLS

Miller (Chair), Palumbo, Beach, Wells and Barnes.

FINANCE

Prezioso (Chair), D. Facemire (Vice Chair), Chafin, Edgell, Green, Helmick, Laird, McCabe, Miller, Plymale, Stollings, Unger, Wells, Yost, Hall, Boley and Sypolt.

GOVERNMENT ORGANIZATION

Snyder (Chair), Green (Vice Chair), Browning, Chafin, Foster, Klempa, McCabe, Miller, Minard, Palumbo, Williams, Yost, Boley and Sypolt.

HEALTH AND HUMAN RESOURCES

Stollings (Chair), Foster (Vice Chair), Chafin, Jenkins, Laird, Miller, Palumbo, Prezioso, Tucker, Wills, Yost, Boley and Hall.

INTERSTATE COOPERATION

Jenkins (Chair), Tucker (Vice Chair), Palumbo, Wells, Wills, Nohe and Sypolt.

JUDICIARY

Palumbo (Chair), Wills (Vice Chair), Beach, Browning, Fanning, Foster, Jenkins, Klempa, McCabe, Minard, Snyder, Tucker, Unger, Williams, Barnes, K. Facemyer and Nohe.

[XLI]
SENATE COMMITTEES

LABOR

Yost (Chair), Miller (Vice Chair), Edgell, Foster, Green, Klempa, Snyder, Williams, Wills, Barnes and Nohe.

MILITARY

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

NATURAL RESOURCES

Laird (Chair), Fanning (Vice Chair), Beach, Edgell, D. Facemire, Green, Helmick, Prezioso, Williams, Wills, Barnes, Boley and K. Facemyer.

PENSIONS AND RETIREMENT

Foster (Chair), Edgell (Vice Chair), Jenkins, McCabe, Plymale, Hall and Nohe.

RULES

Kessler (Chair), McCabe, Browning, Palumbo, Plymale, Prezioso, Snyder, Stollings, Unger, Boley and Hall.

TRANSPORTATION AND INFRASTRUCTURE

Beach (Chair), Klempa (Vice Chair), D. Facemire, Fanning, Plymale, Williams, Tucker, Barnes and K. Facemyer.
SENATE COMMITTEES

JOINT COMMITTEES

ENROLLED BILLS

Miller (Cochair), Palumbo, Beach, Wells and Barnes.

GOVERNMENT AND FINANCE

Kessler (Cochair), Palumbo, Plymale, Prezioso, Unger, K. Facemyer and Hall.

GOVERNMENT OPERATIONS

Snyder (Cochair), D. Facemire (Cochair), Klempa, McCabe and Barnes.

LEGISLATIVE RULE-MAKING REVIEW

Minard (Cochair), Snyder (Vice Cochair), Laird, Unger, Boley, K. Facemyer and Kessler (ex officio).

PENSIONS AND RETIREMENT

Foster (Cochair), Edgell (Vice Cochair), Jenkins, McCabe, Plymale, Hall and Nohe.

RULES

Kessler (Cochair), Unger and Hall.

[XLIII]
SENATE COMMITTEES

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT

Browning (Cochair), Helmick, Klempa, McCabe, Palumbo, Plymale, Prezioso, Stollings, Unger, Barnes, Facemyer and Sypolt.

COMMISSION ON INTERSTATE COOPERATION

Jenkins (Cochair), Snyder (Vice Cochair), Browning, Palumbo, Wells, Johe, Sypolt and Kessler (ex officio).

COMMISSION ON SPECIAL INVESTIGATIONS

Kessler (Cochair), Palumbo, Unger, Boley and Hall.

FOREST MANAGEMENT REVIEW COMMISSION

Williams (Cochair), Fanning, Helmick, Miller and K. Facemyer.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY

Plymale (Cochair), Wells (Vice Cochair), Browning, Edgell, Unger, Boley and Kessler (ex officio).

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY

Stollings (Cochair), Foster, Laird, Unger, Wills, Boley, Hall and Kessler (ex officio).
SENATE COMMITTEES

LEGISLATIVE OVERSIGHT COMMISSION ON STATE WATER RESOURCES

Unger (Cochair), Green (Vice Cochair), Laird, Snyder and Hall.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT

Facemire (Cochair), Klempa, Miller and Sypolt.

LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY

Laird (Cochair), Green, Tucker, Yost and Barnes.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-8-16, relating to choice of law products' liability claims that are based upon prescription drug manufacturer's alleged failure to warn.

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 §55-8-16, to read as follows:

ARTICLE 8. ACTIONS ON CONTRACTS.


(a) It is public policy of this state that, in determining the law applicable to a product liability claim brought by a
nonresident of this state against the manufacturer or
distributor of a prescription drug for failure to warn, the duty
to warn shall be governed solely by the product liability law
of the place of injury ("lex loci delicti").

(b) This section shall be applicable prospectively to all
civil actions commenced on or after July 1, 2011.

CHAPTER 2

(H. B. 3100 - By Delegates Skaff, Brown,
Craig, Morgan, Fragale, Moore, Poore,
Wells, Michael, Caputo and Andes)

[Passed March 12, 2011; in effect ninety days from passage.]  
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §60-3A-18 of the Code of West
Virginia, 1931, as amended, relating to permitting the sale of
liquor on election day.

Be it enacted by the Legislature of West Virginia:

That §60-3A-18 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

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

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

CHAPTER 3

(Com. Sub. for H. B. 3143 - By Delegates Pasdon, Hall, Craig, R. Phillips, Miley and Boggs)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §19-20-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3E-6 of said code, all relating to increasing penalties for causing injury or death to certain animals used by law enforcement or in law enforcement duties; and providing for restitution to the agency or department that owns or owned the animal.

Be it enacted by the Legislature of West Virginia:

That §19-20-24 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3E-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 19. AGRICULTURE.

ARTICLE 20. DOGS AND CATS.

§19-20-24. Causing death or injury to animals used by law-enforcement officials or by fire prevention or investigation officials; criminal penalties.

Any person who, without justification, and with the unlawful intent to inflict serious physical injury or death,
Any person who, without justification, willfully and unlawfully causes physical injury to any trained dog or horse used by law-enforcement officials, the Department of Military Affairs and Public Safety or by fire prevention or investigation officials in the performance of their official duties is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in jail not more than six months, or both.

Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency, the Department of Military Affairs and Public Safety or to the State Fire Marshal or other fire prevention or investigation department or agency owning the animal for any veterinary bills, and replacement costs of any disabled or killed animal.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3E. OFFENSES INVOLVING EXPLOSIVES.

§61-3E-6. Causing death or injury to an explosives detection animal; penalty.

Any person who violates the provisions of this article which violation causes death, serious or debilitating bodily injury to an explosives detection animal owned or used by a
law-enforcement agency, shall be guilty of a felony and, upon conviction thereof, be committed to the custody of the Division of Corrections for not less than one year nor more than five years or fined not more than $5,000 or both. Any person convicted of a violation of this section shall be ordered to make restitution to the law-enforcement agency, the Department of Military Affairs and Public Safety or to the State Fire Marshal or other fire prevention or investigation department or agency owning the animal for any veterinary bills, and replacement costs of any disabled or killed animal.

CHAPTER 4

(S. B. 254 - By Senators Kessler (Acting President), and Hall) [By Request of the Executive]

[Passed February 19, 2011; in effect from passage.] [Approved by the Governor on March 2, 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 8746, fiscal year 2011, organization 0307, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.

340-West Virginia Development Office-
Community Development

Fund 8746 FY 2011 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total. ........... 096 $ 10,000,000</td>
</tr>
</tbody>
</table>
| 2        | And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 8755, fiscal year 2011, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 7. Appropriations from Federal Block Grants.
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 2011.

CHAPTER 5

(S. B. 255 - By Senators Kessler
(Acting President), and Hall)
[By Request of the Executive]

[Passed February 14, 2011; in effect from passage.]
[Approved by the Governor on February 25, 2011.]

AN ACT making a supplementary appropriation of federal funds from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2011, to a new item of appropriation designated to the Governor’s Office, fund 8742, fiscal year 2011, organization 0100, to the Department of Education and the Arts - State Board of Rehabilitation - Division of Rehabilitation Services, fund 8734, fiscal year 2011,
organization 0932, to the Department of Health and Human Resources - West Virginia Health Care Authority, fund 8851, fiscal year 2011, organization 0507, to the Department of Health and Human Resources - Division of Human Services, fund 8722, fiscal year 2011, organization 0511, and to the Department of Transportation - Public Port Authority, fund 8830, fiscal year 2011, organization 0806, 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 Chapter 8, Acts of the Legislature, Regular Session, 2010, 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

283a-Governor’s Office

(WV Code Chapter 5)

Fund 8742 FY 2011 Org 0100

<table>
<thead>
<tr>
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</tr>
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<tbody>
<tr>
<td>Unclassified - Total. . . . 096</td>
<td>$ 55,000,000</td>
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2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to the fund 8734, fiscal year 2011,
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

(WV Code Chapter 18)

Fund 8734 FY 2011 Org 0932

<table>
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<tbody>
<tr>
<td>096</td>
<td>$19,000,000</td>
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</table>

2 And, That the total appropriation for the fiscal year ending
3 June 30, 2011, to fund 8851, fiscal year 2011, organization
4 0507, 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 HEALTH AND HUMAN RESOURCES

316-West Virginia Health Care Authority

(WV Code Chapter 16)
Fund 8851 FY 2011 Org 0507

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2 Federal Economic Stimulus</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 8722, fiscal year 2011, 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

318-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2011 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2 Medical Services</td>
<td>$170,000,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 8830, fiscal year 2011, organization 0806, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.
DEPARTMENT OF TRANSPORTATION

333-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2011 Org 0806

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$1,044,000</td>
</tr>
</tbody>
</table>

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 2011.

CHAPTER 6

(S. B. 342 - By Senators Kessler
(Acting President), and Hall)
[By Request of the Executive]

[Passed February 7, 2011; in effect from passage.]
[Approved by the Governor on March 1, 2011.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Governor’s Office - Civil Contingent Fund, fund 0105, fiscal year 2011, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2011.
WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 12, 2011, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2010; and further included the estimate of revenues for the fiscal year 2011, less net appropriation balances forwarded and regular appropriations for fiscal year 2011; and

WHEREAS, It appears from the Governor’s Executive Budget document, 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, 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 0105, fiscal year 2011, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

7-Governor’s Office -
Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2011 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Election - Surplus (R)</td>
<td>$ 8,000,000</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Special Election - Surplus (fund 0105, activity 233) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The purpose of this 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 2011.

CHAPTER 7

(S. B. 617 - By Senators Prezioso, D. Facemire, Unger, Plymale, McCabe, Laird, Wells, Green, Chaﬁn, Yost, Edgell, Helmick, Stollings, Miller, Hall and Boley)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on March 23, 2011.]

AN ACT making a supplementary appropriation of federal funds from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2011, to the Department of Education and the Arts - Department of Education and the Arts - Office of the Secretary, fund 8841, fiscal year 2011, organization 0431, and to the Department of Health and Human Resources - Division of Health - West Virginia Safe Drinking Water Treatment, fund 8824, fiscal year 2011, organization 0506, by supplementing and amending the appropriations 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 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

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 2 Federal Economic Stimulus</td>
<td>891 350,000</td>
</tr>
<tr>
<td>2 And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 8824, fiscal year 2011, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:</td>
<td></td>
</tr>
</tbody>
</table>

TITLE II--APPROPRIATIONS.

Sec. 6. Appropriations of Federal Funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

315-Division of Health -
West Virginia Safe Drinking Water Treatment
The purpose of this supplementary appropriation bill is to supplement, amend, and increase existing items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2011.

**CHAPTER 8**

(S. B. 618 - By Senators Prezioso, D. Facemire, Unger, Plymale, McCabe, Laird, Wells, Green, Chafin, Yost, Edgell, Helmick, Stollings, Miller, Hall and Boley)

[Passed March 12, 2011; in effect from passage.]  
[Approved by the Governor on March 23, 2011.]

AN ACT supplementing, amending, decreasing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2011, organization 0803, and to the Department of Transportation - Office of Administrative Hearings, fund 9027, fiscal year 2011, organization 0808, for the fiscal year ending June 30, 2011.

WHEREAS, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 2011, which

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>096</td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

(WV Code Chapter 16)
included the statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2010, and further included the estimate of revenues for the fiscal year 2011, less net appropriation balances forwarded and regular appropriations for the fiscal year 2011; 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, 2011; therefore

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the State Road Fund to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2011, organization 0803, be supplemented and amended by decreasing existing items 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

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>$ 2,000,000</td>
</tr>
<tr>
<td>Federal Economic Stimulus II</td>
<td>140,000,000</td>
</tr>
</tbody>
</table>
And, That the items of the total appropriations from the State Road Fund, to the Department of Transportation - Division of Highways, fund 9017, fiscal year 2011, organization 0803, be supplemented and amended by increasing existing items 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

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Maintenance</td>
<td>237 $ 19,000,000</td>
</tr>
<tr>
<td>2 Interstate Construction</td>
<td>278 35,000,000</td>
</tr>
<tr>
<td>3 Nonfederal Aid Construction</td>
<td>281 3,000,000</td>
</tr>
<tr>
<td>4 Federal Economic Stimulus</td>
<td>891 20,000,000</td>
</tr>
</tbody>
</table>

And, That the items of the total appropriations from the State Road Fund, to the Department of Transportation - Office of Administrative Hearings, fund 9027, fiscal year 2011, organization 0808, 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
The purpose of this supplemental appropriation bill is to supplement, amend, decrease and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year ending June 30, 2011.

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2011, to the Department of Military Affairs and Public Safety - West Virginia Division of Corrections - Parolee Supervision Fees, fund 6362, fiscal year 2011, organization 0608, to the Department of Military Affairs and Public Safety - West Virginia State Police - Motor Vehicle Inspection Fund, fund 6501, fiscal year 2011, organization 0612, to the Department of Revenue - Office of the Secretary - State Debt
Reduction Fund, fund 7007, fiscal year 2011, organization 0701, and to the Department of Transportation - Public Port Authority - Special Railroad and Intermodal Enhancement Fund, fund 8254, fiscal year 2011, organization 0806, by supplementing and amending the appropriation for the fiscal year ending June 30, 2011.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Military Affairs and Public Safety - West Virginia Division of Corrections - Parolee Supervision Fees, fund 6362, fiscal year 2011, organization 0608, in the Department of Military Affairs and Public Safety - West Virginia State Police - Motor Vehicle Inspection Fund, fund 6501, fiscal year 2011, organization 0612, in the Department of Revenue - Office of the Secretary - State Debt Reduction Fund, fund 7007, fiscal year 2011, organization 0701, and in the Department of Transportation - Public Port Authority - Special Railroad and Intermodal Enhancement Fund, fund 8254, fiscal year 2011, organization 0806, available for expenditure during the fiscal year ending June 30, 2011 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, 2011, to fund 6362, fiscal year 2011, organization 0608, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II -- APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

188-West Virginia Division of Corrections - Parolee Supervision Fees
And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 6501, fiscal year 2011, organization 0612, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II -- APPROPRIATIONS.**

**Sec. 3. Appropriations from Other Funds.**

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

*189-West Virginia State Police - Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 7007, fiscal year 2011, organization 0612, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II -- APPROPRIATIONS.**

**Sec. 3. Appropriations from Other Funds.**

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

*189-West Virginia State Police - Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)
4 0701, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II -- APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF REVENUE

202-Office of the Secretary - State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2011 Org 0701

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total - Transfer.</td>
<td>402 $ 8,934,000</td>
</tr>
</tbody>
</table>

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 8254, fiscal year 2011, organization 0806, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II -- APPROPRIATIONS.

Sec. 3. Appropriations from Other Funds.

DEPARTMENT OF TRANSPORTATION

227-Public Port Authority - Special Railroad and Intermodal Enhancement Fund

(WV Code Chapter 17)

Fund 8254 FY 2011 Org 0806
### CHAPTER 10

(S. B. 620 - By Senators Prezioso, D. Facemire, Unger, Edgell, Plymale, McCabe, Laird, Wells, Green, Chafin, Yost, Helmick, Stollings, Miller, Boley and Sypolt)

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2011 in the amount of $7,100,000 from the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, and 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 Auditor’s Office - General Administration, fund 0116, fiscal year 2011, organization 1200, to the Department of Agriculture, fund 0131, fiscal year 2011, organization 1400, to the Department of Administration - Ethics Commission, fund 0223, fiscal year 2011, organization 0220, to the Department of Administration - Public Defender
Services, fund 0226, fiscal year 2011, organization 0221, to the Department of Education - State Department of Education, fund 0313, fiscal year 2011, organization 0402, to the Department of Health and Human Resources - Consolidated Medical Service Fund, fund 0525, 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 - West Virginia Parole Board, fund 0440, fiscal year 2011, organization 0605, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2011, organization 0608, to the Department of Military Affairs and Public Safety - Division of Veterans’ Affairs, fund 0456, fiscal year 2011, organization 0613, to Higher Education - Higher Education Policy Commission - Administration - Control Account, fund 0589, fiscal year 2011, organization 0441, and to Higher Education Policy Commission - System Control Account, fund 0586, fiscal year 2011, organization 0442, by supplementing and amending the appropriations for the fiscal year ending June 30, 2011.

WHEREAS, The Legislature finds that the account balance in the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated January 12, 2011, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2010; and further included the estimate of revenues for the fiscal year 2011, less net appropriation balances forwarded and regular appropriations for fiscal year 2011; and

WHEREAS, It appears from the Governor’s Executive Budget document, statement of the State Fund, General Revenue, and this legislation there now remains an unappropriated surplus 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 balance of the funds available for expenditure in the fiscal year ending June 30, 2011, to the Department of Military Affairs and Public Safety - Office of the Secretary, fund 0430, fiscal year 2006, organization 0601, activity 511, be decreased by expiring the amount of $7,100,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year 2011.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0116, fiscal year 2011, organization 1200, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

EXECUTIVE

8-Auditor's Office-
General Administration

(WV Code Chapter 12)

Fund 0116 FY 2011 Org 1200

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Surplus (R). . . . 097</td>
</tr>
<tr>
<td>2</td>
<td>Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0116, activity 097) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.</td>
</tr>
</tbody>
</table>

And, 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 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 2011 Org 1400

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>$725,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0131, activity 097) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0223, fiscal year 2011, organization 0220, 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
25—Ethics Commission
(WV Code Chapter 6B)
Fund 0223 FY 2011 Org 0220
And, That the total appropriation for the fiscal year ending
June 30, 2011, to fund 0226, fiscal year 2011, organization
0221, 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

26—Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2011 Org 0221

1 6a Appointed Counsel
2 6b Fees - Surplus (R) ........ 435 $ 11,500,000

Any unexpended balance remaining in the appropriation
for Appointed Counsel Fees - Surplus (fund 0226, activity
435) at the close of the fiscal year 2011 is hereby
reappropriated for expenditure during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending
June 30, 2011, to fund 0313, fiscal year 2011, organization
0402, be supplemented and amended by increasing existing
items of appropriation as follows:
TITLE II--APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

DEPARTMENT OF EDUCATION

46-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2011 Org 0402

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 4 Unclassified - Surplus (R)</td>
<td>$ 526,522</td>
</tr>
<tr>
<td>2 6 Increased Enrollment - Surplus</td>
<td>2,062,718</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0313, activity 097) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0525, 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

62-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2011 Org 0506
Any unexpended balance remaining in the appropriation for Institutional Facilities Operations - Surplus (fund 0525, activity 632) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

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 an existing item 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

Any unexpended balance remaining in the appropriation for Indigent Burials - Surplus (fund 0403, activity 076) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.
And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0440, fiscal year 2011, organization 0605, 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-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2011 Org 0605

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>097</td>
<td>$31,491</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0440, activity 097) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0450, fiscal year 2011, organization 0608, be supplemented and amended by increasing existing items of appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from General Revenue.**

**DEPARTMENT OF MILITARY AFFAIRS**

AND PUBLIC SAFETY
### TITLE II--APPROPRIATIONS.

#### Section 1. Appropriations from General Revenue.

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

**74-Division of Veterans' Affairs**

(WV Code Chapter 9A)

Fund 0456 FY 2011 Org 0613

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>097</td>
<td>7,100,000</td>
</tr>
<tr>
<td>008</td>
<td>6,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0450, activity 097), and Payments to Federal, County, and/or Regional Jails - Surplus (fund 0450, activity 008) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.
Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0456, activity 097) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0589, fiscal year 2011, organization 0441, be supplemented and amended by increasing an 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

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Surplus (R) . . . . . 097</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0589, activity 097) at the
close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

And, That the total appropriation for the fiscal year ending June 30, 2011, to fund 0586, fiscal year 2011, organization 0442, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from General Revenue.

HIGHER EDUCATION

92-Higher Education Policy Commission -
   System -
   Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2011 Org 0442

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>WVU - School of Health</td>
</tr>
<tr>
<td>5a</td>
<td>Sciences - Surplus</td>
</tr>
<tr>
<td></td>
<td>713</td>
</tr>
<tr>
<td></td>
<td>$ 1,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for WVU - School of Health Sciences - Surplus (fund 0586, activity 713) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The purpose of this bill is to expire funds into the unappropriated surplus balance in the state fund, general revenue, and to supplement, amend, add and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year 2011.
AN ACT making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

TITLE I — GENERAL PROVISIONS.

Section 1. General policy. — The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2012.

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

"Governor" shall mean the Governor of the State of West Virginia.

"Code" shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.
“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year 2012” shall mean the period from July 1, 2011, through June 30, 2012.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.Va. Code §12-2-2 or as otherwise provided.

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

“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

Sec. 3. Classification of appropriations. — An appropriation for:

“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.
Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

“Annual increment” shall mean funds appropriated for “eligible employees” and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

Funds appropriated for “annual increment” shall be transferred to “personal services” or other designated items only as required.

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be transferred by each spending unit from its “personal services” line item or its “unclassified” line item or other appropriate line item to its “employee benefits” line item. If there is no appropriation for “employee benefits,” such costs shall be paid by each spending unit from its “personal services” line item, its “unclassified” line item or other appropriate line item. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

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

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

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

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

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

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

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

"Buildings" shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.
“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.

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

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: Provided, however, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services” line unless the source funds are also wholly from a “personal services” line, or unless the source funds are from another activity that has exclusively funded employment expenses (any of object codes 001 through 016, 160 and 163) for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: Provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to “personal services” and “employee benefits” to other lines
within the same account and no funds from other lines shall be transferred to the “personal services” line: *And provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer general revenue funds appropriated to “annual increment” to other general revenue accounts within the same department, bureau or commission for the purpose of providing an annual increment in accordance with Article 5, Chapter 5 of the Code: *And provided further*, That no authority exists hereunder to transfer funds into line-items to which no funds are legislatively appropriated: *And provided further*, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary or other appropriate agency head may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

*Sec. 4. Method of expenditure.* — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of
169 Article 3, Chapter 12 of the Code or according to any law
detailing a procedure specifically limiting that article.

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

**TITLE II--APPROPRIATIONS.**

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<td>Rehabilitation, State Board of--Division of Rehabilitation Services--Fund No. 8734</td>
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<td>Environmental Protection, Division of--Fund No. 8708</td>
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§11. State Improvement Fund Appropriations
§12. Specific funds and collection accounts
§15. Appropriations for local governments.
§16. Total appropriations.
§17. General school fund.

Section 1. Appropriations from general revenue. —
From the State Fund, General Revenue, there are hereby
appropriated conditionally upon the fulfillment of the
provisions set forth in Article 2, Chapter 11B the following
amounts, as itemized, for expenditure during the fiscal year
2012.

LEGISLATIVE

1-Senate

Fund 0165 FY 2012 Org 2100

<table>
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<td>Compensation of Members (R). . . .</td>
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### APPROPRIATIONS

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<tr>
<th>Description</th>
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<tr>
<td>Compensation and Per Diem of Officers</td>
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<td>3,003,210</td>
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<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>597,712</td>
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<tr>
<td>Current Expenses and Contingent Fund (R)</td>
<td>021</td>
<td>561,392</td>
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<tr>
<td>Repairs and Alterations (R)</td>
<td>064</td>
<td>210,410</td>
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<tr>
<td>Computer Supplies (R)</td>
<td>101</td>
<td>40,000</td>
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<tr>
<td>Computer Systems (R)</td>
<td>102</td>
<td>150,000</td>
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<tr>
<td>Printing Blue Book (R)</td>
<td>103</td>
<td>150,000</td>
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<tr>
<td>Expenses of Members (R)</td>
<td>399</td>
<td>700,000</td>
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<tr>
<td>BRIM Premium (R)</td>
<td>913</td>
<td>29,482</td>
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<tr>
<td>Total</td>
<td></td>
<td>$6,452,206</td>
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</tbody>
</table>

The appropriations for the Senate for the fiscal year 2011 are to remain in full force and effect and are hereby reappropriated to June 30, 2012. Any balances so reappropriated may be transferred and credited to the fiscal year 2012 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 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 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.

2-House of Delegates

Fund 0170 FY 2012 Org 2200

1 Compensation of Members (R) . . . . 003 $ 3,000,000
Compensation and Per Diem of Officers and Employees (R) ....... 005 700,000
Current Expenses and Contingent
Fund (R). ......................... 021 3,954,031
Expenses of Members (R). ........ 399 1,700,000
BRIM Premium (R). ............... 913 50,000
Total. ........................... $ 9,404,031

The appropriations for the House of Delegates for the fiscal year 2011 are to remain in full force and effect and are hereby reappropriated to June 30, 2012. Any balances so reappropriated may be transferred and credited to the fiscal year 2012 accounts.

Upon the written request of the Clerk of the House of Delegates, 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 House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates’ offices, the requisitions for which are to be accompanied by bills to be 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.

3-Joint Expenses

(WV Code Chapter 4)

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<tr>
<th>Fund</th>
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<tr>
<td>1</td>
<td>Joint Committee on Government and Finance (R)</td>
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<td>2</td>
<td>Legislative Printing (R)</td>
<td>105</td>
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<tr>
<td>3</td>
<td>Legislative Rule-Making Review Committee (R)</td>
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<tr>
<td>4</td>
<td>Legislative Computer System (R)</td>
<td>107</td>
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<tr>
<td>5</td>
<td>Joint Standing Committee</td>
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<td>6</td>
<td>on Education (R)</td>
<td>108</td>
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<td>7</td>
<td>BRIM Premium (R)</td>
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<tr>
<td>8</td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

The appropriations for the joint expenses for the fiscal year 2011 are to remain in full force and effect and are
hereby reappropriated to June 30, 2012. Any balances so
reappropriated may be transferred and credited to the fiscal
year 2012 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.

JUDICIAL

4-Supreme Court —
General Judicial

Fund 0180 FY 2012 Org 2400

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<th>Item Description</th>
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<td>Personal Services (R) ..................</td>
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<tr>
<td>Annual Increment (R) ...................</td>
<td>004</td>
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<tr>
<td>Employee Benefits (R) ..................</td>
<td>010</td>
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<tr>
<td>Children’s Protection Act (R) ..........</td>
<td>090</td>
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<tr>
<td>Unclassified (R) .......................</td>
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<tr>
<td>Judges’ Retirement System (R) ..........</td>
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<td>Retirement Systems -</td>
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<td>Unfunded Liability (R) ................</td>
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<td>BRIM Premium (R) .......................</td>
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<tr>
<td>Total.</td>
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</tbody>
</table>

The appropriations to the Supreme Court of Appeals for
the fiscal years 2010 and 2011 are to remain in full force and
effect and are hereby reappropriated to June 30, 2012. Any
balances so reappropriated may be transferred and credited to
the fiscal year 2012 accounts.

This appropriation shall be administered by the
Administrative Director of the Supreme Court of Appeals,
who shall draw requisitions for warrants in payment in the
form of payrolls, making deductions therefrom as required by
law for taxes and other items.

The appropriations for the Judges’ Retirement System
(activity 110) and Retirement Systems - Unfunded Liability
(activity 775) are to be transferred to the Consolidated Public
Retirement Board, in accordance with the law relating
thereto, upon requisition of the Administrative Director of the
Supreme Court of Appeals.

EXECUTIVE

5-Governor’s Office

(WV Code Chapter 5)

Fund 0101 FY 2012 Org 0100

1 Personal Services. ................ 001 $ 2,441,095
2 Salary of Governor. ............... 002 150,000
3 Annual Increment. ............... 004 30,360
4 Employee Benefits. ............... 010 783,619
5 Office of Economic Opportunity. . 034 126,620
6 Unclassified (R). .................. 099 1,026,908
7 GO HELP (R). ..................... 116 510,065
8 National Governors’ Association. . 123 60,700
9 Southern States Energy Board. .... 124 28,732
10 Southern Governors’ Association. .. 314 25,000
11 BRIM Premium. .................. 913 156,851
12 P20 Jobs Cabinet. ............... 954 38,000
13 Total. ...................... $ 5,377,950
Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, activity 099), GO HELP (fund 0101, activity 116), JOBS Fund (fund 0101, activity 665), and Pharmaceutical Cost Management Council (fund 0101, activity 796) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

6-Governor’s Office —
Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2012 Org 0100

1 1 Unclassified - Total (R)........... 096 $ 606,666

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0102, activity 096) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

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

7-Governor’s Office —
Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2012 Org 0100

1 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 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

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.

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.

8-Auditor’s Office — General Administration

(WV Code Chapter 12)

Fund 0116 FY 2012 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,307,257</td>
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<tr>
<td>Salary of Auditor</td>
<td>002</td>
<td>95,000</td>
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<td>Annual Increment</td>
<td>004</td>
<td>47,686</td>
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<td>010</td>
<td>833,554</td>
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<td>Unclassified (R)</td>
<td>099</td>
<td>458,307</td>
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<tr>
<td>Volunteer Fire Department Workers</td>
<td>832</td>
<td>2,500,000</td>
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<td>Compensation Subsidy (R)</td>
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<td>15,428</td>
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<tr>
<td>Total</td>
<td></td>
<td>$6,257,232</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0116, activity 099) and Unclassified - Surplus (fund 0116, activity 097) at the close of the fiscal year 2012 is hereby reappropriated for expenditure during the fiscal year 2013.
year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

9-Treasurer’s Office

(WV Code Chapter 12)

Fund 0126 FY 2012 Org 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>1,993,886</td>
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<td>Salary of Treasurer</td>
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<td>3</td>
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<td>Employee Benefits</td>
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<td>5</td>
<td>Unclassified (R)</td>
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<td>693,046</td>
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<td>6</td>
<td>Abandoned Property Program</td>
<td>118</td>
<td>258,601</td>
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<td>7</td>
<td>Tuition Trust Fund (R)</td>
<td>692</td>
<td>147,163</td>
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<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>30,809</td>
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<td>9</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099) and Tuition Trust Fund (fund 0126, activity 692) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2012 Org 1400

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<td>Salary of Commissioner</td>
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<td>Annual Increment</td>
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<td>Employee Benefits</td>
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<td>Program/Market</td>
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<td>Huntington Farmers Market</td>
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<td>10</td>
<td>Black Fly Control (R)</td>
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<td>11</td>
<td>Donated Foods Program</td>
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<td>12</td>
<td>Predator Control (R)</td>
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<td>13</td>
<td>Logan Farmers Market</td>
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<td>14</td>
<td>Bee Research</td>
<td>691</td>
<td>*76,894</td>
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<td>15</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>75,000</td>
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<td>16</td>
<td>Microbiology Program (R)</td>
<td>785</td>
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<td>17</td>
<td>Moorefield Agriculture Center (R)</td>
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<td>1,209,513</td>
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<td>18</td>
<td>Chesapeake Bay Watershed</td>
<td>830</td>
<td>125,000</td>
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<tr>
<td>19</td>
<td>BRIM Premium</td>
<td>913</td>
<td>130,202</td>
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<td>20</td>
<td>Threat Preparedness</td>
<td>942</td>
<td>81,252</td>
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<td>21</td>
<td>WV Food Banks</td>
<td>969</td>
<td>95,000</td>
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<tr>
<td>22</td>
<td>Livestock Care Standards Board</td>
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<td>15,000</td>
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<td>23</td>
<td>Senior’s Farmers’ Market Nutrition</td>
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<td>Coupon Program</td>
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<td>62,173</td>
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<td>25</td>
<td>Total</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), Predator Control (fund 0131, activity 470), Capital Outlay and Maintenance (fund 0131, activity 755), Microbiology Program (fund 0131, activity 785), and Moorefield Agriculture Center (fund 0131, activity 786) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

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

\*CLERK’S NOTE: The Chief Executive reduced the amount in Item 10, line 14 by $10,000, from $86,894 to $76,894. The total does NOT reflect the reduction by the Governor.
From the above appropriation for WV Food Banks (activity 969), the full appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund 0132 FY 2012 Org 1400</th>
</tr>
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<tbody>
<tr>
<td>1 Personal Services. ........ $ 511,152</td>
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<tr>
<td>2 Annual Increment. .......... 10,726</td>
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<tr>
<td>3 Employee Benefits .......... 234,277</td>
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<tr>
<td>4 Unclassified (R) .......... 442,292</td>
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<tr>
<td>5 Soil Conservation Projects (R) 8,398,288</td>
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<tr>
<td>6 Marlinton Flood Wall (R) 750,000</td>
</tr>
<tr>
<td>7 BRIM Premium .............. 12,969</td>
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<tr>
<td>8 Total .................... $ 11,109,704</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), and Marlinton Flood Wall (fund 0132, activity 757) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

12-Department of Agriculture — Meat Inspection

(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund 0135 FY 2012 Org 1400</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified - Total ........ $ 718,278</td>
</tr>
</tbody>
</table>

*Clerk's Note: The Chief Executive reduced the amount in Item 11, line 6 by $750,000, from $1,500,000 to $750,000. The total does NOT reflect the reduction by the Governor.
Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

13-Department of Agriculture — Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2012 Org 1400

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

14-Department of Agriculture — West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2012 Org 1400

1 Unclassified - Total (R) ............... 096 $ 102,743

2 Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0607, activity 096) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

15-Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2012 Org 1500

1 Personal Services (R) ............... 001 $ 2,228,612
## Appropriations

<table>
<thead>
<tr>
<th>Description</th>
<th>Fund</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>Salary of Attorney General</td>
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<td>95,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>58,175</td>
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<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>1,119,944</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>792,897</td>
</tr>
<tr>
<td>Criminal Convictions and Habeas Corpus Appeals (R)</td>
<td>260</td>
<td>1,187,803</td>
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<tr>
<td>Better Government Bureau</td>
<td>740</td>
<td>325,407</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>118,590</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$ 5,926,428</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the above appropriations for Personal Services (fund 0150, activity 001), Employee Benefits (fund 0150, activity 010), Unclassified (fund 0150, activity 099), Criminal Convictions and Habeas Corpus Appeals (fund 0150, activity 260), and Agency Client Revolving Liquidity Pool (fund 0150, activity 362) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

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

16-Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2012 Org 1600
1. **Personal Services** ........................................ 001 $ 709,091
2. **Salary of Secretary of State** .......................... 002 95,000
3. **Annual Increment** ........................................ 004 10,000
4. **Employee Benefits** ....................................... 010 467,777
5. **Unclassified (R)** .......................................... 099 9,297
6. **BRIM Premium** ........................................... 913 16,000
7. **Total** ...................................................... $ 1,307,165

Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0155, activity 097) and Unclassified (fund 0155, activity 099) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2012 Org 1601

1. **Unclassified — Total** ................................. 096 $ 9,761

DEPARTMENT OF ADMINISTRATION

18-Department of Administration —
Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2012 Org 0201

1. **Personal Services** ........................................ 001 $ 443,414
2. **Annual Increment** ........................................ 004 3,026
3. **Employee Benefits** ....................................... 010 140,462
4. **Unclassified** ............................................. 099 116,553
5. **Financial Advisor (R)** ................................. 304 200,000
6. **Lease Rental Payments** ................................. 516 16,000,000
7. **Design-Build Board** .................................... 540 19,068
8. **BRIM Premium** ........................................... 913 3,990
9. **Total** ...................................................... $16,926,513
Any unexpended balances remaining in the appropriations for Financial Advisor (fund 0186, activity 304) and Debt Reduction (fund 0186, activity 635) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The appropriation for Lease Rental Payments shall be disbursed as provided by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2012 Org 0205

Supplemental Benefits for Annuents................. 892 $ 908,000

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

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2012 Org 0209

Personal Services. ...................... 001 83,590
Annual Increment....................... 004 1,101
Employee Benefits..................... 010 34,092
Unclassified.......................... 099 120,500
Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2012 Org 0211

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (activity 371), the Division shall consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2012 Org 0213
1 Personal Services ................ 001 $ 722,838
2 Annual Increment ................ 004 12,095
3 Employee Benefits ............... 010 291,594
4 Unclassified .................... 099 144,403
5 BRIM Premium ................... 913 6,167
6 Total ................................ $ 1,177,097

7 The division of highways shall reimburse the Unclassified
appropriation (fund 2031, activity 099) within the division of
purchasing for all actual expenses incurred pursuant to the

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2012 Org 0215

1 Unclassified - Total .................. 096 $ 1,823,244

24-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2012 Org 0217

1 Unclassified - Total .................. 096 $ 46,550

2 To pay expenses for members of the commission on
uniform state laws.

25-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2012 Org 0219

1 Personal Services .................. 001 $ 660,635
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2 Annual Increment 004 $9,097
3 Employee Benefits 010 205,833
4 Unclassified (R) 099 210,443
5 BRIM Premium 913 3,885
6 Total $1,089,893

Any unexpended balance remaining in the appropriation for Unclassified (fund 0220, activity 099) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2012 Org 0220

1 Unclassified 099 $752,517
2 BRIM Premium 913 2,788
3 Total $755,305

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2012 Org 0221

1 Personal Services 001 $665,608
2 Annual Increment 004 11,280
3 Employee Benefits 010 290,966
4 Unclassified 099 441,219
5 Public Defender Corporations 352 18,216,605
6 Appointed Counsel Fees 788 12,223,115
7 BRIM Premium 913 4,216
8 Total $31,853,009

Any unexpended balance remaining in the above appropriation for Appointed Counsel Fees and Public
Defender Corporations (fund 0226, activity 127) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, activity 352) to Appointed Counsel Fees (fund 0226, activity 788).

**28-Committee for the Purchase of Commodities and Services from the Handicapped**

(WV Code Chapter 5A)

Fund 0233 FY 2012 Org 0224

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
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**29-Public Employees Insurance Agency**

(WV Code Chapter 5)

Fund 0200 FY 2012 Org 0225

<table>
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<tr>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>PEIA Subsidy</td>
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</table>

The above appropriation for PEIA Subsidy (fund 0200, activity 801) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employee's Insurance Agency for the purposes of offsetting benefit changes and to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

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

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557  FY 2012  Org 0228

1 | Forensic Medical Examinations (R). | 683 | $139,783
2 | Federal Funds/Grant Match (R). | 749 | $99,984
3 | Total. | | 239,767

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, activity 683) and Federal Funds/Grant Match (fund 0557, activity 749) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

31-Children's Health Insurance Agency

(WV Code Chapter 5)

Fund 0588  FY 2012  Org 0230

1 | Unclassified - Total. | 096 | $10,428,479
2 | Autism Spectrum Disorder Coverage. | 856 | $497,035
3 | Total. | | $10,925,514

32-Real Estate Division

(WV Code Chapter 5A)

Fund 0610  FY 2012  Org 0233

1 | Unclassified. | 099 | $998,527
DEPARTMENT OF COMMERCE

33-Division of Tourism

(WV Code Chapter 5B)

Fund 0246 FY 2012 Org 0304

Any unexpended balance remaining in the appropriation for Tourism - Special Projects (fund 0246, activity 859) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

34-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2012 Org 0305

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

35-Geological and Economic Survey

(WV Code Chapter 29)
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified</td>
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<td>Mineral Mapping System (R)</td>
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<td>$1,439,326</td>
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<td>6</td>
<td>BRIM Premium</td>
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<td>Total</td>
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<td>$3,539,328</td>
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Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, activity 207) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

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

36-West Virginia Development Office
(WV Code Chapter 5B)

Fund 0256 FY 2012 Org 0307

<table>
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<th>Item</th>
<th>Description</th>
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<td>4</td>
<td>ARC-WV Home of Your Own Alliance</td>
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<td>Southern WV Career Center</td>
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<tr>
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*CLERK'S NOTE: The Chief Executive reduced the amount in Item 36, line 7 by $500,000, from $4,061,758 to $3,561,758. The total does NOT reflect the reduction by the Governor.
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tr>
<td>12</td>
<td>ARC Assessment</td>
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<td>13</td>
<td>Mid-Atlantic Aerospace Complex</td>
<td>231 161,226</td>
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<td>14</td>
<td>Guaranteed Work Force Grant (R)</td>
<td>242 1,050,234</td>
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<td>15</td>
<td>Mingo County Surface Mine Project</td>
<td>296 0</td>
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<tr>
<td>16</td>
<td>Mingo County Post Mine Land Use Projects</td>
<td>841 125,000</td>
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<tr>
<td>17</td>
<td>Robert C. Byrd Institute for Advanced/ Flexible Manufacturing - Technology Outreach and Programs for Environmental and Advanced Technologies</td>
<td>367 474,058</td>
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<tr>
<td>18</td>
<td>Advantage Valley</td>
<td>389 67,762</td>
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<tr>
<td>19</td>
<td>Chemical Alliance Zone</td>
<td>390 *45,600</td>
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<tr>
<td>20</td>
<td>WV High Tech Consortium</td>
<td>391 215,034</td>
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<tr>
<td>21</td>
<td>Regional Contracting Assistance Center</td>
<td>418 200,000</td>
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<td>22</td>
<td>Highway Authorities</td>
<td>431 791,435</td>
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<td>23</td>
<td>Charleston Farmers Market</td>
<td>476 91,200</td>
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<tr>
<td>24</td>
<td>International Offices (R)</td>
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<td>25</td>
<td>Small Business Development (R)</td>
<td>703 200,000</td>
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<td>26</td>
<td>WV Manufacturing Extension Partnership</td>
<td>731 131,328</td>
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<td>27</td>
<td>Polymer Alliance</td>
<td>754 104,880</td>
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<td>28</td>
<td>Regional Councils</td>
<td>784 401,280</td>
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<td>29</td>
<td>Mainstreet Program</td>
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<tr>
<td>30</td>
<td>National Institute of Chemical Studies</td>
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<td>31</td>
<td>Local Economic Development Assistance (R)</td>
<td>819 *3,900,000</td>
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<td>32</td>
<td>I-79 Development Council</td>
<td>824 *50,050</td>
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<td>33</td>
<td>BRIM Premium</td>
<td>913 26,096</td>
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<td>34</td>
<td>4-H Camp Improvements (R)</td>
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<td>35</td>
<td>Hatfield McCoy Recreational Trail</td>
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<td>36</td>
<td>Hardwood Alliance Zone</td>
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</tr>
<tr>
<td>37</td>
<td>Total</td>
<td>$ 25,319,483</td>
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</table>

*Clerk's Note: The Chief Executive reduced Item 36, line 23, by $54,400, from $100,000 to $45,600; line 38, by $3,777,000, from $7,677,000 to $3,900,000; and line 39, by $15,000, from $65,050 to $50,050. The total does NOT reflect the reduction by the Governor.*
Any unexpended balances remaining in the appropriations for Tourism — Unclassified — Surplus (fund 0256, activity 075), Unclassified - Surplus (fund 0256, activity 097), Partnership Grants (fund 0256, activity 131), Local Economic Development Partnerships (fund 0256, activity 133), Guaranteed Work Force Grant (fund 0256, activity 242), Local Economic Development Assistance — Surplus (fund 0256, activity 266), Industrial Park Assistance (fund 0256, activity 480), Leverage Technology and Small Business Development Program (fund 0256, activity 525), International Offices (fund 0256, activity 593), Small Business Development (fund 0256, activity 703), Local Economic Development Assistance (fund 0256, activity 819), Economic Development Assistance (fund 0256, activity 900), 4-H Camp Improvements (fund 0256, activity 941), and Mining Safety Technology (fund 0256, activity 945) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The above appropriation to Local Economic Development Partnerships (activity 133) shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities participating in the certified development community program developed under the provisions of W.Va. Code §5B-2-14. The West Virginia development office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed $34,000 per county served by an economic development or redevelopment corporation or authority.

From the above appropriation for Unclassified (fund 0256, activity 099) $250,000 is for TechConnect; $250,000 is for Tamarack Foundation; $1,250,000 is to be transferred to Development Office Promotion Fund (Fund 3171).

*Clerk's Note: The Chief Executive reduced Item 36, line 76, Tech Connect, by $500,000, from $750,000 to $250,000.
From the above appropriation for Highway Authorities (fund 0256, activity 431), $115,187 is for King Coal Highway Authority; $115,187 is for Coal Field Expressway Authority; $92,150 is for Coal Heritage Highway Authority; $92,150 is for Coal Heritage Area Authority; $46,075 is for Little Kanawha River Parkway; $82,935 is for Midland Trail Scenic Highway Association; $52,525 is for Shawnee Parkway Authority; $92,150 is for Corridor G Regional Development Authority; $57,000 is for Corridor H Authority; and $46,076 is for Route 2 168 Highway Authority.

37-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2012 Org 0308

<table>
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<tr>
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<td>Personal Services</td>
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<td>Employee Benefits</td>
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38-Occupational Safety and Health Fund

(WV Code Chapter 21)

Fund FY 2012 Org 0308

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<th>Description</th>
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<td>Personal Services</td>
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<tr>
<td>2</td>
<td>Employee Benefits</td>
<td>010</td>
<td>*0</td>
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<td>3</td>
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*Clerk’s Note: The Chief Executive reduced Item 38, line 1, by deleting the figure $200,000; line 2, by deleting the figure $100,000; and line 4, by deleting the figure $1,500 and adjusting the total to $98,500 to reflect the deletions.*
### 39-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2012 Org 0310

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<td>Litter Control Conservation Officers</td>
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<td>159,306</td>
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<tr>
<td>Upper Mud River Flood Control</td>
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<td>Law Enforcement</td>
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</table>

Any unexpended balances remaining in the appropriations for Land Purchase (fund 0265, activity 761) and Fish Hatchery Improvements (fund 0265, activity 825) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

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

### 40-Division of Miners’ Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2012 Org 0314

<table>
<thead>
<tr>
<th>Item Description</th>
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<tr>
<td>Personal Services</td>
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</table>
 appropriated

2 Annual Increment.................. 004 $ 83,914
3 Employee Benefits................ 010 2,866,352
4 Unclassified....................... 099 1,921,467
5 Coal Dust and Rock Dust Sampling.. 270 414,694
6 BRIM Premium....................... 913 68,134
7 Total. ................................ $ 12,831,804

Included in the above appropriation for Unclassified (fund 0277, activity 099) is $500,000 for the fifth year of Southern West Virginia Community and Technical College Mine Rescue and Rapid Response Team.

41-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2012 Org 0319

1 Personal Services.................. 001 $ 123,170
2 Annual Increment.................. 004 1,080
3 Employee Benefits................ 010 35,909
4 Mine Safety Technology Task Force. 061 115,000
5 Unclassified....................... 099 29,250
6 WV Diesel Equipment Commission. 712 37,050
7 Board of Miners Training and Certification. .............. 667 48,750
8 Total. ................................ $ 390,209

42-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

Fund 0285 FY 2012 Org 0320

1 Unclassified....................... 099 $ 48,750
2 Coal Forum......................... 664 29,250
3 Total. ................................ $ 78,000
4 It is the intent of the Legislature that the Coal Forum (activity 664) is to expend funds from its appropriation on technical, environmental, and coal education programs.

43-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2012 Org 0323

1 Unclassified - Total. ............. 096 $ 95,000

44-Department of Commerce - Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2012 Org 0327

1 Unclassified - Total. ............. 096 $ 392,565

45-Division of Energy

(WV Code Chapter 5H)

Fund 0612 FY 2012 Org 0328

1 Unclassified. .................... 099 $ 1,923,270
2 BRIM Premium ..................... 913 3,297
3 Total. ............................ $ 1,926,567

4 From the above appropriation for Unclassified (fund 0612, activity 099) $693,500 is for West Virginia University and $693,500 is for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.
### 46-State Department of Education - School Lunch Program

(WV Code Chapters 18 and 18A)

**Fund 0303 FY 2012 Org 0402**

<table>
<thead>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
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### 47-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

**Fund 0306 FY 2012 Org 0402**

<table>
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</table>

### 48-State Department of Education

(WV Code Chapters 18 and 18A)

**Fund 0313 FY 2012 Org 0402**

<table>
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<td>4</td>
<td>Unclassified (R)</td>
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<td>34/1000 Waiver</td>
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<td>Safe Schools</td>
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<td>8</td>
<td>Teacher Mentor (R)</td>
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<td>National Teacher Certification (R)</td>
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<tr>
<td>10</td>
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<td>21st Century Fellows</td>
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<td>16</td>
<td>English as a Second Language</td>
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<td>17</td>
<td>Teacher Reimbursement</td>
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<td>Hi-Y Youth in Government</td>
<td>616</td>
<td>100,000</td>
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<tr>
<td>21</td>
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<tr>
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<td>Principals Mentorship</td>
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<tr>
<td>25</td>
<td>Pilot Program of Structured In-School Alternatives</td>
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<td>21st Century Innovation Zones</td>
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<td>21st Century Learners (R)</td>
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<td>31</td>
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<td>WV Commission on Holocaust Education</td>
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</table>
42 Sparse Population Allocation........ 973 105,000
43 Local Solutions Dropout
44 Prevention and Recovery......... 780 2,230,000
45 Educational Program Allowance.... 996 *250,000
46 Total. ................................ $ 45,464,914

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

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, activity 099), Teacher Mentor (fund 0313, activity 158), National Teacher Certification (fund 0313, activity 161), High Acuity Special Needs (fund 0313, activity 634), Student Enrichment Program (fund 0313, activity 879), and 21st Century Learners (fund 0313, activity 886) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriation for Sparse Population Allocation (activity 973), funding shall be provided in the same manner as in Fiscal Year 2011. It shall be available to those counties whose population falls at or below 2.5 students per square mile and which have more than 650 square miles for transportation purposes.

From the above appropriation for Educational Program Allowance (activity 996), $100,000 shall be expended for Webster County Board of Education for Hacker Valley; $150,000 for the Randolph County Board of Education for Pickens School*

From the above appropriation for Low Student Enrollment Allowance (activity 615), funds shall be allocated to county

*Clerk's Note: The Chief Executive reduced Item 48, line 45, by $100,000, from $350,000 to $250,000. The total does NOT reflect the reduction by the Governor. The Chief Executive also deleted the language "and $100,000 for the Preston County Board of Education for Aurora School" in Item 48, lines 67 and 68.

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

The above appropriation for Local Solutions Dropout Prevention and Recovery shall be transferred to the Local Solutions Dropout Prevention and Recovery Fund.

49-State Department of Education - Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314  FY 2012  Org 0402

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<td>$28,401,246</td>
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</table>

*CLERK'S NOTE: The Chief Executive deleted all language in Item 48, lines 79 through 81, which read “The above appropriation for Math and Science Teacher Loan Assistance Program shall be transferred to the Math and Science Teacher Load Assistance Fund.”
Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, activity 472) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

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

50-State Department of Education -
State Aid to Schools

(WV Code Chapters 18 and 18A)

<table>
<thead>
<tr>
<th>Fund 0317 FY 2012 Org 0402</th>
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<tbody>
<tr>
<td>1. Other Current Expenses. 022 $154,221,542</td>
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<tr>
<td>2. Advanced Placement. 053 312,508</td>
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<td>3. Professional Educators. 151 881,179,854</td>
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<td>4. Service Personnel. 152 290,154,327</td>
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<td>5. Fixed Charges. 153 105,790,735</td>
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<td>7. Administration. 155 0</td>
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<td>8. Professional Student Support Services 655 30,833,273</td>
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<tr>
<td>9. Improved Instructional Programs. 156 *38,528,797</td>
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<td>10. 21st Century Strategic Technology Learning Growth. 936 5,528,535</td>
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<td>12. Basic Foundation Allowances. 1,585,435,270</td>
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<td>13. Less Local Share. (380,935,952)</td>
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<tr>
<td>14. Total Basic State Aid. 1,204,499,318</td>
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<tr>
<td>15. Public Employees' Insurance Matching. 012 224,672,696</td>
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<tr>
<td>17. Teachers’ Retirement System. 019 61,212,021</td>
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</table>

*CLERK'S NOTE: The Chief Executive reduced Item 50, line 9, by $5,841,043, from $44,840 to $38,528,797. The total does NOT reflect the reduction by the Governor.
Ch. 11] APPROPRIATIONS 89

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Fund</th>
<th>FY 2012</th>
<th>Org</th>
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<tbody>
<tr>
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<td>$1,068,999</td>
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<tr>
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<td>Albert Yanni Vocational Program</td>
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<td>Improvement Staff</td>
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<td>339</td>
<td>GED Testing (R)</td>
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<td>FFA Grant Awards</td>
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<td>840</td>
<td>Pre-Engineering Academy Program</td>
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*CLERK’S NOTE: The Chief Executive deleted all language in Item 50, lines 22 through 25, which read “Included in the above appropriation for Administration (fund 0317, activity 155) is an additional $500,000 to be used to improve the current school nurse-to-student ratio in a manner to be determined by the State Board of Education.”
Any unexpended balance remaining in the appropriation for GED Testing (fund 0390, activity 339) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

52-State Board of Education - Division of Education Performance Audits

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2012 Org 0402

1 Personal Services. .................. 001 $  441,220
2 Annual Increment..................... 004  5,196
3 Employee Benefits................... 010  116,304
4 Unclassified......................... 099  156,899
5 Total. ................................ $  719,619

53-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2012 Org 0403

1 Personal Services. .................. 001 $  8,369,562
2 Annual Increment..................... 004  8,780
3 Employee Benefits................... 010  2,709,463
4 Unclassified......................... 099  1,864,531
5 Capital Outlay and Maintenance (R). 755  62,500
6 BRIM Premium......................... 913  59,087
7 Total. ................................ $ 13,073,923

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0320, activity 755) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.
### DEPARTMENT OF EDUCATION AND THE ARTS

*54-Department of Education and the Arts - Office of the Secretary*

(WV Code Chapter 5F)

**Fund 0294 FY 2012 Org 0431**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
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<td>$930,534</td>
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<tr>
<td>2</td>
<td>Center for Professional Development (R)</td>
<td>115</td>
<td>$2,730,230</td>
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<td>3</td>
<td>National Youth Science Camp</td>
<td>132</td>
<td><em>290,000</em></td>
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<tr>
<td>4</td>
<td>WV Humanities Council</td>
<td>168</td>
<td>$450,000</td>
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<td>5</td>
<td>Benedum Professional Development Collaborative (R)</td>
<td>427</td>
<td>$927,500</td>
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<td>6</td>
<td>Governor’s Honor Academy (R)</td>
<td>478</td>
<td>$600,780</td>
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<td>7</td>
<td>Energy Express</td>
<td>861</td>
<td>$470,000</td>
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<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$4,509</td>
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<tr>
<td>9</td>
<td>Special Olympic Games</td>
<td>966</td>
<td>$25,000</td>
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<td>10</td>
<td>Total</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294, activity 115), Benedum Professional Development Collaborative (fund 0294, activity 427), and Governor’s Honor Academy (fund 0294, activity 478) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

### 55-Division of Culture and History

(WV Code Chapter 29)

**Fund 0293 FY 2012 Org 0432**

*CLERK’S NOTE: The Chief Executive reduced Item 54, line 4, by $60,000, from $350,000 to $290,000. The total does NOT reflect the reduction by the Governor.*
<table>
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<tr>
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<th>Code</th>
<th>Amount</th>
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<td>$2,763,729</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>61,847</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,273,976</td>
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<tr>
<td>4</td>
<td>Unclassified (R)</td>
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<td>1,032,786</td>
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<td>5</td>
<td>Culture and History Programming</td>
<td>732</td>
<td>292,945</td>
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<td>6</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
<td>100,000</td>
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<td>7</td>
<td>Historical Highway Marker</td>
<td>844</td>
<td>75,185</td>
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<td>8</td>
<td>BRIM Premium</td>
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<td>33,677</td>
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<td>Total</td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0293, activity 097), Unclassified (fund 0293, activity 099), Capital Outlay, Repairs and Equipment (fund 0293, activity 589), Capital Outlay, Repairs and Equipment — Surplus (fund 0293, activity 677), Capital Outlay and Maintenance (fund 0293, activity 755), and Historical Highway Marker Program (fund 0293, activity 844) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The Unclassified appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the division of culture and history and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the Code.

All federal moneys received as reimbursement to the division of culture and history for moneys expended from the general revenue fund for the arts fund and historical preservation are hereby reappropriated for the purposes as originally made, including personal services, current expenses and equipment.

From the above appropriation for Unclassified (activity 099), $100,000 shall be used for the Sesquicentennial Celebration.
### 56-Library Commission

*(WV Code Chapter 10)*

<table>
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<tr>
<th>Fund</th>
<th>FY 2012</th>
<th>Org 0433</th>
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<tbody>
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<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
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<td>5</td>
<td>Services to Blind &amp; Handicapped</td>
<td>181</td>
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<td>BRIM Premium</td>
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<td><strong>Total</strong></td>
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</table>

### 57-Educational Broadcasting Authority

*(WV Code Chapter 10)*

<table>
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<tr>
<th>Fund</th>
<th>FY 2012</th>
<th>Org 0439</th>
</tr>
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<tbody>
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</tr>
<tr>
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<td>Annual Increment</td>
<td>004</td>
</tr>
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<td>3</td>
<td>Employee Benefits</td>
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</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
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<td>5</td>
<td>Mountain Stage</td>
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<td>6</td>
<td>Capital Outlay and Maintenance (R)</td>
<td>755</td>
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<td>BRIM Premium</td>
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<tr>
<td><strong>Total</strong></td>
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</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0300, activity 099) and Capital Outlay and Maintenance (fund 0300, activity 755) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriation for Unclassified (fund 0300, activity 099) $45,000 is for the WV Music Hall of Fame Induction Ceremony.
### APPROPRIATIONS

#### 58-State Board of Rehabilitation - Division of Rehabilitation Services

(WV Code Chapter 18)

**Fund 0310 FY 2012 Org 0932**

<table>
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<tr>
<th></th>
<th>Description</th>
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<td>Annual Increment</td>
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<td>166,317</td>
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<td>3</td>
<td>Independent Living Services (R)</td>
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<td>359,810</td>
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<td>4</td>
<td>Employee Benefits</td>
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<td>2,769,868</td>
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<td>Unclassified</td>
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<td>6</td>
<td>Workshop Development</td>
<td>163</td>
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<td>7</td>
<td>Supported Employment Extended Services (R)</td>
<td>206</td>
<td>100,000</td>
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<td>8</td>
<td>Ron Yost Personal Assistance</td>
<td>407</td>
<td>388,698</td>
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<td>9</td>
<td>Employment Attendant Care Program</td>
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<td>156,065</td>
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<td>BRIM Premium</td>
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<td>$14,163,575</td>
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Any unexpended balance remaining in the appropriation for Independent Living Services (fund 0310, activity 009), Supported Employment Extended Services (fund 0310, activity 206), and Ron Yost Personal Assistance Fund (fund 0310, activity 407) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriation for Workshop Development (activity 163), funds shall be used exclusively with the private non-profit community rehabilitation program organizations known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services, and individuals with disabilities currently in place at those 31 organizations.
DEPARTMENT OF ENVIRONMENTAL PROTECTION

59-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2012 Org 0311

<table>
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<tr>
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60-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2012 Org 0313

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<td>Dam Safety</td>
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<td>7</td>
<td>West Virginia Stream Partners Program</td>
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<td>77,396</td>
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<td>8</td>
<td>WV Contribution to River Commissions</td>
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<td>148,485</td>
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<td>9</td>
<td>Office of Water Resources Non-Enforcement Activity</td>
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<td>10</td>
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</table>
Any unexpended balance remaining in the appropriation for Unclassified - Surplus (fund 0273, activity 097) at the close of fiscal year 2011 is hereby reappropriated for expenditure during FY 2012.

A portion of the appropriation for Unclassified (fund 0273, activity 099) and Dam Safety (fund 0273, activity 607) may be transferred to the special revenue fund Dam Safety Rehabilitation Revolving Fund (fund 3025) for the state deficient dams rehabilitation assistance program.

61-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2012 Org 0325

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<tbody>
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DEPARTMENT OF HEALTH AND HUMAN RESOURCES

62-Department of Health and Human Resources - Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2012 Org 0501

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<td>1</td>
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<td>191</td>
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<td>3</td>
<td>Commission for the Deaf and Hard of Hearing</td>
<td>704</td>
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Any unexpended balance remaining in the appropriation for the Women's Commission (fund 0400, fiscal year 2009, fiscal year 2010, fiscal year 2011, activity 191) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

63-Division of Health - Central Office

(WV Code Chapter 16)

Fund 0407 FY 2012 Org 0506

<table>
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<td>1</td>
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<td>Employment Benefits</td>
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<td>Chief Medical Examiner</td>
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<td>Unclassified</td>
<td>099</td>
<td>5,266,327</td>
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<td>6</td>
<td>State Aid for Local and Basic Public Health Services</td>
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<td>16,640,755</td>
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<td>Safe Drinking Water Program</td>
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<td>522,984</td>
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<td>Women, Infants and Children</td>
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<tr>
<td>9</td>
<td>Early Intervention</td>
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<td>Cancer Registry</td>
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<td>11</td>
<td>ABCA Tobacco Retailer Education</td>
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<td>12</td>
<td>CARDIAC Project</td>
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<td>475,000</td>
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<td>13</td>
<td>State EMS Technical Assistance</td>
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<tr>
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<td>Statewide EMS Program Support (R)</td>
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<tr>
<td>15</td>
<td>Primary Care Centers - Mortgage - Finance</td>
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<td>688,676</td>
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<tr>
<td>16</td>
<td>Black Lung Clinics</td>
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<td>17</td>
<td>Center for End of Life</td>
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<td>*250,000</td>
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<tr>
<td>18</td>
<td>Women's Right to Know</td>
<td>546</td>
<td>15,000</td>
</tr>
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</table>

*CLERK'S NOTE: The Chief Executive reduced Item 63, line 20, by $250,000, from $500,000 to $250,000. The total does NOT reflect the reduction by the Governor.
<table>
<thead>
<tr>
<th>Line</th>
<th>Appropriation Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>22</td>
<td>Pediatric Dental Services</td>
<td>550</td>
<td>151,603</td>
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<tr>
<td>23</td>
<td>Vaccine for Children</td>
<td>551</td>
<td>445,962</td>
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<td>24</td>
<td>Adult Influenza Vaccine</td>
<td>552</td>
<td>65,000</td>
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<td>25</td>
<td>Tuberculosis Control</td>
<td>553</td>
<td>247,089</td>
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<tr>
<td>26</td>
<td>Maternal &amp; Child Health Clinics, Clinicians and Medical Contracts</td>
<td>575</td>
<td>7,227,979</td>
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<td>27</td>
<td>Epidemiology Support</td>
<td>626</td>
<td>1,709,752</td>
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<td>28</td>
<td>Primary Care Support</td>
<td>628</td>
<td>8,857,770</td>
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<td>29</td>
<td>Health Right Free Clinics</td>
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<td>4,499,336</td>
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<td>30</td>
<td>Capital Outlay and Maintenance (R)</td>
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<td>2,125,000</td>
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<tr>
<td>31</td>
<td>Healthy Lifestyles (R)</td>
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<td>169,285</td>
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<td>32</td>
<td>Emergency Response Entities - Special Projects (R)</td>
<td>822</td>
<td>744,800</td>
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<tr>
<td>33</td>
<td>Osteoporosis and Arthritis</td>
<td>849</td>
<td>259,404</td>
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<tr>
<td>34</td>
<td>Diabetes Education and Prevention</td>
<td>873</td>
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<td>35</td>
<td>Tobacco Education Program (R)</td>
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<td>5,683,830</td>
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<td>36</td>
<td>BRIM Premium</td>
<td>913</td>
<td>211,214</td>
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<td>37</td>
<td>State Trauma and Emergency Care</td>
<td>918</td>
<td>1,837,886</td>
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<td>38</td>
<td>Maternal Mortality Review</td>
<td>834</td>
<td>108,257</td>
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<td>39</td>
<td>Total</td>
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<td>$81,473,032</td>
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</table>

Any unexpended balances remaining in the appropriations for Statewide EMS Program Support (fund 0407, activity 383), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575), Capital Outlay and Maintenance (fund 0407, activity 755), Healthy Lifestyles (fund 0407, activity 778), Emergency Response Entities - Special Projects (fund 0407, activity 822), Assistance to Primary Health Care Centers Community Health Foundation (fund 0407, activity 845) and Tobacco Education Program (fund 0407, activity 906) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.
From the above appropriation for Unclassified (activity 099), an amount not less than $100,000 is for the West Virginia Cancer Coalition; $50,000 shall be expended for the West Virginia Aids Coalition; $100,000 is for Adolescent Immunization Education; $73,065 is for informal dispute resolution relating to nursing home administrative appeals; and $50,000 is for Hospital Hospitality House of Huntington.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) $250,000 is for the West Virginia University Center for Excellence in Women’s Health; and $400,000 shall be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund.

* The above appropriation for ABCA Tobacco Retailer Education Program - Transfer (activity 239) shall be transferred to the Alcohol Beverage Control Administration (fund 7352, org 0708) for expenditure.

Included in the above appropriation for Primary Care Centers - Mortgage Finance is $47,500 for the mortgage payment for the Lincoln Primary Care Center, Inc.; $50,483 for the mortgage payment for the Monroe Health Center; $40,436 for the mortgage payment for Roane County Family Health Care, Inc.; $45,600 for the mortgage payment for the Primary Care Systems (Clay); $19,000 for the mortgage payment for the Belington Clinic; $28,500 for the mortgage payment for the Tri-County Health Clinic; $14,250 for the

*CLERK’S NOTE: The Chief Executive deleted language in Item 63, lines 70 through 72, which read “From the above appropriation for Unclassified (fund 0407, activity 099) $30,000 is for the Center for Rural Health Development.
mortgage payment for Valley Health Care (Randolph); $25,236 for the mortgage payment for Family Care Health Center in Madison; $7,600 for the mortgage payment for Northern Greenbrier Health Clinic; $12,061 for the mortgage payment for the Women’s Care, Inc. (Putnam); $23,750 for the mortgage payment for the Preston-Taylor Community Health Centers, Inc.; $19,000 for the mortgage payment for the North Fork Clinic (Pendleton); $38,000 for the mortgage payment for the Pendleton Community Care; $36,480 for the mortgage payment for Clay-Battelle Community Health Center; $31,920 for the mortgage payment for Mountaineer Health Clinic in Paw Paw; $12,350 for the mortgage payment for the St. George Medical Clinic; $26,600 for the mortgage payment for the Bluestone Health Center; $42,750 for the mortgage payment for Wheeling Health Right; $45,600 for the mortgage payment for the Minnie Hamilton Health Care Center, Inc.; $51,300 for the mortgage payment for the Shenandoah Valley Medical Systems, Inc.; $42,750 for the mortgage payment for the Change, Inc.; and $27,510 for the mortgage payment for the Wirt County Health Services Association.

64-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2012 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
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<td>004</td>
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<td>3</td>
<td>Employee Benefits.</td>
<td>010</td>
<td>301,548</td>
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<td>4</td>
<td>Unclassified.</td>
<td>099</td>
<td>6,663</td>
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<tr>
<td>5</td>
<td>Special Olympics.</td>
<td>208</td>
<td>26,074</td>
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<td>6</td>
<td>Behavioral Health Program - Unclassified (R).</td>
<td>219</td>
<td>*62,437,972</td>
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<td>8</td>
<td>Family Support Act.</td>
<td>221</td>
<td>1,093,923</td>
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*Clerk’s Note: The Chief Executive reduced Item 64, line 7, from $62,937,972 to $62,437,972. The total does NOT reflect the reduction by the Governor.
### Appropriations

<table>
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<tr>
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<th>Fund</th>
<th>Activity</th>
<th>Amount</th>
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<td>9</td>
<td>Institutional Facilities Operations (R)</td>
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<td>10</td>
<td>Capital Outlay and Maintenance (R)</td>
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<td>950,000</td>
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<td>11</td>
<td>Colin Anderson Community Placement (R)</td>
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<td>664,000</td>
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<td>12</td>
<td>Renaissance Program</td>
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<td><strong>$ 159,811,279</strong></td>
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Any unexpended balances remaining in the appropriations for Behavioral Health Program - Unclassified (fund 0525, activity 219), Institutional Facilities Operations (fund 0525, activity 335), Capital Outlay (fund 0525, activity 511), Capital Outlay and Maintenance (fund 0525, activity 755), and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The secretary shall, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of revenue an itemized report of expenditures made during the preceding six-month period.

Included in the above appropriation for Behavioral Health Program - Unclassified (fund 0525, activity 219) is $100,000 for the Four Angels Substance Abuse Treatment Project development.*

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health - hospital services revenue account (fund 5156, activity 335), on July 1, 2011, the sum of $160,000 shall be

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*CLERK'S NOTE: The Chief Executive deleted the language in Item 64, lines 32 through 33, which read “and $500,000 for West Virginia Partnership To Promote Community Well-Being.”
transferred to the department of agriculture - land division -
farm operating fund (1412) as advance payment for the
purchase of food products; actual payments for such
purchases shall not be required until such credits have been
completely expended.

Additional funds have been appropriated in fund 5156,
fiscal year 2012, organization 0506, for the operation of the
institutional facilities. The secretary of the department of
health and human resources is authorized to utilize up to ten
percent of the funds from the Institutional Facilities
Operations line item to facilitate cost effective and cost
saving services at the community level.

65-Division of Health -
West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2012 Org 0506

1 West Virginia Drinking Water Treatment
2 Revolving Fund - Transfer . . . . . 689 $ 700,000

The above appropriation for Drinking Water Treatment
Revolving Fund - Transfer shall be transferred to the West
Virginia Drinking Water Treatment Revolving Fund or
appropriate bank depository and the Drinking Water
Treatment Revolving - Administrative Expense Fund as
provided by Chapter 16 of the Code.

66-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2012 Org 0510
**11 Appropriations**

| Item | Code | Description | Amount  
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<td>1.</td>
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<td>010</td>
<td>Employee Benefits</td>
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<td>Unclassified</td>
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</table>

**67-Division of Human Services**

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2012 Org 0511

<table>
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<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
<th>Amount</th>
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<td>1.</td>
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<td>010</td>
<td>Employee Benefits</td>
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<td>4.</td>
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<td>Unclassified</td>
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<td>5.</td>
<td>144</td>
<td>Child Care Development</td>
<td>$775,933</td>
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<td>6.</td>
<td>183</td>
<td>Medical Services Contracts and Office of Managed Care</td>
<td>$1,835,469</td>
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<td>7.</td>
<td>189</td>
<td>Medical Services (R)</td>
<td>$216,461,376</td>
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<td>8.</td>
<td>195</td>
<td>Social Services</td>
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<td>9.</td>
<td>196</td>
<td>Family Preservation Program</td>
<td>$1,565,000</td>
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<td>10.</td>
<td>274</td>
<td>Family Resource Networks (R)</td>
<td>$1,905,367</td>
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<td>11.</td>
<td></td>
<td>Domestic Violence Legal Services Fund</td>
<td>$400,000</td>
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<tr>
<td>12.</td>
<td>384</td>
<td>James &quot;Tiger&quot; Morton Catastrophic Illness Fund</td>
<td>$698,797</td>
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<td>13.</td>
<td>455</td>
<td>MR/DD Waiver</td>
<td>$88,753,483</td>
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<td>14.</td>
<td>466</td>
<td>Child Protective Services Case Workers</td>
<td>$19,142,591</td>
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<td>15.</td>
<td>515</td>
<td>OSCAR and RAPIDS</td>
<td>$5,086,356</td>
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<td>16.</td>
<td>533</td>
<td>Title XIX Waiver for Seniors</td>
<td>$9,587,500</td>
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<td>17.</td>
<td>547</td>
<td>WV Teaching Hospitals Tertiary/Safety Net</td>
<td>$6,356,000</td>
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*Clerk's Note*: The Chief Executive reduced Item 67, line 4, by $100,000, from $15,552,857 to $15,452,857. The total does NOT reflect the reduction by the Governor.
### Appropriations

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<tr>
<th>Item Description</th>
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<tr>
<td>Specialized Foster Care</td>
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<tr>
<td>Child Welfare System</td>
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<tr>
<td>In-Home Family Education</td>
<td>688</td>
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<td>WV Works Separate State Program</td>
<td>698</td>
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<tr>
<td>Child Support Enforcement</td>
<td>705</td>
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<tr>
<td>Medicaid Auditing</td>
<td>706</td>
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<tr>
<td>Temporary Assistance for Needy</td>
<td>707</td>
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<tr>
<td>Child Care Maintenance of Effort</td>
<td>708</td>
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<tr>
<td>Child and Family Services</td>
<td>736</td>
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<tr>
<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
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<tr>
<td>Capital Outlay and Maintenance (R)</td>
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<tr>
<td>Medical Services Administrative</td>
<td>789</td>
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<tr>
<td>Indigent Burials (R)</td>
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<tr>
<td>BRIM Premium</td>
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<tr>
<td>Rural Hospitals Under 150 Beds</td>
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<tr>
<td>Children’s Trust Fund - Transfer</td>
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<tr>
<td>Traumatic Brain Injury Waiver</td>
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<tr>
<td>Total</td>
<td>713</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>$ 564,485,212</strong></td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Medical Services (fund 0403, activity 189), Family Resource Networks (fund 0403, activity 274), Capital Outlay and Maintenance (fund 0403, activity 755), and Indigent Burials (fund 0403, activity 851) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The above appropriation for James “Tiger” Morton Catastrophic Illness Fund (activity 455) shall be transferred to the James “Tiger” Morton Catastrophic Illness Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the Code.
The above appropriation for Domestic Violence Legal Services Fund (activity 384) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the department of health and human resources shall have the authority to transfer funds within the above account: Provided, That no more than five percent of the funds appropriated to one line item may be transferred to other line items: Provided, however, That no funds from other line items shall be transferred to the personal services line item.

From the above appropriation for Child Support Enforcement (fund 0403, activity 705) an amount not to exceed $300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (activity 750), 50% of the total shall be divided equally and distributed among the fourteen (14) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (activity 750), shall be distributed according to the formula established by the Family Protection Services Board.

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

The above appropriation for Children’s Trust Fund - Transfer (activity 951) shall be transferred to the Children’s Fund (fund 5469, org 0511).
From the above appropriation for Unclassified (fund 0403, activity 099) *$100,000 is provided for a one-time pilot program for at-risk youth. The funds are to be administered as a reimbursement grant and may only be drawn down on a one-to-one matching basis.

Included in the above appropriation for Social Services (fund 0403, activity 195) is an additional $78,365 for continuing education requirements relating to the practice of social work.

From the above appropriation for WV Works Separate State Program (activity 698), $1,150,000 shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and $3,600,000 shall be transferred to the WV Works Separate State Two-Parent Program Fund (fund 5468).

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

68-Department of Military Affairs and Public Safety - Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2012 Org 0601

<table>
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<td>1</td>
<td>Unclassified (R)</td>
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<td>2</td>
<td>Fusion Center (R)</td>
<td>469 $503,864</td>
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<td>3</td>
<td>BRIM Premium</td>
<td>913 $9,404</td>
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<td>4</td>
<td>WV Fire and EMS Survivor</td>
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<td>5</td>
<td>Benefit (R)</td>
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<td>Homeland State Security Administrative</td>
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<td>7</td>
<td>Agency (R)</td>
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*Clerk's Note:* The Chief Executive reduced Item 67, line 90, by $100,000 from $200,000 to $100,000.
Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, activity 099), Fusion Center (fund 0430, activity 469), Capital Outlay (fund 0430, activity 511), WV Fire and EMS Survivor Benefit (fund 0430, activity 939) and Homeland State Security Administrative Agency (fund 0430, activity 953), at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

69-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 0433 FY 2012 Org 0603

<p>| | | | | |</p>
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<tr>
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<tr>
<td></td>
<td>099</td>
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<td>Mountaineer ChalleNGe Academy</td>
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<tr>
<td>Capital Outlay and Maintenance</td>
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<tr>
<td>Total</td>
<td></td>
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</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0433, activity 099) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

Included in the above appropriation for Unclassified (fund 0433, activity 099) is $400,000 for the purpose of upgrading the infrastructure at Tri-State Airport.

From the above appropriation to Unclassified an amount approved by the adjutant general and the secretary of military affairs and public safety may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.
### APPROPRIATIONS

#### 70-Adjutant General - Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2012 Org 0603

<p>| | | | | | | | | | | | | |</p>
<table>
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#### 71-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2012 Org 0605

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#### 72-Division of Homeland Security and Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2012 Org 0606

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Mine and Industrial Accident Rapid Response Call Center. ........... 781 514,238
Early Warning Flood System (R)... 877 540,415
BRIM Premium. ....................... 913 20,336
WVU Charleston Poison Control Hotline......................... 944 596,100
Disaster Mitigation (R). ............ 952 100,000
Total. .................................. $ 3,340,945

Any unexpended balances remaining in the appropriations for Unclassified (fund 0443, activity 099), Federal Funds/Grant Match (fund 0443, activity 749), Early Warning Flood System (fund 0443, activity 877), and Disaster Mitigation (fund 0443, activity 952) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

73-Division of Corrections -
Central Office

(WV Code Chapters 25, 28, 49 and 62)

Fund 0446 FY 2012 Org 0608

Personal Services....................... 001 $ 430,008
Annual Increment....................... 004 7,805
Employee Benefits..................... 010 160,037
Unclassified. ......................... 099 96,635
Total. .................................. $ 694,485

Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

74-Division of Corrections -
Correctional Units
### APPROPRIATIONS

(WV Code Chapters 25, 28, 49 and 62)

**Fund 0450 FY 2012 Org 0608**

<table>
<thead>
<tr>
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<td>Huntington Work Release Center</td>
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<td>Anthony Correctional Center</td>
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<td>Huttonsville Correctional Center</td>
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<td>Northern Correctional Center</td>
<td>534</td>
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<td>Inmate Medical Expenses (R)</td>
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<td>Pruntytown Correctional Center</td>
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<td>Payments to Federal, County and/or Regional Jails (R)</td>
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<td>Corrections Academy</td>
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<td>Martinsburg Correctional Center</td>
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<td>3,364,563</td>
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<td>Parole Services</td>
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<td>Capital Outlay and Maintenance (R)</td>
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<td>Stevens Correctional Center</td>
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<td>Parkersburg Correctional Center</td>
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<td>2,416,012</td>
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<td>St. Mary’s Correctional Center</td>
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<td>Denmar Correctional Center</td>
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<td>Ohio County Correctional Center</td>
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<td>Mt. Olive Correctional Complex</td>
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<td>Lakin Correctional Center</td>
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<td>BRIM Premium</td>
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<td><strong>Total</strong></td>
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<td><strong>$165,344,049</strong></td>
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</table>

Any unexpended balances remaining in the appropriations for Children’s Protection Act (fund 0450, activity 090), Unclassified - Surplus (fund 0450, activity 097), Inmate
Medical Expenses (fund 0450, activity 535), Payments to Federal, County and/or Regional Jails (fund 0450, activity 555), and Capital Outlay and Maintenance (fund 0450, activity 755) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The commissioner of corrections shall have the authority to transfer between line items appropriated to the individual correctional units above and may transfer funds from the individual units to Payments to Federal, County and/or Regional Jails (fund 0450, activity 555) or Inmate Medical Expenses (fund 0450, activity 535).

From the above appropriation to Unclassified, on July 1, 2011, the sum of $300,000 shall be transferred to the department of agriculture - land division - farm operating fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

75-West Virginia State Police

(WV Code Chapter 15)

Fund 0453  FY 2012  Org 0612

<table>
<thead>
<tr>
<th>Item</th>
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<th>Code</th>
<th>Amount</th>
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<td>Employee Benefits</td>
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<td>Children’s Protection Act</td>
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<td>892,770</td>
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<td>Unclassified</td>
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<td>9,236,038</td>
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<td>Vehicle Purchase</td>
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<td>Barracks Lease Payments</td>
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<td>8</td>
<td>Communications and</td>
<td></td>
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<td>9</td>
<td>Other Equipment (R)</td>
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<td>Trooper Retirement Fund</td>
<td>605</td>
<td>5,538,913</td>
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<td>11</td>
<td>Handgun Administration Expense</td>
<td>747</td>
<td>76,106</td>
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</table>
12 Capital Outlay and Maintenance (R).  755  250,000
13 Retirement Systems - Unfunded  775  22,051,000
14 Automated Fingerprint Identification System  898  661,716
15 BRIM Premium  913  4,948,648
16 Total .......................... $ 101,262,084

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, activity 558), and Capital Outlay and Maintenance (fund 0453, activity 755) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriation for Personal Services, an amount not less than $25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.

76-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2012 Org 0613

1 Personal Services ................ 001 $ 0
2 Annual Increment .................. 004 0
3 Employee Benefits ................ 010 0
4 Unclassified ...................... 099 0
5 Veterans’ Field Offices .......... 228 0
6 Veterans’ Nursing Home .......... 286 0
7 Veterans’ Toll Free Assistance Line. 328 0
8 Veterans’ Reeducation Assistance (R) 329 0
9 Veterans’ Grant Program (R) ...... 342 0
10 Veterans’ Grave Markers ......... 473 0
11 Veterans Transportation .......... 485 0
Ch. 11] APPROPRIATIONS

12 Memorial Day Patriotic Exercise..... 697 0
13 Veterans Cemetery................. 808
14 Educational Opportunities for
   Children of Deceased
16 Veterans (R). ..................... 854 0
17 BRIM Premium. ........................ 913 0
18 Total. ............................. $  0

77-Division of Veterans' Affairs -
Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2012 Org 0618

1 Personal Services. .................. 001 $ 0
2 Annual Increment. .................. 004 0
3 Employee Benefits. .................. 010 0
4 Unclassified. ....................... 099 0
5 Total. ............................... $  0

78-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2012 Org 0619

1 Unclassified - Total. ............... 096 $ 81,156

79-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2012 Org 0620

1 Personal Services. ................. 001 $ 435,295
2 Annual Increment. .................. 004   6,025
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<th>Item</th>
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<td>Community Corrections (R)</td>
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<td>BRIM Premium</td>
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<td>Total</td>
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Any unexpended balances remaining in the appropriations for Child Advocacy Centers (fund 0546, activity 458) and Community Corrections (fund 0546, activity 561) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriation for Child Advocacy Centers (fund 0546, activity 458), the division may retain an amount not to exceed four percent of the total appropriation for administrative purposes.

---

**80-Division of Juvenile Services**

(WV Code Chapter 49)

**Fund 0570 FY 2012 Org 0621**

<table>
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<td>Statewide Reporting Centers (R)</td>
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<td>Robert L. Shell Juvenile Center</td>
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<td>Capital Outlay and Maintenance (R)</td>
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<td>250,000</td>
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<td>Gene Spadaro Juvenile Center</td>
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<td>7</td>
<td>Davis Center for Girls</td>
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<td>8</td>
<td>BRIM Premium</td>
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<td>9</td>
<td>WV Industrial Home for Youth (R)</td>
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<td>10</td>
<td>Kenneth Honey Rubenstein</td>
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<tr>
<td>11</td>
<td>Juvenile Center (R)</td>
<td>980</td>
<td>5,383,326</td>
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</table>
APPROPRIATIONS

12 Vicki Douglas Juvenile Center........ 981 1,817,695
13 Northern Regional Juvenile Center... 982 1,344,737
14 Lorrie Yeager Jr. Juvenile Center... 983 1,937,266
15 Sam Perdue Juvenile Center......... 984 1,984,974
16 Tiger Morton Center................ 985 2,130,233
17 Donald R. Kuhn Juvenile Center.... 986 4,210,847
18 J.M. "Chick" Buckbee
19 Juvenile Center.................... 987 2,038,794
20 Total.................................. $45,936,353

Any unexpended balances remaining in the appropriations for Statewide Reporting Centers (fund 0570, activity 262), Capital Outlay and Maintenance (fund 0570, activity 755), WV Industrial Home for Youth (fund 0570, activity 979), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, activity 980) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriations, on July 1, 2011, the sum of $50,000 shall be transferred to the department of agriculture - land division - farm operating fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.

The director of juvenile services shall have the authority to transfer between line items appropriated to the individual juvenile centers above.

81-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2012 Org 0622

1 Personal Services (R)................. 001 $ 1,372,956
2 Annual Increment...................... 004 38,090
3 Employee Benefits.................... 010 587,688
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Any unexpended balances remaining in the appropriations for Personal Services (fund 0585, activity 001), Equipment (fund 0585, activity 070), and Unclassified (fund 0585, activity 099) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

**DEPARTMENT OF REVENUE**

*82-Office of the Secretary*

(WV Code Chapter 11)

Fund 0465 FY 2012 Org 0701

<table>
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<th>[Ch. 11</th>
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Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 0465, activity 096) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

*83-Tax Division*

(WV Code Chapter 11)

Fund 0470 FY 2012 Org 0702

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<td>Annual Increment.</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits (R).</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
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<tr>
<td>5</td>
<td>GIS Development Project (R).</td>
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</table>

*CLERK'S NOTE: The Chief Executive reduced Item 83, line 4, by $30,000 from $8,099,623 to $8,069,623. The total does NOT reflect the reduction by the Governor.*
Any unexpended balances remaining in the appropriations for Personal Services (fund 0470, activity 001), Employee Benefits (fund 0470, activity 010), Tax Technology Upgrade (fund 0470, activity 094), Unclassified (fund 0470, activity 099), Integrated Tax Accounting System (fund 0470, activity 292), GIS Development Project (fund 0470, activity 562), and Remittance Processor (fund 0470, activity 570) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

**84-State Budget Office**

(WV Code Chapter 11B)

Fund **0595** FY **2012** Org **0703**

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<td>364</td>
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<td>4</td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>1,468,073</strong></td>
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</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, activity 099) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

**85-West Virginia Office of Tax Appeals**

(WV Code Chapter 11)

Fund **0593** FY **2012** Org **0709**

*CLERK’S NOTE: The Chief Executive reduced Item 84, line 2, by $100,000 from $600,000 to $500,000. The total does NOT reflect the reduction by the Governor.*
### APPROPRIATIONS

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 0593, activity 099) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

#### 86-Division of Professional and Occupational Licenses - State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2012 Org 0933

<table>
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<tr>
<td>1</td>
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### DEPARTMENT OF TRANSPORTATION

#### 87-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2012 Org 0804

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<thead>
<tr>
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<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
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<td>$2,394,338</td>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 0506, activity 099) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriation for Unclassified (fund 0506, activity 099), $30,000 shall be expended for improvements at the Duffield Station.
88-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2012 Org 0805

1 Unclassified - Total. .................. 096 $ 2,786,009

Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

89-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2012 Org 0806

1 Unclassified (R). .................. 099 $ 406,072
2 BRIM Premium. .................. 913 2,764
3 Total. .......................... $ 408,836

Any unexpended balance remaining in the appropriation for Unclassified (fund 0581, activity 099) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

90-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2012 Org 0807

1 Unclassified (R). .................. 099 $ 1,219,693
2 Civil Air Patrol. .................. 234 155,095
3 Total. .......................... $ 1,374,788
Any unexpended balance remaining in the appropriation for Unclassified (fund 0582, activity 099) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriation for Unclassified, the sum of $120,000 shall be distributed equally to each of the twelve local Civil Air Patrol Squadrons.

DEPARTMENT OF VETERANS' ASSISTANCE

91-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2012 Org 0613

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Total</th>
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<td>Personal Services</td>
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<td>$1,236,015</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified</td>
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<td>181,495</td>
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<tr>
<td>5</td>
<td>Veterans' Field Offices</td>
<td>228</td>
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<td>6</td>
<td>Veterans' Nursing Home</td>
<td>286</td>
<td>6,799,289</td>
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<td>7</td>
<td>Veterans' Toll Free Assistance Line</td>
<td>328</td>
<td>5,015</td>
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<td>8</td>
<td>Veterans' Reeducation Assistance (R)</td>
<td>329</td>
<td>131,604</td>
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<td>9</td>
<td>Veterans' Grant Program (R)</td>
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<td>150,000</td>
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<td>10</td>
<td>Veterans' Grave Markers</td>
<td>473</td>
<td>15,750</td>
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<td>11</td>
<td>Veterans Transportation</td>
<td>485</td>
<td>625,000</td>
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<tr>
<td>12</td>
<td>Memorial Day Patriotic Exercise</td>
<td>697</td>
<td>20,000</td>
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<td>13</td>
<td>Veterans Cemetery</td>
<td>808</td>
<td>372,338</td>
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<td>14</td>
<td>Educational Opportunities for Children of Deceased Veterans (R)</td>
<td>854</td>
<td>25,000</td>
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<td>15</td>
<td>BRIM Premium</td>
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<td>16</td>
<td>Total</td>
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<td>$10,399,517</td>
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Any unexpended balances remaining in the appropriations for Veterans' Reeducation Assistance (fund 0456, activity 329), Veterans' Grant Program (fund 0456, activity 342),
Women’s Veterans’ Monument (fund 0456, activity 385), Veterans’ Bonus (fund 0456, activity 483), and Educational Opportunities for Children of Deceased Veterans (fund 0456, activity 854) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The above appropriation for Veterans’ Nursing Home (fund 0456, activity 286) may be transferred to the Veterans Facilities Support Fund (fund 6703, org 0613) at the discretion of the director of the Division of Veterans’ Affairs.

92-Department of Veterans’ Assistance - Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2012 Org 0618

<table>
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<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>3</td>
<td>Employee Benefits</td>
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<td>4</td>
<td>Unclassified</td>
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BUREAU OF SENIOR SERVICES

93-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2012 Org 0508

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<th>Description</th>
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<th>Amount</th>
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<tr>
<td>1</td>
<td>Any unexpended balance remaining in the appropriation for Unclassified - Total - Surplus (fund 0420, activity 284) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.</td>
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## Higher Education

94-West Virginia Council for Community and Technical College Education - Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2012 Org 0420

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>New River Community and Technical College</td>
<td>358</td>
<td>$5,778,627</td>
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<tr>
<td>2</td>
<td>West Virginia Council for Community and Technical Education (R)</td>
<td>392</td>
<td>862,294</td>
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<td>Eastern West Virginia Community and Technical College</td>
<td>412</td>
<td>2,094,052</td>
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<td>4</td>
<td>Kanawha Valley Community and Technical College</td>
<td>445</td>
<td>4,112,421</td>
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<td>5</td>
<td>Southern West Virginia Community and Technical College</td>
<td>446</td>
<td>9,181,588</td>
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<tr>
<td>6</td>
<td>West Virginia Northern Community and Technical College</td>
<td>447</td>
<td>7,859,711</td>
</tr>
<tr>
<td>7</td>
<td>West Virginia University - Parkersburg</td>
<td>471</td>
<td>10,416,188</td>
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<td>8</td>
<td>Bridgemont Community and Technical College</td>
<td>486</td>
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<td>9</td>
<td>Mountwest Community and Technical College</td>
<td>487</td>
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<tr>
<td>10</td>
<td>Transit Training Partnership</td>
<td>783</td>
<td>80,000</td>
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<td>11</td>
<td>Community College Workforce Development (R)</td>
<td>878</td>
<td>918,000</td>
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<td>12</td>
<td>Blue Ridge Community and Technical College</td>
<td>885</td>
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<td>13</td>
<td>College Transition Program (R)</td>
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<td>14</td>
<td>West Virginia Advance Workforce Development (R)</td>
<td>893</td>
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<td>15</td>
<td>Technical Program Development (R)</td>
<td>894</td>
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Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0596, activity 097), Equipment - Surplus (fund 0596, activity 341), West Virginia Council for Community and Technical Education (fund 0596, activity 392), Community College Workforce Development (fund 0596, activity 878), College Transition Program (fund 0596, activity 887), West Virginia Advance Workforce Development (fund 0596, activity 893), and Technical Program Development (fund 0596, activity 894) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

From the above appropriation for New River Community and Technical College no funds shall be expended for the pursuit, planning, procurement, lease or construction of any new student housing on any state lands in Greenbrier County including any and all lands under the control of New River Community and Technical College.

From the above appropriation for the Community College Workforce Development (fund 0596, activity 878), $200,000 shall be expended on the Mine Training Program in Southern West Virginia.

The institutions operating with special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.
### APPROPRIATIONS

(WV Code Chapter 18B)

Fund **0589** FY **2012** Org **0441**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>099</th>
<th>164</th>
<th>165</th>
<th>169</th>
<th>800</th>
<th>867</th>
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<th>Total</th>
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<td></td>
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<td>Higher Education Grant Program</td>
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<td>3</td>
<td>Tuition Contract Program</td>
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<td>1,445,990</td>
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<td>4</td>
<td>WVNET</td>
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<td>5</td>
<td>PROMISE Scholarship — Transfer</td>
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<td>6</td>
<td>HEAPS Grant Program (R)</td>
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<tr>
<td>7</td>
<td>BRIM Premium</td>
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<td>$68,656,342</td>
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Any unexpended balances remaining in the appropriations for Vice Chancellor for Health Sciences - Rural Health Initiative Program and Site Support (fund 0589, activity 595), Capital Outlay and Maintenance (fund 0589, activity 755), and HEAPS Grant Program (fund 0589, activity 867) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The above appropriation for Higher Education Grant Program (activity 164) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by W.Va. Code §18C-5-3.

The above appropriation for PROMISE Scholarship - Transfer (activity 800) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

---

96-Higher Education Policy Commission - System - Control Account

(WV Code Chapter 18B)

Fund **0586** FY **2012** Org **0442**
<table>
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<th>Division</th>
<th>Line No.</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>WVU School of Health Science</td>
<td>Eastern Division</td>
<td>056</td>
<td>$2,637,528</td>
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<tr>
<td>2</td>
<td>West Virginia School of Osteopathic Medicine</td>
<td></td>
<td>172</td>
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</tr>
<tr>
<td>3</td>
<td>Marshall Medical School</td>
<td></td>
<td>173</td>
<td>12,556,564</td>
</tr>
<tr>
<td>4</td>
<td>WVU—School of Health Sciences</td>
<td>Charleston Division</td>
<td>175</td>
<td>2,684,094</td>
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<tr>
<td>5</td>
<td>WVU School of Health Sciences</td>
<td>Rural Health Outreach Programs (R)</td>
<td>377</td>
<td>605,594</td>
</tr>
<tr>
<td>6</td>
<td>Bluefield State College</td>
<td></td>
<td>408</td>
<td>6,570,942</td>
</tr>
<tr>
<td>7</td>
<td>Concord University</td>
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<td>10,164,340</td>
</tr>
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<td>8</td>
<td>Fairmont State University</td>
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<td>414</td>
<td>17,803,627</td>
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<td>9</td>
<td>Glenville State College</td>
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<td>428</td>
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<tr>
<td>10</td>
<td>Shepherd University</td>
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<td>11</td>
<td>West Liberty University</td>
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<td>12</td>
<td>West Virginia State University</td>
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<td>441</td>
<td>10,927,589</td>
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<td>13</td>
<td>Marshall University</td>
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<tr>
<td>14</td>
<td>Marshall University Medical School</td>
<td>BRIM Subsidy</td>
<td>449</td>
<td>1,015,462</td>
</tr>
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<td>15</td>
<td>West Virginia University</td>
<td></td>
<td>459</td>
<td>*116,272,285</td>
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<tr>
<td>16</td>
<td>West Virginia University School of Medicine</td>
<td>BRIM Subsidy</td>
<td>460</td>
<td>1,400,038</td>
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<td>17</td>
<td>Jackson’s Mill (R)</td>
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<td>461</td>
<td>350,000</td>
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<td>18</td>
<td>West Virginia University Institute for Technology</td>
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<td>8,686,192</td>
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<td>19</td>
<td>Vista E-Learning (R)</td>
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<td>519</td>
<td>300,000</td>
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<td>20</td>
<td>State Priorities - Brownfield Professional Development (R)</td>
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<td>531</td>
<td>805,598</td>
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<tr>
<td>21</td>
<td>Rural Health Initiative - Medical Schools Support</td>
<td></td>
<td>581</td>
<td>480,069</td>
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<tr>
<td>22</td>
<td>WV Autism Training Center</td>
<td></td>
<td>932</td>
<td>2,105,796</td>
</tr>
</tbody>
</table>

*Clerk's Note:* The Chief Executive reduced Item 96, line 16, by $100,000 from $7,197,804 to $7,097,804 and on line 23, by $100,000 from $116,372,285 to $116,272,285. The total does NOT reflect the reduction by the Governor.
West Virginia State University Land
Grant Match.................................. 956 1,908,000
West Virginia University —
Potomac State .......................... 994 4,689,609
Total. ....................................... $309,758,420

Any unexpended balances remaining in the appropriations for Rural Health Outreach Programs (fund 0586, activity 377), WVUIT-ABET Accreditation (fund 0586, activity 454), Jackson’s Mill (fund 0586, activity 461), Vista E-Learning (fund 0586, activity 519), and State Priorities-Brownfield Professional Development (fund 0586, activity 531) at the close of fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

Included in the appropriation for WVU — School of Health Sciences and Marshall Medical School are $943,080 and $295,477, respectively, for Graduate Medical Education which may be transferred to the Department of Health and Human Resources’ Medical Service Fund (fund 5084) for the purpose of matching federal or other funds to be used in support of graduate medical education, subject to approval of the Vice- Chancellor for Health Sciences and the Secretary of the Department of Health and Human Resources. If approval is denied, the funds may be utilized by the respective institutions for expenditure on graduate medical education.

Included in the above appropriation for WVU - School of Health Sciences - Charleston Division and Marshall Medical School, an amount not less than $5,000 respectively, is to be used for the West Virginia Academy of Family Physicians Doc of the Day Program.

Included in the above appropriation for WVU — School of Health Sciences is $1,000,000 for the Blanchette Rockefeller Project.
Included in the above appropriation for Glenville State College is $300,000 for a 20 county “Hidden Promise” consortium between the County School Systems and Glenville State College; $200,000 for courses offered in conjunction with the corrections academy.

Included in the above appropriation for West Virginia University is $34,500 for the Marshall and WVU Faculty and Course Development International Study Project; $246,429 for the WVU Law School — Skills Program; $300,000 for the WVU Coal and Energy Research Bureau to be expended in consultation with the Board of Coal Mine Health and Safety, the Mine Safety Technology Task Force, and the DEP Advisory Council; $19,714 for the WVU College of Engineering and Mineral Resources — Diesel Training — Transfer; $82,500 for the WVU — Sheep Study; $500,000 for the Mining Engineering Program; $500,000 for the Center for Multiple Sclerosis Program; $550,000 for the Davis College of Forestry Agriculture and Consumer Sciences of which $112,500 is to be used for Morgantown Farms; $112,500 is to be used for Raymond Memorial Farm; $112,500 is to be used for Reedsville Farm; $112,500 is to be used for Kerneysville Farm; $200,000 for Reedsville Arena and Jackson’s Mill Arena; $80,000 for a Landscape Architect at Davis College of Forestry Agriculture and Consumer Sciences; $100,000 for the WVU — Soil Testing Program; $100,000 for a veterinarian; $50,000 for the WVU Cancer Study; $220,000 for the WVU Petroleum Engineering Program; $150,000 for the WV Alzheimer Disease Register; $100,000 for the rifle team.

*Clerk’s Note: The Chief Executive reduced Item 96, line 68, by $50,000, from $350,000 to $300,000, on lines 71 and 72, deleting the semicolon and the words “and $50,000 to upgrade the security system at the corrections academy”, and deleting the language in Item 96, line 96, which read “$100,000 is for the Aquaculture Program” and the semicolon.
Included in the above appropriation for Marshall Medical School is $417,351 for the Marshall University Forensic Lab and $275,061 for the Marshall University Center for Rural Health.

Included in the above appropriation for Marshall University is $181,280 for the Marshall University-Southern WV CTC 2+2 Program and $175,000 for the Luke Lee Listening Language & Learning Lab.

Included in the above appropriation for Concord University is $100,000 for the Geographic Alliance.

Included in the above appropriation for Shepherd University is $100,000 for the Gateway Program.

Included in the above appropriation for Jackson’s Mill is $150,000 for the Jackson’s Mill Fire Academy.

From the above appropriation for Rural Health Outreach Programs (activity 377) includes rural health activities and programs; rural residency development and education; and rural outreach activities. These funds shall be dispersed equally among the three (3) medical schools.

From the above appropriation for WVU - Potomac State is $50,000 for maintenance, repairs and equipment, $75,000 for Potomac State Farms for maintenance, repairs, and equipment and $82,500 for the Potomac State Equine Program.

The institutions operating from special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

From the above appropriations to the respective medical schools, the line items for BRIM subsidies funding shall be
paid to the Board of Risk and Insurance Management as a general revenue subsidy against the “Total Premium Billed” to each institution as part of the full cost of their malpractice insurance coverage.

Total TITLE II, Section 1 - General Revenue (Including claims against the state) $4,014,121,000

Sec. 2. Appropriations from state road fund. - From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2012.

DEPARTMENT OF TRANSPORTATION

97-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)

Fund 9007 FY 2012 Org 0802

<table>
<thead>
<tr>
<th>Activity</th>
<th>Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>Annual Increment</td>
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<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>Total</td>
<td></td>
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</table>

98-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2012 Org 0803
<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Section</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Debt Service</td>
<td>040</td>
<td>$49,900,000</td>
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<tr>
<td>2</td>
<td>Maintenance</td>
<td>237</td>
<td>326,096,000</td>
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<tr>
<td>3</td>
<td>Maintenance, Contract Paving and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Secondary Road Maintenance</td>
<td>272</td>
<td>45,000,000</td>
</tr>
<tr>
<td>4</td>
<td>Bridge Repair and Replacement</td>
<td>273</td>
<td>30,000,000</td>
</tr>
<tr>
<td>5</td>
<td>Inventory Revolving</td>
<td>275</td>
<td>4,000,000</td>
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<tr>
<td>6</td>
<td>Equipment Revolving</td>
<td>276</td>
<td>15,000,000</td>
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<tr>
<td>7</td>
<td>General Operations</td>
<td>277</td>
<td>53,848,821</td>
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<tr>
<td>8</td>
<td>Interstate Construction</td>
<td>278</td>
<td>150,000,000</td>
</tr>
<tr>
<td>9</td>
<td>Other Federal Aid Programs</td>
<td>279</td>
<td>300,700,000</td>
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<tr>
<td>10</td>
<td>Appalachian Programs</td>
<td>280</td>
<td>115,000,000</td>
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<tr>
<td>11</td>
<td>Nonfederal Aid Construction</td>
<td>281</td>
<td>15,000,000</td>
</tr>
<tr>
<td>12</td>
<td>Highway Litter Control</td>
<td>282</td>
<td>1,680,000</td>
</tr>
<tr>
<td>13</td>
<td>Federal Economic Stimulus</td>
<td>891</td>
<td>20,000,000</td>
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<tr>
<td>14</td>
<td>Total</td>
<td></td>
<td>$1,126,224,821</td>
</tr>
</tbody>
</table>

The above appropriations are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the code.

The commissioner of highways shall have the authority to operate revolving funds within the state road fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated within the above items sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with sections seventeen and eighteen, article two, chapter fourteen of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of
the amount appropriated may be made available upon recommendation of the commissioner and approval of the governor. Further, for the purpose of Appalachian programs, funds appropriated to line items may be transferred to other line items upon recommendation of the commissioner and approval of the governor.

99-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2012 Org 0808

1 Unclassified - Total. ................. 096 $ 1,951,979

2 Total TITLE II, Section 2 - State Road Fund
3 (Including claims against the state) $ 1,171,146,346

Sec. 3. Appropriations from other funds. - From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2012.

LEGISLATIVE

100-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2012 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Fund</th>
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<tbody>
<tr>
<td>Personal Services.</td>
<td>$ 286,000</td>
</tr>
<tr>
<td>Annual Increment.</td>
<td>6,200</td>
</tr>
<tr>
<td>Employee Benefits.</td>
<td>124,200</td>
</tr>
</tbody>
</table>
Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

JUDICIAL

101-Supreme Court - Family Court Fund

(WV Code Chapter 51)

Fund 1763 FY 2012 Org 2400

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

EXECUTIVE

102-Auditor’s Office - Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2012 Org 1200

1 Personal Services ..................... 001 $ 432,487
2 Annual Increment ..................... 004 9,300
3 Employee Benefits ................... 010 187,360
4 Unclassified ......................... 099 884,771
5 Total. ............................... $ 1,513,918

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the
expenditure of funds other than personal services or employee benefits to enable the division to pay the direct expenses relating to land sales as provided in chapter eleven-a of the West Virginia Code.

The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.

103-Auditor's Office - Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2012 Org 1200

1 Unclassified - Total. 096 $154,922

104-Auditor's Office - Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2012 Org 1200

1 Personal Services. 001 $1,187,265
2 Annual Increment. 004 18,316
3 Employee Benefits. 010 509,929
4 Unclassified. 099 1,471,122
5 Total. $3,186,632

105-Auditor's Office - Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2012 Org 1200
APPROPRIATIONS

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

2 Fifty percent of the deposits made into this fund shall be transferred to the Treasurer’s Office - Technology Support and Acquisition Fund (fund 1329, org 1300) for expenditure for the purposes described in W.Va. Code §12-3-10c.

106-Auditor’s Office - Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2012 Org 1200

1 Unclassified - Total. ............... 096 $ 4,234,315

107-Auditor’s Office - Office of the Chief Inspector

(WV Code Chapter 6)

Fund 1235 FY 2012 Org 1200

1 Personal Services. ............... 001 $ 2,466,793
2 Annual Increment. ............... 004 39,288
3 Employee Benefits. ............... 010 899,431
4 Unclassified. ............... 099 815,915
5 Total. .......................... $ 4,221,427

108-Treasurer’s Office - College Prepaid Tuition and Savings Program Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2012 Org 1300

1 Unclassified - Total. ............... 096 $ 1,408,631
109-Treasurer’s Office -
Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1329 FY 2012 Org 1300

1 Unclassified - Total. .................. 096 $ 476,649

110-Department of Agriculture -
Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2012 Org 1400

1 Unclassified - Total. .................. 096 $ 3,728,297

111-Department of Agriculture -
West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2012 Org 1400

1 Personal Services. .................... 001 $ 54,339
2 Annual Increment....................... 004 998
3 Employee Benefits...................... 010 16,094
4 Unclassified. .......................... 099 975,996
5 Total. ................................. $ 1,047,427

112-Department of Agriculture -
General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2012 Org 1400
The above appropriation shall be expended in accordance with Article 26, Chapter 19 of the Code.

113-Department of Agriculture - Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2012 Org 1400

1 Unclassified - Total. ............... 096 $ 1,515,706

114-Department of Agriculture - Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2012 Org 1400

1 Unclassified - Total. ............... 096 $ 4,564,268

115-Department of Agriculture - Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2012 Org 1400

1 Unclassified - Total. ............... 096 $ 25,000

116-Attorney General - Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2012 Org 1500
117 - Attorney General -

Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2012 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total.</td>
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<td>$266,841</td>
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</table>

118 - Attorney General -

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2012 Org 1500

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total.</td>
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<td>$901,135</td>
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</table>

119 - Secretary of State -

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2012 Org 1600

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services.</td>
<td>001</td>
<td>$684,700</td>
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<td>2</td>
<td>Annual Increment.</td>
<td>004</td>
<td>5,160</td>
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<td>3</td>
<td>Employee Benefits.</td>
<td>010</td>
<td>286,882</td>
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<td>4</td>
<td>Unclassified.</td>
<td>099</td>
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<td>Total.</td>
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<td>$1,255,985</td>
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</table>
### Department of Administration

#### 121-Department of Administration - Office of the Secretary
**Employee Pension and Health Care Benefit Fund**

(WV Code Chapter 18)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>096</td>
<td>Unclassified - Total</td>
<td>096</td>
<td>$34,216,000</td>
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</tbody>
</table>

The above appropriation for Unclassified - Total (fund 2044, activity 096) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

#### 122-Division of Information Services and Communications

(WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**APPROPRIATIONS**

120-Secretary of State -
**General Administrative Fees Account**

(WV Code Chapters 3, 5 and 59)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tr>
<td>1617</td>
<td>2012</td>
<td>1600</td>
<td>Personal Services</td>
<td>001</td>
<td>$827,959</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Annual Increment</td>
<td>004</td>
<td>11,000</td>
</tr>
<tr>
<td></td>
<td></td>
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<td>Employee Benefits</td>
<td>010</td>
<td>506,004</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Unclassified</td>
<td>099</td>
<td>1,199,542</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Technology Improvements</td>
<td>599</td>
<td>750,000</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$3,294,505</strong></td>
</tr>
</tbody>
</table>

**DEPARTMENT OF ADMINISTRATION**
The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the division of information services and communications as provided by law.

Each spending unit operating from the general revenue fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

123-Division of Purchasing - Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2012 Org 0213

<table>
<thead>
<tr>
<th></th>
<th>Fund 2263 FY 2012 Org 0213</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001 $491,919</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004 7,561</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010 168,831</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099 238,204</td>
</tr>
<tr>
<td>Total</td>
<td>$906,515</td>
</tr>
</tbody>
</table>

124-Division of Purchasing - Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2012 Org 0213
140  APPROPRIATIONS  [Ch. 11

1  Personal Services. ................. 001  $ 235,435
2  Annual Increment. ................ 004  4,102
3  Employee Benefits .................. 010  82,385
4  Unclassified. ..................... 099  234,329
5  Total. .............................  $ 556,251

125-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2012 Org 0222

1  Personal Services. ................. 001  $ 2,803,062
2  Annual Increment. ................ 004  72,348
3  Employee Benefits .................. 010  1,059,253
4  Unclassified. ..................... 099  1,207,158
5  Total. .............................  $ 5,141,821

The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of personnel.

126-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2012 Org 0228

1  Unclassified - Total (R). .......... 096  $ 552,393

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 2521, activity 096, fiscal year 2011) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

127-Office of Technology -  
Chief Technology Officer Administration Fund
Fund 2531 FY 2012 Org 0231

1  Unclassified - Total. ....................... 096 $ 1,886,044

From the above fund, the provisions of W.Va. Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

128-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2012 Org 0305

1  Personal Services. ......................... 001 $ 670,778
2  Annual Increment. ......................... 004  16,620
3  Employee Benefits. ...................... 010  230,026
4  Unclassified. ............................. 099  363,348
5  Total. ..................................... $ 1,280,772

129-Division of Forestry - Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2012 Org 0305

1  Unclassified - Total. ....................... 096 $ 143,767

130-Division of Forestry - Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2012 Org 0305
142 APPROPRIATIONS [Ch. 11

1 Unclassified - Total. .............. 096 $ 827,462

131-Geological and Economic Survey-
Geological and Analytical Services Fund

(WV Code Chapter 29)

Fund 3100 FY 2012 Org 0306

1 Personal Services. ....................... 001 $ 25,821
2 Employee Benefits ....................... 010 2,401
3 Unclassified. ....................... 099 190,057
4 Total. ........................................ $ 218,279

5 The above appropriation shall be used in accordance with

132-West Virginia Development Office -
Department of Commerce
Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2012 Org 0307

1 Unclassified - Total. .............. 096 $ 3,035,336

133-West Virginia Development Office -
Broadband Deployment Fund

(WV Code Chapter 31)

Fund 3174 FY 2012 Org 0307

1 Unclassified - Total. .............. 096 $ 5,000,000

134-Division of Labor -
Contractor Licensing Board Fund
### Ch. 11] APPROPRIATIONS

(WV Code Chapter 21)

**Fund 3187 FY 2012 Org 0308**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>$2,158,958</td>
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</table>

*135-Division of Labor - Elevator Safety Act*

(WV Code Chapter 21)

**Fund 3188 FY 2012 Org 0308**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$91,696</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
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<td>1,352</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>45,637</td>
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<td>4</td>
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<td>099</td>
<td>49,246</td>
</tr>
<tr>
<td>5</td>
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<td>$187,931</td>
</tr>
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</table>

*136-Division of Labor - Crane Operator Certification Fund*

(WV Code Chapter 21)

**Fund 3191 FY 2012 Org 0308**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>096</td>
<td>$138,025</td>
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</tbody>
</table>

*137-Division of Labor - Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

**Fund 3192 FY 2012 Org 0308**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>144</td>
<td>APPROPRIATIONS</td>
<td>[Ch. 11</td>
<td></td>
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<tr>
<td>---</td>
<td>---</td>
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<td></td>
</tr>
<tr>
<td>1</td>
<td>Unclassified - Total. ................. 096  $ 108,117</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

138-Division of Labor -
State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Fund 3195 FY 2012 Org 0308

| 1  | Personal Services. ................ 001  $ 102,905 |
| 2  | Annual Increment.................... 004  411 |
| 3  | Employee Benefits................... 010  31,997 |
| 4  | Unclassified.......................... 099  46,002 |
| 5  | BRIM Premium.......................... 913  3,404 |
| 6  | Total. ................................ $ 184,719 |

139-Division of Labor -
Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2012 Org 0308

| 1  | Unclassified - Total. ................. 096  $ 50,000 |

140-Division of Natural Resources -
License Fund - Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2012 Org 0310

| 1  | Wildlife Resources................... 023  $ 5,550,693 |
| 2  | Administration.......................... 155  1,308,476 |
| 3  | Capital Improvements and Land Purchase (R) ............ 248  1,378,545 |
| 4  | Law Enforcement.......................... 806  5,545,677 |
| 5  | Total. ................................ $ 13,783,391 |
The total amount of this appropriation shall be paid from a special revenue fund out of fees collected by the division of natural resources.

Any unexpended balances remaining in the appropriations for Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

141-Division of Natural Resources - Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)

Fund 3202 FY 2012 Org 0310

1 Unclassified - Total. ............... 096 $ 75,000

142-Division of Natural Resources - Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2012 Org 0310

1 Personal Services. ................. 001 $ 698,662
2 Annual Increment. ................. 004 15,000
3 Employee Benefits. ............... 010 315,166
4 Unclassified. ...................... 099 297,043
5 Total. .......................... $ 1,325,871

143-Division of Natural Resources - Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2012 Org 0310
### Appropriations

<table>
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<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$131,864</td>
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144-Division of Natural Resources -  
Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2012 Org 0310

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145-Division of Natural Resources -  
Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2012 Org 0310

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146-Division of Miners’ Health, Safety and Training -  
Special Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2012 Org 0314

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### APPROPRIATIONS

147-Division of Energy - Energy Assistance

(WV Code Chapter 5B)

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148-Division of Energy - Office of Coal Field Community Development

(WV Code Chapter 5B)

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### DEPARTMENT OF EDUCATION

149-State Board of Education - Strategic Staff Development

(WV Code Chapter 18)

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150-State Department of Education - School Building Authority

(WV Code Chapter 18)

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### DEPARTMENT OF EDUCATION AND THE ARTS

**152-Office of the Secretary -
Lottery Education Fund Interest Earnings -
Control Account**

(WV Code Chapter 29)

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<tr>
<td>3508</td>
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<td>0431</td>
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1. Any unexpended balance remaining in the appropriation for EPSCoR (fund 3508, activity 571), Educational Enhancements (fund 3508, activity 695), and Literacy Project (fund 3508, activity 899) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.
### 153-Division of Culture and History –
*Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2012 Org 0432

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### 154-State Board of Rehabilitation -
*Division of Rehabilitation Services -
West Virginia Rehabilitation Center -
Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2012 Org 0932

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### DEPARTMENT OF ENVIRONMENTAL PROTECTION

#### 155-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2012 Org 0312

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#### 156-Division of Environmental Protection -
*Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2012 Org 0313

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<th>Item</th>
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<td>Personal Services</td>
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150  APPROPRIATIONS  [Ch. 11

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157-Division of Environmental Protection - Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2012 Org 0313

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158-Division of Environmental Protection - Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2012 Org 0313

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159-Division of Environmental Protection - Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2012 Org 0313
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160-Division of Environmental Protection - Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2012 Org 0313

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161-Division of Environmental Protection - Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2012 Org 0313

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162-Division of Environmental Protection - Underground Storage Tank Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2012 Org 0313

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### 163-Division of Environmental Protection - Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

**Fund 3331 FY 2012 Org 0313**

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### 164-Division of Environmental Protection - Solid Waste Reclamation and Environmental Response Fund

(WV Code Chapter 22)

**Fund 3332 FY 2012 Org 0313**

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### 165-Division of Environmental Protection - Solid Waste Enforcement Fund

(WV Code Chapter 22)

**Fund 3333 FY 2012 Org 0313**
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166-Division of Environmental Protection -  
Air Pollution Control Fund

(WV Code Chapter 22)

Fund 3336 FY 2012 Org 0313

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167-Division of Environmental Protection -  
Environmental Laboratory Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2012 Org 0313

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168-Division of Environmental Protection -  
Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2012 Org 0313
# Appropriations

1 **Unclassified - Total.** ............ 096 $ 7,244,023

**169-Division of Environmental Protection - Litter Control Fund**

(WV Code Chapter 22)

Fund 3486 FY 2012 Org 0313

1 **Unclassified - Total.** ............ 096 $ 60,000

**170-Division of Environmental Protection - Recycling Assistance Fund**

(WV Code Chapter 22)

Fund 3487 FY 2012 Org 0313

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**171-Division of Environmental Protection - Mountaintop Removal Fund**

(WV Code Chapter 22)

Fund 3490 FY 2012 Org 0313

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172-Oil and Gas Conservation Commission - Special Oil and Gas Conservation Fund

(WV Code Chapter 22C)

Fund 3371 FY 2012 Org 0315

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DEPARTMENT OF HEALTH AND HUMAN RESOURCES

173-Division of Health - The Vital Statistics Account
(WV Code Chapter 16)

Fund 5144 FY 2012 Org 0506

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</table>

174-Division of Health - Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)

Fund 5156 FY 2012 Org 0506
Institutional Facilities
Operations (R).......................... 335 $ 38,874,567
Medical Services Trust Fund -
Transfer (R).............................. 512 25,300,000
Total. .................................. $ 64,174,567

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by W.Va. Code §16-1-13, and shall be used for operating expenses and for improvements in connection with existing facilities and bond payments.

The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations line to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 2012, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335) on July 1, 2011, the sum of $160,000 shall be transferred to the department of agriculture - land division - farm operation fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.
### Ch. 11] APPROPRIATIONS 157

175-Division of Health -
Laboratory Services

(WV Code Chapter 16)

**Fund 5163 FY 2012 Org 0506**

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176-Division of Health -
The Health Facility Licensing Account

(WV Code Chapter 16)

**Fund 5172 FY 2012 Org 0506**

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177-Division of Health -
Hepatitis B Vaccine

(WV Code Chapter 16)

**Fund 5183 FY 2012 Org 0506**

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178-Division of Health - Lead Abatement Account

(WV Code Chapter 16)

Fund 5204 FY 2012 Org 0506

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179-Division of Health - West Virginia Birth to Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2012 Org 0506

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180-Division of Health - Tobacco Control Special Fund

(WV Code Chapter 16)

Fund 5218 FY 2012 Org 0506

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181-West Virginia Health Care Authority — Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2012 Org 0507
1 Personal Services ................ 001 $ 2,178,871
2 Annual Increment ................ 004 31,072
3 Employee Benefits ............... 010 785,806
4 Hospital Assistance .............. 025 600,000
5 Unclassified .................... 099 3,104,945
6 Total ................................ $ 6,700,694

The above appropriation is to be expended in accordance with and pursuant to the provisions of Article 29B, Chapter 16 of the Code and from the special revolving fund designated health care cost review fund.

The Health Care Authority is authorized to transfer up to $1,500,000 from this fund to the West Virginia Health Information Network Account (fund 5380) as authorized per W.Va. Code §16-29G-4.

182-West Virginia Health Care Authority - West Virginia Health Information Network Account

(WV Code Chapter 16)

Fund 5380 FY 2012 Org 0507

1 Unclassified ...................... 099 $ 2,000,000
2 Technology Infrastructure Network .. 351 3,500,000
3 Total ................................ $ 5,500,000

183-West Virginia Health Care Authority - Revolving Loan Fund

(WV Code Chapter 16)

Fund 5382 FY 2012 Org 0507

1 Unclassified - Total ............... 096 $ 2,000,000
The Health Care Authority is authorized to transfer up to $4,000,000 from this fund to the West Virginia Health Information Account (fund 5380) as authorized by W.Va. Code §16-29G-4.

184-Division of Human Services -
Health Care Provider Tax -
Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2012 Org 0511

1 Medical Services .......................... 189 $ 170,727,592
2 Medical Services Administrative Costs 789 417,240
3 Total ........................................ $171,144,832

From the above appropriation for Medical Services Administrative Costs (fund 5090, activity 789), $200,000 shall be transferred to the tax division per W.Va. Code §11-27-32 and the remainder shall be transferred to a special revenue account in the treasury for use by the department of health and human resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the West Virginia medical services fund (fund 5084).

185-Division of Human Services -
Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2012 Org 0511

1 Unclassified - Total (R) .............. 096 $ 44,287,194

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 5094, activity 096) at the close
of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012, except for fund 5094, activity 096, fiscal year 2008 which shall expire on June 30, 2011.

186-Division of Human Services -
Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2012 Org 0511

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The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of W.Va. Code §9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state match for medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the division of human services accounts.

187-Division of Human Services -
James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2012 Org 0511

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188-Family Protection Services Board -
Domestic Violence Legal Services Fund
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<td><strong>1 Unclassified - Total. . . . . . . . . . . . . . 096 $ 838,022</strong></td>
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<td><strong>189-Division of Human Services - West Virginia Works Separate State College Program Fund</strong></td>
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<td><strong>Fund 5467 FY 2012 Org 0511</strong></td>
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<td><strong>190-Division of Human Services - West Virginia Works Separate State Two-Parent Program Fund</strong></td>
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<td>(WV Code Chapter 9)</td>
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<td><strong>Fund 5468 FY 2012 Org 0511</strong></td>
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<tr>
<td><strong>1 Unclassified - Total. . . . . . . . . . . . . . 096 $ 4,000,000</strong></td>
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**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

| **191-Department of Military Affairs and Public Safety - Office of the Secretary - Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund** |
| (WV Code Chapter 15) |
| **Fund 6003 FY 2012 Org 0601** |
1 Unclassified - Total. .......................... 096 $ 25,000

192-State Armory Board -
General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2012 Org 0603

1 Unclassified - Total. .......................... 096 $ 600,000

193-Division of Homeland Security and
Emergency Management -
West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2012 Org 0606

1 Unclassified - Total (R). .......................... 096 $ 2,000,000

Any unexpended balance remaining in the appropriation
for Unclassified - Total (fund 6295, activity 096) at the close
of fiscal year 2011 is hereby reappropriated for expenditure
during the fiscal year 2012.

194-West Virginia Division of Corrections -
Parolee Supervision Fees

(WV Code Chapter 62)

Fund 6362 FY 2012 Org 0608

1 Personal Services. .......................... 001 $ 376,732
2 Annual Increment. .......................... 004 7,291
3 Employee Benefits. .......................... 010 129,257
4 Unclassified. .......................... 099 488,853
5 Total. .......................... $ 1,002,133
195-West Virginia State Police -
Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2012 Org 0612

1. Personal Services ................ 001 $ 776,904
2. Annual Increment ................ 004 28,740
3. Employee Benefits ............... 010 305,524
4. Unclassified .................... 099 443,203
5. BRIM Premium ................... 913 302,432
6. Total. ........................... $ 1,856,803

7. The total amount of this appropriation shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

196-West Virginia State Police -
Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2012 Org 0612

1. Unclassified ..................... 099 $ 1,327,000
2. BRIM Premium ................... 913 154,452
3. Total. ........................... $ 1,481,452

4. The total amount of this appropriation shall be paid from the special revenue fund out of receipts collected pursuant to sections nine-a and sixteen, article fifteen, chapter eleven of the code and paid into a revolving fund account in the state treasury.

197-West Virginia State Police -
Surplus Real Property Proceeds Fund
### APPROPRIATIONS

(WV Code Chapter 15)

Fund 6516  FY 2012  Org 0612

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198-West Virginia State Police - Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519  FY 2012  Org 0612

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199-West Virginia State Police - Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527  FY 2012  Org 0612

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200-West Virginia State Police - Bail Bond Enforcer Fund

(WV Code Chapter 15)

Fund 6532  FY 2012  Org 0612

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### APPROPRIATIONS

#### 201-Division of Veterans’ Affairs - Veterans’ Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2012 Org 0613

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#### 202-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2012 Org 0615

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#### 203-Division of Veterans’ Affairs - WV Veterans’ Home - Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2012 Org 0618

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#### 204-Fire Commission - Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2012 Org 0619

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### 205-Division of Justice and Community Services - WV Community Corrections Fund

(WV Code Chapter 62)

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Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2011 is hereby available for expenditure as part of the fiscal year 2012 appropriation.

### 206-Division of Justice and Community Services - Court Security Fund

(WV Code Chapter 51)

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### DEPARTMENT OF REVENUE

#### 207-Division of Banking

(WV Code Chapter 31A)

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(WV Code Chapter 51)

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### DEPARTMENT OF REVENUE

#### 207-Division of Banking

(WV Code Chapter 31A)

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(WV Code Chapter 51)

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208-Office of the Secretary - State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2012 Org 0701

1 Unclassified - Total - Transfer...... 402 $20,000,000

The above appropriation for Unclassified - Total - Transfer shall be transferred to the Consolidated Public Retirement Board - West Virginia Public Employees Retirement System Employers Accumulation Fund (fund 2510).

209-Tax Division - Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2012 Org 0702

1 Personal Services................. 001 $17,244
2 Annual Increment................. 004 370
3 Employee Benefits.............. 010 5,845
4 Unclassified.................... 099 7,717
5 Total....................... $31,176

210-Tax Division - Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2012 Org 0702
### APPROPRIATIONS

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<td>099</td>
<td>337,610</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,493,623</td>
</tr>
</tbody>
</table>

**211-Tax Division - Special District Excise Tax Administration Fund**

(WV Code Chapter 11)

Fund 7086 FY 2012 Org 0702

<table>
<thead>
<tr>
<th></th>
<th>Unclassified - Total.</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>096</td>
<td>$51,993</td>
</tr>
</tbody>
</table>

**212-Tax Division - Wine Tax Administration Fund**

(WV Code Chapter 60)

Fund 7087 FY 2012 Org 0702

<table>
<thead>
<tr>
<th></th>
<th>Unclassified - Total.</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>096</td>
<td>$259,568</td>
</tr>
</tbody>
</table>

**213-Tax Division - Reduced Cigarette Ignition Propensity Standard and Fire Prevention Act Fund**

(WV Code Chapter 47)

Fund 7092 FY 2012 Org 0702

<table>
<thead>
<tr>
<th></th>
<th>Unclassified - Total.</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>096</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

**214-State Budget Office - Public Employees Insurance Reserve Fund**

(WV Code Chapter 11B)

Fund 7400 FY 2012 Org 0703
170  APPROPRIATIONS  [Ch. 11

1 Public Employees Insurance Reserve
2 Fund — Transfer. . . . . . . . . . . . . . . . . . . . . . 903  $ 6,800,000

3 The above appropriation for Public Employees Insurance
4 Reserve Fund — Transfer shall be transferred to the Medical
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

215-Insurance Commissioner -
Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2012 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>518,696</td>
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<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>6,892</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>183,992</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>1,470,286</td>
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<tr>
<td>5 Total</td>
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<td>2,179,866</td>
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</tbody>
</table>

216-Insurance Commissioner -
Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2012 Org 0704

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services</td>
<td>001</td>
<td>383,295</td>
</tr>
<tr>
<td>2 Annual Increment</td>
<td>004</td>
<td>6,360</td>
</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>153,544</td>
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<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>272,242</td>
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<tr>
<td>5 Total</td>
<td></td>
<td>815,441</td>
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</tbody>
</table>

217-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2012 Org 0704
The total amount of this appropriation shall be paid from a special revenue fund out of collections of fees and charges as provided by law.

218-Insurance Commissioner –
Workers’ Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2012 Org 0704

$550,000,000

219-Insurance Commissioner –
Workers’ Compensation Uninsured Employers’ Fund

(WV Code Chapter 23)

Fund 7163 FY 2012 Org 0704

$27,000,000

220-Insurance Commissioner –
Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2012 Org 0704

$5,000,000
### 221-Insurance Commissioner –
Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2012 Org 0704

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</table>

### 222-Lottery Commission -
Revenue Center Construction Fund

(WV Code Chapter 29)

Fund 7209 FY 2012 Org 0705

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</table>

### 223-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2012 Org 0706

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$166,570</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,332</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>74,789</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>86,497</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$333,188</td>
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</table>

### 224-Racing Commission -
Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2012 Org 0707

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Medical Expenses - Total</td>
<td>245</td>
</tr>
</tbody>
</table>
The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this account except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

225-Racing Commission - Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2012 Org 0707

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$125,645</td>
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<td>Annual Increment</td>
<td>004</td>
<td>$2,170</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$37,495</td>
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<td>Unclassified</td>
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<td>$424,161</td>
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<td>Total</td>
<td></td>
<td>$589,471</td>
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</tbody>
</table>

226-Racing Commission - General Administration

(WV Code Chapter 19)

Fund 7305 FY 2012 Org 0707

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,258,053</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$25,206</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$599,870</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,311,164</td>
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<tr>
<td>Total</td>
<td></td>
<td>$4,194,293</td>
</tr>
</tbody>
</table>

227-Racing Commission - Administration, Promotion, Education, Capital Improvement and Greyhound Adoption Programs to include Spaying and Neutering Account
Appropriations

(WV Code Chapter 19)

Fund 7307 FY 2012 Org 0707

1 Unclassified - Total. .................. 096 $ 772,765

228-Alcohol Beverage Control Administration - Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2012 Org 0708

1 Personal Services. .................. 001 $ 113,943
2 Annual Increment. .................. 004 3,780
3 Employee Benefits. .................. 010 50,840
4 Unclassified. ....................... 099 206,324
5 Capital Outlay and Maintenance. . 755 400,000
6 Total. ................................ $ 774,887

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services line item for field auditors.

229-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2012 Org 0708

1 Personal Services. .................. 001 $ 3,734,079
2 Annual Increment. .................. 004 98,092
3 Employee Benefits. .................. 010 1,640,895
4 Unclassified. ....................... 099 3,030,048
5 Total. .............................. $ 8,503,114

From the above appropriation an amount shall be used for the Tobacco/Alcohol Education Program.
The total amount of this appropriation shall be paid from a special revenue fund out of liquor revenues.

The above appropriation includes the salary of the commissioner and the salaries, expenses and equipment of administrative offices, warehouses and inspectors.

There is hereby appropriated from liquor revenues, in addition to the above appropriation, the necessary amount for the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

230-Division of Motor Vehicles - Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2012 Org 0802

1 Unclassified - Total. ................. 096 $ 189,000

231-Division of Motor Vehicles - Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2012 Org 0802

1 Unclassified - Total. ................. 096 $ 6,552,511

232-Division of Highways - A. James Manchin Fund

(WV Code Chapter 22)

Fund 8319 FY 2012 Org 0803
176 APPROPRIATIONS [Ch. 11

1  Unclassified - Total.  096  $ 1,600,000

233-Public Port Authority -
   Special Railroad and Intermodal Enhancement Fund

   (WV Code Chapter 17)
   Fund 8254  FY 2012  Org 0806

1  Unclassified - Total.  096  $ 12,000,000

DEPARTMENT OF VETERANS’ ASSISTANCE

234-Veterans’ Facilities Support Fund -

   (WV Code Chapter 9A)
   Fund 6703  FY 2012  Org 0613

1  Unclassified - Total.  096  $ 6,000,000

235-Department of Veterans’ Assistance -
   WV Veterans’ Home -
   Special Revenue Operating Fund

   (WV Code Chapter 9A)
   Fund 6754  FY 2012  Org 0618

1  Unclassified - Total.  096  $ 750,000

BUREAU OF SENIOR SERVICES

236-Bureau of Senior Services -
   Community Based Service Fund

   (WV Code Chapter 22)
   Fund 5409  FY 2012  Org 0508
UNCLASSIFIED - Total. ................. 096 $ 9,952,064

HIGHER EDUCATION

237-Higher Education Policy Commission -
System -
Registration Fee Capital Improvement Fund
(Capital Improvement and Bond Retirement Fund)
Control Account

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2012 Org 0442

1 Debt Service.............................. 040 $ 4,164,854
2 General Capital Expenditures (R) ... 306 500,000
3 Total. ................................... $ 4,664,854

Any unexpended balance remaining in the appropriation
for General Capital Expenditures (fund 4902, activity 306,
fiscal year 2011) at the close of fiscal year 2011 is hereby
reappropriated for expenditure during the fiscal year 2012.

The total amount of this appropriation shall be paid from
the special capital improvements fund created in W.Va. Code
§18B-10-8. Projects are to be paid on a cash basis and made
available on July 1 of each year.

The above appropriations, except for debt service, may be
transferred to special revenue funds for capital improvement
projects at the institutions.

238-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 2012 Org 0442

<table>
<thead>
<tr>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>040</td>
<td>$27,502,710</td>
</tr>
<tr>
<td>General Capital Expenditures</td>
<td>306</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Facilities Planning and Administration</td>
<td>386</td>
<td>421,082</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$30,923,792</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Facilities Planning and Administration (fund 4903, activity 386) at the close of fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The total amount of this appropriation shall be paid from the special capital improvement fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at the institutions.

239-Higher Education Policy Commission - Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2012 Org 0442

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any unexpended balance remaining in the appropriation at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.</td>
<td></td>
</tr>
<tr>
<td>The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the</td>
<td></td>
</tr>
</tbody>
</table>
discretion of the Higher Education Policy Commission and
the funds may be allocated to any institution within the
system.

The total amount of this appropriation shall be paid from
the unexpended proceeds of revenue bonds previously issued
pursuant to W.Va. Code §18-12B-8, which have since been
refunded.

240-Higher Education Policy Commission -
Community and Technical College
Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2012 Org 0442

Any unexpended balance remaining in the appropriation
for Capital Improvements - Total (fund 4908, activity 958) at
the close of fiscal year 2011 is hereby reappropriated for
expenditure during the fiscal year 2012.

The total amount of this appropriation shall be paid from
the sale of the 2009 Series A Community and Technical
College Capital Improvement Revenue Bonds and anticipated
interest earnings.

241-Higher Education Policy Commission -
West Virginia University -
West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2012 Org 0463

Unclassified - Total (R). . . . . . . . . . . . . . . . 096 $15,935,640
Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4179, activity 096) at the close of fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.


(WV Code Chapter 18B)

Fund 4270 FY 2012 Org 0471

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4270, activity 096) at the close of fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The total amount of this appropriation shall be used for the purchase of additional real property or technology, or for capital improvements at the institution.

243-Higher Education Policy Commission - West Liberty University - West Liberty University Land Sales Account

(WV Code Chapter 18B)

Fund 4566 FY 2012 Org 0488

Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4566, activity 096) at the close of fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The total amount of this appropriation shall be used for the purchase of additional real property or technology, or for capital improvements at the institution.
Any unexpended balance remaining in the appropriation for Unclassified - Total (fund 4732, activity 096) at the close of fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The total amount of this appropriation shall be used for the purchase of additional real property or technology, or for capital improvements at the institution.

MISCELLANEOUS BOARDS AND COMMISSIONS

245-Board of Barbers and Cosmetologists

(WV Code Chapter 16 and 30)

Fund 5425 FY 2012 Org 0505

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$284,906</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$6,500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$133,024</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$221,612</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$646,042</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the board of barbers and cosmetologists as provided by law.
246-Hospital Finance Authority
(WV Code Chapter 16)

Fund 5475 FY 2012 Org 0509

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$49,410</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$1,300</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$21,488</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$27,673</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$99,871</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

247-WV State Board of Examiners for Licensed Practical Nurses
(WV Code Chapter 30)

Fund 8517 FY 2012 Org 0906

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>096</td>
<td>$387,957</td>
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</tbody>
</table>

248-WV Board of Examiners for Registered Professional Nurses
(WV Code Chapter 30)

Fund 8520 FY 2012 Org 0907

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>096</td>
<td>$1,126,049</td>
</tr>
</tbody>
</table>

249-Public Service Commission
(WV Code Chapter 24)

Fund 8623 FY 2012 Org 0926
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$8,500,587</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>161,734</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>3,100,051</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>2,957,041</td>
</tr>
<tr>
<td>PSC Weight Enforcement</td>
<td>345</td>
<td>4,385,540</td>
</tr>
<tr>
<td>Debt Payment/Capital Outlay</td>
<td>520</td>
<td>350,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>114,609</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$19,569,562</strong></td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collection for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to spend up to $500,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

### 250-Public Service Commission - Gas Pipeline Division — Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY</th>
<th>Org</th>
</tr>
</thead>
<tbody>
<tr>
<td>8624</td>
<td>2012</td>
<td>0926</td>
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</table>

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$166,481</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>6,890</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>68,569</td>
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<td>Unclassified</td>
<td>099</td>
<td>85,966</td>
</tr>
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<td><strong>Total</strong></td>
<td></td>
<td><strong>$327,906</strong></td>
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</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of
regulatory authority over pipeline companies as provided by law.

251-Public Service Commission - Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2012 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,575,837</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$609,253</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$679,790</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,914,527</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of receipts collected for or by the public service commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

252-Public Service Commission - Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2012 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$542,658</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$8,692</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$186,692</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$286,472</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>$4,532</td>
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<tr>
<td>Total</td>
<td></td>
<td>$1,029,046</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections made by the public service commission.
253-Real Estate Commission

(WV Code Chapter 30)

Fund 8635 FY 2012 Org 0927

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$423,477</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,828</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>148,020</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>300,622</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$880,947</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid out of collections of license fees as provided by law.

254-WV Board of Examiners for Speech-Language Pathology and Audiology

(WV Code Chapter 30)

Fund 8646 FY 2012 Org 0930

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total</td>
<td>096</td>
<td>$114,813</td>
</tr>
</tbody>
</table>

255-WV Board of Respiratory Care

(WV Code Chapter 30)

Fund 8676 FY 2012 Org 0935

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Category</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total</td>
<td>096</td>
<td>$130,970</td>
</tr>
</tbody>
</table>

256-WV Board of Licensed Dietitians

(WV Code Chapter 30)

Fund 8680 FY 2012 Org 0936
1 Unclassified - Total. ................. 096 $ 20,500

257-Massage Therapy Licensure Board

(WV Code Chapter 30)
Fund 8671 FY 2012 Org 0938

1 Unclassified - Total. ................. 096 $ 127,006

258-Board of Medicine

(WV Code Chapter 30)
Fund 9070 FY 2012 Org 0945

1 Unclassified - Total. ................. 096 $ 1,488,162

259-West Virginia Enterprise Resource Planning Board

(WV Code Chapter 12)
Fund __ FY 2012 Org __

1 Unclassified - Total. ................. 096 $ 43,000,000

260-Board of Treasury Investments

(WV Code Chapter 12)
Fund 9152 FY 2012 Org 0950

1 Unclassified - Total. ................. 096 $ 1,266,707

2 There is hereby appropriated from this fund, in addition to
the above appropriation, the amount of funds necessary for
the Board of Treasury Investments to pay the fees and
expenses of custodians, fund advisors and fund managers for the Consolidated fund of the State as provided in Article 6C, Chapter 12 of the Code.

The total amount of the appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.

Total TITLE II, Section 3 - Other Funds (Including claims against the state) $1,478,494,773

Sec. 4. Appropriations from lottery net profits. - Net profits of the lottery are to be deposited by the director of the lottery to the following accounts in the amounts indicated. The director of the lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the director of the lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, and Fund 3514 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, and Fund 3514 for that purpose. Upon receipt of reimbursement of amounts so transferred, the director of the lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

261-Education, Arts, Sciences and Tourism - Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2012 Org 0211
<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

262-West Virginia Development Office - Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2012 Org 0304

<table>
<thead>
<tr>
<th>Activity</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Tourism - Telemarketing Center</td>
<td>463</td>
</tr>
<tr>
<td>2 WV Film Office</td>
<td>498</td>
</tr>
<tr>
<td>3 Tourism - Advertising (R)</td>
<td>618</td>
</tr>
<tr>
<td>4 Tourism - Unclassified (R)</td>
<td>662</td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Capitol Complex - Capital Outlay (fund 3067, activity 417), Tourism - Advertising (fund 3067, activity 618), Tourism - Unclassified (fund 3067, activity 662), and Tourism - Special Projects (fund 3067, activity 859) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

263-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2012 Org 0310

<table>
<thead>
<tr>
<th>Activity</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified (R)</td>
<td>099</td>
</tr>
<tr>
<td>2 Pricketts Fort State Park</td>
<td>324</td>
</tr>
<tr>
<td>3 Non-Game Wildlife (R)</td>
<td>527</td>
</tr>
<tr>
<td>4 State Parks and</td>
<td></td>
</tr>
<tr>
<td>5 Recreation Advertising (R)</td>
<td>619</td>
</tr>
<tr>
<td>6 Total</td>
<td></td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Gypsy Moth Suppression Program for State Parks (fund 3267, activity 017), Unclassified (fund 3267, activity 099), Capital Outlay - Parks (fund 3267, activity 288), Non-Game Wildlife (fund 3267, activity 527), and State Parks and Recreation Advertising (fund 3267, activity 619) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

264-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2012 Org 0402

<table>
<thead>
<tr>
<th>Description</th>
<th>FY 2012</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>$3,950,000</td>
</tr>
<tr>
<td>FBI Checks</td>
<td>372</td>
<td>116,806</td>
</tr>
<tr>
<td>Vocational Education</td>
<td>393</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Equipment Replacement</td>
<td>393</td>
<td>3,427,848</td>
</tr>
<tr>
<td>Assessment Program (R)</td>
<td>396</td>
<td></td>
</tr>
<tr>
<td>21st Century Technology Infrastructure Network Tools and Support (R)</td>
<td>933</td>
<td>22,078,295</td>
</tr>
<tr>
<td>Total.</td>
<td></td>
<td>$30,572,949</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, activity 099), Assessment Program (fund 3951, activity 396), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, activity 933) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

265-State Department of Education - School Building Authority - Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2012 Org 0402
190

APPROPRIATIONS

1 Debt Service - Total. ............... 310 $ 18,000,000

266-Department of Education and the Arts -
Office of the Secretary -
Control Account -
Lottery Education Fund

(WV Code Chapter 5F)

Fund 3508 FY 2012 Org 0431

1 Unclassified (R) ...................... 099 $ 120,000
2 Commission for National and
   Community Service .................. 193 435,050
3 Arts Programs (R) ................... 500 81,075
4 College Readiness (R) .............. 579 184,489
5 Challenger Learning Center .......... 862 118,750
6 Statewide STEM 21st Century Academy 897 150,000
7 Governor’s Honor Academy .......... 478 *400,000
8 Literacy Project .................... 899 *350,000
9 Total ................................... $ 2,003,722
10
11 Any unexpended balances remaining in the appropriations
12 for Unclassified (fund 3508, activity 099), Arts Programs
13 (fund 3508, activity 500), and College Readiness (fund 3508,
14 activity 579) at the close of fiscal year 2011 are hereby
15 reappropriated for expenditure during the fiscal year 2012.

267-Division of Culture and History -
Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2012 Org 0432

*CLERK'S NOTE: The Chief Executive reduced Item 266, line 8, by $89,358,
from $489,358 to $400,000 and on line 9, by $75,000 from $425,000 to
$350,000. The total does NOT reflect the reduction by the Governor.
Huntington Symphony ........... 027 $ 94,763
Martin Luther King, Jr. 
Holiday Celebration ........... 031 10,260
Unclassified (R) ............... 099 755,540
Fairs and Festivals (R) ........ 122 2,071,731
Archeological Curation/Capital
Improvements (R) ............... 246 51,626
Historic Preservation Grants (R) . 311 559,029
West Virginia Public Theater ...... 312 198,550
Tri-County Fair Association ...... 343 22,562
George Tyler Moore Center for the
Study of the Civil War ........... 397 56,858
Greenbrier Valley Theater ...... 423 148,913
Theater Arts of West Virginia ... 464 265,000
Marshall Artists Series .......... 518 59,565
Grants for Competitive Arts
Program (R) ................... 624 $1,021,250
West Virginia State Fair ....... 657 49,875
Contemporary American Theater
Festival .......................... 811 94,763
Independence Hall ............... 812 45,125
Mountain State Forest Festival ... 864 63,175
WV Symphony ................... 907 94,763
Wheeling Symphony ............. 908 94,763
Appalachian Children’s Chorus ... 916 90,250
Save The Music .................. 94,763
Total ........................... $6,102,111

Any unexpended balances remaining in the appropriations
for Archeological Curation/Capital Improvements (fund
3534, activity 246), Historic Preservation Grants (fund 3534,
activity 311), Grants for Competitive Arts Program (fund
3534, activity 624), and Project ACCESS (fund 3534,
activity 865) at the close of the fiscal year 2011 are hereby
reappropriated for expenditure during the fiscal year 2012.

*CLERK’S NOTE: The Chief Executive reduced Item 267, line 17, by
$228,750, from $1,250,000 from $200,000 to $1,021,250. The total does
NOT reflect the reduction by the Governor.
From the above appropriation for Unclassified (fund 3534, activity 099) funding shall be provided to the Aracoma Story Council $1,425, Beckley Main Street (Raleigh) $4,750, Belle Boyd House (Berkeley) $1,900, Buffalo Creek Memorial (Logan) $4,750, Carnegie Hall (Greenbrier) $69,825, Ceredo Historical Society (Wayne) $1,900, Ceredo Kenova Railroad Museum (Wayne) $1,900, Chuck Mathena Center (Mercer) $100,000, Collis P. Huntington Railroad Historical Society (Cabell) $9,500, Country Music Hall of Fame and Museum (Marion) $6,650, Culture and History National Conference $25,000, Flannigan Murrell House (Summers) $9,500, Fort Ashby Fort (Mineral) $1,425, Fort New Salem (Harrison) $3,515, Fort Randolph (Mason) $4,750, Frieda J. Riley Award (Harrison) $2,850, General Adam Stephen Memorial Foundation $17,600, Grafton Mother’s Day Shrine Community (Taylor) $8,075, Hardy County Tour and Crafts Association $19,000, Heritage Craft Center of the Eastern Panhandle (Berkeley) $6,650, Heritage Farm Museum & Village (Cabell) $47,500, Historic Fayette Theater (Fayette) $5,225, Historic Middleway Conservancy (Jefferson) $950, Jefferson County Black History Preservation Society (Jefferson) $4,750, Jefferson County Historical Landmark Commission $7,600, Maddie Carroll House (Cabell) $7,125, Marshall County Historical Society $8,075, McCoy Theater (Hardy) $19,000, Morgantown Theater Company (Monongalia) $19,000, Mountaineer Boys’ State (Lewis) $9,500, Nicholas Old Main Foundation (Nicholas) $1,900, Norman Dillon Farm Museum (Berkeley) $9,500, Old Opera House Theater Company (Jefferson) $14,250, Parkersburg Arts Center (Wood) $19,000, Pocahontas Historic Opera House $5,700, Raleigh County All Wars Museum $9,500, Rhododendron Girl’s State (Ohio) $9,500, Roane County 4-H and FFA Youth Livestock Program $4,750, Scottish Heritage Society/N. Central WV (Harrison) $4,750, Society for the Preservation of McGrew House (Preston) $3,325, Soldiers’ Memorial Theater (Raleigh) $9,500, Southern WV Veterans’ Museum $4,275, Summers County Historic Landmark
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73  Commission $4,750, Those Who Served War Museum
74  (Mercer) $3,800, Three Rivers Avian Center (Summers)
75  $14,250, Tug Valley Arts Council (Mingo) $4,750, Tug
76  Valley Chamber of Commerce Coal House (Mingo) $1,900,
77  Tunnelton Historical Society (Preston) $1,900, Veterans
78  Committee for Civic Improvement of Huntington (Wayne)
79  $4,750, Webb Chapel Cemetery Association Event (Preston)
80  $1,900, West Virginia Museum of Glass (Lewis) $4,750,
81  West Virginia Music Hall of Fame (Kanawha) $33,250,
82  YMCA Camp Horseshoe (Ohio) $95,000, Youth Museum of
83  Southern WV (Raleigh) $11,400.

84  From the above appropriation for Fairs and Festivals (fund
85  3534, activity 122) funding shall be provided to the African-
86  American Cultural Heritage Festival (Jefferson) $4,750,
87  African-American Heritage Family Tree Museum (Fayette)
88  $4,275, Alderson 4th of July Celebration (Greenbrier)
89  $4,750, Allegheny Echo (Pocahontas) $7,125, Alpine
90  Festival/Leaf Peepers Festival (Tucker) $10,688, Angus Beef
91  and Cattle Show (Lewis) $1,425, Antique Market Fair
92  (Lewis) $1,900, Apollo Theater-Summer Program (Berkeley)
93  $1,900, Appalachian Autumn Festival (Braxton) $3,325,
94  Appalachian Mountain Bike Race (Calhoun) $1,425, Apple
95  Butter Festival (Morgan) $5,700, Arkansaw Homemaker’s
96  Heritage Weekend (Hardy) $3,325, Armed Forces Day-South
97  Charleston (Kanawha) $2,850, Arthurdale Heritage New
98  Deal Festival (Preston) $4,750, Arts Monongahela
99  (Monongalia) $19,000, Athens Town Fair (Mercer) $1,900,
100  Augusta Fair (Randolph) $4,750, Barbour County Fair
101  $23,750, Barboursville Oktoberfest (Cabell) $4,750, Bass
102  Festival (Pleasants) $1,758, Battelle District Fair
103  (Monongalia) $4,750, Battle of Dry Creek (Greenbrier)
104  $1,425, Battle of Lewisburg Civil War Days (Greenbrier)
105  $2,850, Battle of Point Pleasant Memorial Committee
106  (Mason) $4,750, Belle Town Fair (Kanawha) $4,275,
107  Belleville Homecoming (Wood) $19,000, Bergoo Down
108  Home Days (Webster) $2,375, Berkeley County Youth Fair
109  $17,575, Black Bear 4K Mountain Bike Race (Kanawha)
$950, Black Heritage Festival (Harrison) $5,700, Black Walnut Festival (Roane) $9,500, Blue-Gray Reunion (Barbour) $3,325, Boone County Fair $9,500, Boone County Labor Day Celebration $3,800, Bradshaw Fall Festival (McDowell) $1,900, Bramwell Street Fair (Mercer) $3,325, Braxton County Fairs and Festivals Association $10,925, Braxton County Monster Fest/WV Autumn Festival $2,375, Brooke County Fair $3,325, Bruceton Mills Good Neighbor Days (Preston) $1,900, Buckwheat Festival (Preston) $8,075, Buffalo 4th of July Celebration (Putnam) $475, Burlington Apple Harvest Festival (Mineral) $28,500, Burlington Pumpkin Harvest Festival (Raleigh) $4,750, Cabell County Fair $9,500, Calhoun County Wood Festival $1,900, Campbell’s Creek Community Fair (Kanawha) $2,375, Cape Coalwood Festival Association (McDowell) $2,375, Capon Bridge Annual VFD Celebration (Hampshire) $950, Capon Bridge Founders Day Festival (Hampshire) $1,900, Capon Springs Ruritan 4th of July (Hampshire) $950, Cass Homecoming (Pocahontas) $1,900, Cedarville Town Festival (Gilmer) $950, Celebration in the Park (Wood) $3,800, Celebration of America (Monongalia) $5,700, Chapmanville Apple Butter Festival (Logan) $950, Chapmanville Fire Department 4th of July (Logan) $2,850, Charles Town Christmas Festival (Jefferson) $4,750, Charles Town Heritage Festival (Jefferson) $4,750, Charlie West Blues Festival (Kanawha) $9,500, Cherry River Festival (Nicholas) $6,175, Chester Fireworks (Hancock) $1,425, Chester Fourth of July Festivities (Hancock) $4,750, Chief Logan State Park-Civil War Celebration (Logan) $7,600, Christmas in Shepherdstown (Jefferson) $3,800, Christmas in the Park (Brooke) $4,750, Christmas in the Park (Logan) $23,750, City of Dunbar Critter Dinner (Kanawha) $9,500, City of New Martinsville Festival of Memories (Wetzel) $10,450, City of Pleasant Valley Celebration (Marion) $2,375, Civil War Horse Cavalry Race (Barbour) $950, Clay County Golden Delicious Apple Festival $6,650, Coal Field Jamboree (Logan) $33,250, Coalton Days Fair (Randolph) $6,650, Country Roads Festival (Fayette) $1,900, Cowen
Railroad Festival (Webster) $3,325, Craigsville Fall Festival (Nicholas) $3,325, Delbarton Homecoming (Mingo) $3,325, Doddridge County Fair $6,650, Durbin Days (Pocahontas) $4,750, Elbert/Filbert Reunion Festival (McDowell) $1,425, Elizabethtown Festival (Marshall) $4,750, Elkins Randolph County 4th of July Car Show (Randolph) $1,900, Fairview 4th of July Celebration (Marion) $950, Farm Safety Day (Preston) $1,900, Fayette American Legion 4th of July (Fayette) $950, FestivALL Charleston (Kanawha) $19,000, First Stage Children’s Theater Company (Cabell) $1,900, Flemington Day Fair and Festival (Taylor) $3,325, Follansbee Community Days (Brooke) $7,838, Fort Gay Mountain Heritage Days (Wayne) $4,750, Fort Henry Days (Ohio) $5,035, Frankford Autumnfest (Greenbrier) $4,750, Franklin Fishing Derby (Pendleton) $7,125, Franklin’s Fireman Carnival (Pendleton) $4,750, Freshwater Folk Festival (Greenbrier) $4,750, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) $4,750, Frontier Days (Harrison) $2,850, Frontier Fest/Canaan Valley (Taylor) $4,750, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) $2,375, Gassaway Days Celebration (Braxton) $4,750, Gilbert Kiwanis Harvest Festival (Mingo) $3,800, Gilbert Spring Fling (Mingo) $4,750, Gilmer County Farm Show $3,800, Grant County Arts Council $1,900, Grape Stomping Wine Festival (Nicholas) $1,900, Great Greenbrier River Race (Pocahontas) $9,500, Green Spring Days (Hampshire) $950, Guyandotte Civil War Days (Cabell) $9,500, Hamlin 4th of July Celebration (Lincoln) $4,750, Hampshire Civil War Celebration Days (Hampshire) $950, Hampshire County 4th of July Celebration $19,000, Hampshire County Fair $5,700, Hampshire Heritage Days (Hampshire) $3,800, Hancock County Oldtime Fair $4,750, Hardy County Commission 4th of July $9,500, Hatfield McCoy Matewan Reunion Festival (Mingo) $4,750, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) $4,750, Heritage Craft Festival (Monroe) $950, Heritage Days Festival (Roane) $1,425, Hicks Festival (Tucker) $1,900, Hilltop Festival (Cabell) $950, Hilltop Festival of Lights (McDowell) $1,900,
186 Hinton Railroad Days (Summers) $5,225, Holly River
187 Festival (Webster) $1,425, Hundred 4th of July (Wetzel)
188 $6,888, Hundred American Legion Earl Kiger Post Bluegrass
189 Festival (Wetzel) $1,900, Hurricane 4th of July Celebration
190 (Putnam) $4,750, Iaeger Lions Club Annual Golf Show
191 (McDowell) $1,425, Iaeger Town Fair (McDowell) $1,425,
192 Irish Heritage Festival of WV (Raleigh) $4,750, Irish Spring
193 Festival (Lewis) $950, Italian Heritage Festival-Clarksburg
194 (Harrison) $28,500, Jackson County Fair $4,750,
195 Jacksonville Homecoming (Wetzel) $950, Jane Lew Arts and
196 Crafts Fair (Lewis) $950, Jefferson County African American
197 Heritage Festival $4,750, Jefferson County Fair Association
198 $23,750, Jersey Mountain Ruritan Pioneer Days (Hampshire)
199 $950, John Henry Days Festival (Monroe) $4,750, Johnnie
200 Johnson Blues and Jazz Festival (Marion) $4,750, Johnstown
201 Community Fair (Harrison) $2,375, Junior Heifer Preview
202 Show (Lewis) $1,900, Kanawha Coal Riverfest-St. Albans
203 4th of July Festival (Kanawha) $4,750, Kanawha County Fair
204 $4,750, Kayford Reunion (Kanawha) $2,375, Kermit Fall
205 Festival (Mingo) $2,850, Keyser Old Fashioned 4th of July
206 Celebration (Mineral) $950, King Coal Festival (Mingo)
207 $4,750, Kingwood Downtown Street Fair and Heritage Days
208 (Preston) $1,900, L.Z. Rainelle WV Veterans Reunion
209 (Greenbrier) $4,750, Lady of Agriculture (Preston) $950,
210 Lamb and Steer Show (Grant) $8,550, Larry Joe Harless
211 Center Octoberfest Hatfield McCoy Trail (Mingo) $9,500,
212 Larry Joe Harless Community Center Spring Middle School
213 Event (Mingo) $4,750, Last Blast of Summer (McDowell)
214 $4,750, Laurel Mt. Re-enactment Committee (Barbour)
215 $3,088, Lewis County Fair Association $3,325, Lewisburg
216 Shanghai (Greenbrier) $1,900, Lincoln County Fall Festival
217 $7,600, Lincoln County Winterfest $4,750, Lincoln District
218 Fair (Marion) $2,375, Little Birch Days Celebration
219 (Braxton) $475, Little Levels Heritage Festival (Pocahontas)
220 $1,900, Logan County Arts and Crafts Fair $3,800, Logan
221 Freedom Festival $14,250, Lost Creek Community Festival
222 (Harrison) $6,650, Mannington District Fair (Marion) $5,700,
223 Maple Syrup Festival (Randolph) $950, Marion County FFA
Ch. 11] APPROPRIATIONS

224 Farm Fest $2,375, Marmet Annual Labor Day Celebration (Kanawha) $1,900, Marshall County Antique Power Show
225 $2,375, Marshall County Fair $7,125, Mason County Fair $4,750, Mason Dixon Festival (Monongalia) $6,650,
226 Matewan Massacre Reenactment (Mingo) $5,700, Matewan-
227 Magnolia Fair (Mingo) $42,750, McARTS-McDowell
228 County $19,000, McDowell County Fair $2,375, McGrew
229 House History Day (Preston) $1,900, McNeill’s Rangers
230 (Mineral) $7,600, Meadow Bridge Hometown Festival
231 (Fayette) $1,188, Meadow River Days Festival (Greenbrier)
232 $2,850, Mercer Bluestone Valley Fair (Mercer) $1,900,
233 Mercer County Fair $1,900, Mid Ohio Valley Antique
234 Engine Festival (Wood) $2,850, Milton Christmas in the Park
235 (Cabell) $2,375, Milton Fourth of July Celebration (Cabell)
236 $2,375, Mineral County Fair $1,663, Mineral County
237 Veterans Day Parade $1,425, Molasses Festival (Calhoun)
238 $1,900, Monroe County Harvest Festival $1,900, Moon Over
239 Mountwood Fishing Festival (Wood) $2,850, Morgan County
240 Fair-History Wagon $1,425, Moundsville Bass Festival
241 (Marshall) $3,800, Moundsville July 4th Celebration
242 (Marshall) $4,750, Mount Liberty Fall Festival (Barbour)
243 $2,375, Mountain Fest (Monongalia) $19,000, Mountain
244 Festival (Mercer) $4,394, Mountain Heritage Arts and Crafts
245 Festival (Jefferson) $4,750, Mountain Music Festival
246 (McDowell) $2,375, Mountain State Apple Harvest Festival
247 (Berkeley) $7,125, Mountain State Arts Crafts Fair at Cedar
248 Lakes (Jackson) $42,750, Mountaineer Hot Air Balloon
249 Festival (Monongalia) $3,800, Mud River Festival (Lincoln)
250 $7,600, Mullens Dogwood Festival (Wyoming) $6,650,
251 Multi-Cultural Festival of West Virginia (Kanawha) $19,000,
252 Nettle Festival (Pocahontas) $4,750, New Cumberland
253 Christmas Parade (Hancock) $2,850, New Cumberland
254 Fourth of July Fireworks (Hancock) $4,750, New River
255 Bridge Day Festival (Fayette) $38,000, Newburg Volunteer
256 Fireman’s Field Day (Preston) $950, Newell Annual Clay
257 Festival (Hancock) $2,850, Nicholas County Fair $4,750,
258 Nicholas County Potato Festival $3,325, North Preston
259 Farmers Club - Civil War Times (Preston) $950, North River
Valley Festival (Hampshire) $950, Northern Preston Mule Pull and Farmers Days (Preston) $3,800, Oak Leaf Festival (Fayette) $5,700, Oceana Heritage Festival (Wyoming) $5,700, Oglebay City Park-Festival of Lights (Ohio) $76,000, Oglebay Festival (Ohio) $9,500, Ohio County Country Fair $8,550, Ohio Valley Beef Association (Wood) $2,375, Ohio Valley Black Heritage Festival (Ohio) $5,225, Old Central City Fair (Cabell) $4,750, Old Tyme Christmas (Jefferson) $2,280, Paden City Labor Day Festival (Wetzel) $6,175, Parkersburg Homecoming (Wood) $11,400, Patty Fest (Monongalia) $1,900, Paw Paw District Fair (Marion) $3,325, Pax Reunion Committee (Fayette) $4,750, Pendleton County 4-H Weekend $1,900, Pendleton County Committee for Arts $14,250, Pendleton County Fair $23,750, Pennsboro Country Road Festival (Ritchie) $1,900, Petersburg Fourth of July Celebration (Grant) $19,000, Petersburg HS Celebration (Grant) $9,500, Piedmont-Annual Back Street Festival (Mineral) $3,800, Pinch Reunion (Kanawha) $1,425, Pine Bluff Fall Festival (Harrison) $3,800, Pine Grove 4th of July Festival (Wetzel) $6,650, Pineville Festival (Wyoming) $5,700, Pleasants County Agriculture Youth Fair $4,750, Poca Heritage Days (Putnam) $2,850, Pocahontas County Pioneer Days $6,650, Point Pleasant Stern Wheel Regatta (Mason) $4,750, Potomac Highlands Maple Festival (Grant) $5,700, Pratt Fall Festival (Kanawha) $2,375, Princeton Street Fair (Mercer) $4,750, Putnam County Fair $4,750, Quartets on Parade (Hardy) $3,800, Rand Community Center Festival (Kanawha) $2,375, Randolph County Community Arts Council $2,850, Randolph County Fair $6,650, Randolph County Ramp and Rails $1,900, Ranson Christmas Festival (Jefferson) $4,750, Ranson Festival (Jefferson) $4,750, Ravenswood Octoberfest (Jackson) $7,600, Reedsville VFD Fair (Preston) $1,900, Renick Liberty Festival (Greenbrier) $950, Riders of the Flood (Greenbrier) $2,850, Ripley 4th of July (Jackson) $14,250, Ritchie County Fair and Exposition $4,750, Ritchie County Pioneer Days $950, River City Festival (Preston) $950, Riverfest (Marion) $1,900, Roane County Agriculture Field Day $2,850,
<table>
<thead>
<tr>
<th>No.</th>
<th>Event Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>300</td>
<td>Romney 250th Celebration</td>
<td>$6,000</td>
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<tr>
<td>301</td>
<td>Ronceverte River Festival</td>
<td>$4,750</td>
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<tr>
<td>302</td>
<td>Rowlesburg Labor Day Festival</td>
<td>$950</td>
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<tr>
<td>303</td>
<td>Rupert Country Fling (Greenbrier)</td>
<td>$2,850</td>
</tr>
<tr>
<td>304</td>
<td>Saint Spyridon Greek Festival (Harrison)</td>
<td>$2,375</td>
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<tr>
<td>305</td>
<td>Apple Butter Festival (Greenbrier)</td>
<td>$3,800</td>
</tr>
<tr>
<td>306</td>
<td>South Charleston Summerfest (Kanawha)</td>
<td>$9,500</td>
</tr>
<tr>
<td>307</td>
<td>Wayne County Fall Festival</td>
<td>$950</td>
</tr>
<tr>
<td>308</td>
<td>Spirit of Grafton</td>
<td>$9,500</td>
</tr>
<tr>
<td>309</td>
<td>Spring Mountain Festival</td>
<td>$3,800</td>
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<tr>
<td>310</td>
<td>Springfield Peach Festival (Hampshire)</td>
<td>$1,140</td>
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<tr>
<td>311</td>
<td>St. Albans City of Lights - December (Kanawha)</td>
<td>$4,750</td>
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<tr>
<td>312</td>
<td>Stoco Reunion (Raleigh)</td>
<td>$2,375</td>
</tr>
<tr>
<td>313</td>
<td>Stonewall Jackson</td>
<td>$10,450</td>
</tr>
<tr>
<td>314</td>
<td>Festival (Lewis) $475, Strawberry Festival (Upshur) $28,500</td>
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<tr>
<td>315</td>
<td>Taste of Parkersburg (Wood)</td>
<td>$1,900</td>
</tr>
<tr>
<td>316</td>
<td>Taylor County Fair $5,225, Terra Alta VFD 4th of July Celebration</td>
<td>$4,750</td>
</tr>
<tr>
<td>317</td>
<td>The Gathering at Sweet Creek (Wood)</td>
<td>$2,850</td>
</tr>
<tr>
<td>318</td>
<td>Three Rivers Coal Festival (Marion)</td>
<td>$7,363</td>
</tr>
<tr>
<td>319</td>
<td>Thunder on the Tygart - Mothers' Day Celebration (Taylor)</td>
<td>$14,250</td>
</tr>
<tr>
<td>320</td>
<td>Town of Anawalt Celebration (McDowell)</td>
<td>$1,425</td>
</tr>
<tr>
<td>321</td>
<td>Town of Delbarton 4th of July Celebration (Mingo)</td>
<td>$2,850</td>
</tr>
<tr>
<td>322</td>
<td>Town of Fayetteville Heritage Festival (Fayette)</td>
<td>$7,125</td>
</tr>
<tr>
<td>323</td>
<td>Town of Kimball Centennial Celebration</td>
<td>$950</td>
</tr>
<tr>
<td>324</td>
<td>Town of Matoaka Hog Roast (Mercer)</td>
<td>$4,750</td>
</tr>
<tr>
<td>325</td>
<td>Treasure Mountain Festival (Pendleton)</td>
<td>$23,750</td>
</tr>
<tr>
<td>326</td>
<td>Tucker County Arts Festival and Celebration $17,100, Tucker County Fair $4,513</td>
<td></td>
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<tr>
<td>327</td>
<td>Tucker County Health Fair $1,900, Tunnelton Depot Days (Preston)</td>
<td>$950</td>
</tr>
<tr>
<td>328</td>
<td>Tunnelton Volunteer Fire Department Festival (Preston)</td>
<td>$950</td>
</tr>
<tr>
<td>329</td>
<td>Turkey Festival (Hardy)</td>
<td>$2,850</td>
</tr>
<tr>
<td>330</td>
<td>Tyler County Fair $4,940, Tyler County Fourth of July $475,</td>
<td></td>
</tr>
<tr>
<td>331</td>
<td>Uniquely West Virginia Festival (Morgan)</td>
<td>$1,900</td>
</tr>
<tr>
<td>332</td>
<td>Upper Kanawha Valley Oktoberfest (Kanawha) $2,375, Upper Ohio</td>
<td></td>
</tr>
<tr>
<td>333</td>
<td>Valley Italian Festival (Ohio) $11,400, Upper West Fork VFD</td>
<td></td>
</tr>
<tr>
<td>334</td>
<td>Bluegrass Festival (Calhoun) $475, Upshur County Fair $6,650</td>
<td></td>
</tr>
<tr>
<td>335</td>
<td>Valley District Fair- Reedsville (Preston) $3,325,</td>
<td></td>
</tr>
<tr>
<td>336</td>
<td>Veterans Welcome Home Celebration (Cabell) $1,500,</td>
<td></td>
</tr>
</tbody>
</table>
Vietnam Veterans of America Christmas Party (Cabell) $950,
Volcano Days at Mountwood Park (Wood) $4,750, War
Homecoming Fall Festival (McDowell) $1,425, Wardensville
Fall Festival (Hardy) $4,750, Wayne County Fair $4,750,
Wayne County Fall Festival $4,750, Webster County Wood
Chopping Festival $14,250, Webster Wild Water Weekend
$1,900, Weirton July 4th Celebration (Hancock) $19,000,
Welcome Home Family Day (Wayne) $3,040, Wellsburg 4th
of July Celebration (Brooke) $7,125, Wellsburg Apple
Festival of Brooke County $4,750, West Virginia Blackberry
Festival (Harrison) $4,750, West Virginia Chestnut Festival
(Preston) $950, West Virginia Coal Festival (Boone) $9,500,
West Virginia Dairy Cattle Show (Lewis) $9,500, West
Virginia Dandelion Festival (Greenbrier) $4,750, West
Virginia Fair and Exposition (Wood) $7,695, West Virginia
Fireman’s Rodeo (Fayette) $2,375, West Virginia Honey
Festival (Wood) $1,900, West Virginia Oil and Gas Festival
(Tyler) $10,450, West Virginia Polled Hereford Association
(Braxton) $1,425, West Virginia Poultry Festival (Hardy)
$4,750, West Virginia Pumpkin Festival (Cabell) $9,500,
West Virginia State Folk Festival (Gilmer) $4,750, West
Virginia State Monarch Butterfly Festival (Brooke) $4,750,
West Virginia Water Festival - City of Hinton (Summers)
$15,200, West Virginia Wine & Jazz Festival (Monongalia)
$8,550, Weston VFD 4th of July Firemen Festival (Lewis)
$1,900, Wetzel County Autumnfest $5,225, Wetzel County
Town and Country Days $16,150, Wheeling Celtic Festival
(Ohio) $1,900, Wheeling City of Lights (Ohio) $7,600,
Wheeling Sternwheel Regatta (Ohio) $9,500, Wheeling
Vintage Raceboat Regatta (Ohio) $19,000, Whipple
Community Action (Fayette) $2,375, Widen Days Festival
(Calhoun) $1,900, Wileyville Homecoming (Wetzel) $3,800,
Wine Festival and Mountain Music Event (Harrison) $4,750,
Winter Festival of the Waters (Berkeley) $4,750, Wirt
County Fair $2,375, Wirt County Pioneer Days $1,900,
Youth Stockman Beef Expo. (Lewis) $1,900, Sternwheel
Festival (Wood) $2,850.
Any unexpended balance remaining in the appropriation for Unclassified (fund 3534, activity 099), at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

Any unexpended balance remaining in the appropriation for Fairs and Festivals (fund 3534, activity 122), at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

Any Fairs & Festivals awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and the Cultural Grant Program allocations.

### 268-Library Commission - Lottery Education Fund

(WV Code Chapter 10)

**Fund 3559 FY 2012 Org 0433**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Books and Films</td>
<td>179</td>
<td>$427,500</td>
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<tr>
<td>2</td>
<td>Services to Libraries</td>
<td>180</td>
<td>$550,000</td>
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<tr>
<td>3</td>
<td>Grants to Public Libraries</td>
<td>182</td>
<td>$8,348,884</td>
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<tr>
<td>4</td>
<td>Digital Resources</td>
<td>309</td>
<td>$219,992</td>
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<tr>
<td>5</td>
<td>Libraries - Special Projects (R)</td>
<td>625</td>
<td>$850,000</td>
</tr>
<tr>
<td>6</td>
<td>Infomine Network</td>
<td>884</td>
<td>$871,594</td>
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<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$11,267,970</td>
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</tbody>
</table>

Any unexpended balance remaining in the appropriation for Libraries-Special Projects (fund 3559, activity 625) at the close of fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

### 269-Bureau of Senior Services - Lottery Senior Citizens Fund
APPROPRIATIONS  

(WV Code Chapter 29)

Fund 5405 FY 2012 Org 0508

1 Personal Services. ...................... 001 $ 138,628
2 Annual Increment. ...................... 004 3,000
3 West Virginia Helpline. ............... 006 200,000
4 Employee Benefits. ..................... 010 65,486
5 Unclassified. .......................... 099 1,333,543
6 Local Programs Service Delivery
   Costs. ................................ 200 2,475,250
7 Silver Haired Legislature. .............. 202 20,000
8 Area Agencies Administration ......... 203 38,684
9 Senior Citizen Centers and
   Programs (R) ........................ 462 2,470,000
10 Transfer to Division of Human Services
   for Health Care and Title XIX Waiver
   for Senior Citizens.................. 539 31,822,578
11 Roger Tompkins Alzheimers Respite
12 Care. ................................ 643 1,796,038
13 Regional Aged and Disabled
14 Resource Center. ...................... 767 935,000
15 Senior Services Medicaid Transfer. . 871 8,670,000
16 Legislative Initiatives for the Elderly. 904 10,000,000
17 Long Term Care Ombudsman ........... 905 321,325
18 BRIM Premium. ........................ 913 7,243
19 In-Home Services and Nutrition
   for Senior Citizens.................. 917 4,500,000
20 Total. .............................. $ 64,796,775

Any unexpended balance remaining in the appropriation
for Senior Citizen Centers and Programs (fund 5405, activity
462), at the close of the fiscal year 2011 is hereby
reappropriated for expenditure during the fiscal year 2012.

The above appropriation for Transfer to Division of
Human Services for Health Care and Title XIX Waiver for
Senior Citizens along with the federal moneys generated
thereby shall be used for reimbursement for services provided under the program. From the above appropriation for Unclassified (fund 5405, activity 099) $500,000 is for the Lighthouse Program and $500,000 is for the FAIR Program.

270-Community and Technical College —
Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2012 Org 0442

<table>
<thead>
<tr>
<th></th>
<th>Debt Service - Total</th>
<th>310</th>
<th>$5,000,000</th>
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</thead>
</table>

Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements - Total (fund 4908, activity 847) at the close of fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

271-Higher Education Policy Commission -
Lottery Education -
Higher Education Policy Commission -
Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2012 Org 0441

<table>
<thead>
<tr>
<th></th>
<th>Marshall Medical School</th>
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<th>$470,104</th>
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<tbody>
<tr>
<td>2</td>
<td>RHI Program and Site Support (R)</td>
<td>033</td>
<td></td>
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<tr>
<td>3</td>
<td>WVU Health Sciences</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>RHI Program and Site Support (R)</td>
<td>035</td>
<td>1,289,226</td>
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<td>5</td>
<td>RHI Program and Site Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>District Consortia (R)</td>
<td>036</td>
<td>2,213,469</td>
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<tr>
<td>7</td>
<td>RHI Program and Site Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>RHEP Program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Administration (R)</td>
<td>037</td>
<td>169,731</td>
</tr>
</tbody>
</table>
204 APPROPRIATIONS [Ch. 11

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Appropriation</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>RHI Program and Site Support - Grad Med Ed and Fiscal</td>
<td>98,709</td>
</tr>
<tr>
<td>12</td>
<td>Oversight (R)</td>
<td>038</td>
</tr>
<tr>
<td>13</td>
<td>Higher Education Grant Program (R)</td>
<td>362,323</td>
</tr>
<tr>
<td>14</td>
<td>Minority Doctoral Fellowship (R)</td>
<td>150,000</td>
</tr>
<tr>
<td>15</td>
<td>Underwood—Smith Scholarship Program - Student Awards (R)</td>
<td>141,142</td>
</tr>
<tr>
<td>17</td>
<td>Health Sciences Scholarship (R)</td>
<td>251,459</td>
</tr>
<tr>
<td>19</td>
<td>Rural Health Residency Program (R)</td>
<td>267,532</td>
</tr>
<tr>
<td>21</td>
<td>MA Public Health Program and Health Science Technology (R)</td>
<td>62,291</td>
</tr>
<tr>
<td>23</td>
<td>Marshall University Graduate College Writing Project (R)</td>
<td>25,000</td>
</tr>
<tr>
<td>25</td>
<td>WV Engineering, Science, and Technology Scholarship Program (R)</td>
<td>470,473</td>
</tr>
<tr>
<td>27</td>
<td>Health Sciences Career Opportunities Program (R)</td>
<td>376,992</td>
</tr>
<tr>
<td>30</td>
<td>HSTA Program (R)</td>
<td>1,539,068</td>
</tr>
<tr>
<td>31</td>
<td>Center for Excellence in Disabilities (R)</td>
<td>320,000</td>
</tr>
<tr>
<td>33</td>
<td>Total</td>
<td>8,207,519</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations at the close of fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.

The above appropriation for Underwood-Smith Scholarship Program - Student Awards (activity 167) shall be transferred to the Underwood-Smith Teacher Scholarship Fund (fund 4922, org 0441) established by W.Va. Code §18C-4-1.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (activity 868) shall be
transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

The above appropriation for Higher Education Grant Program (activity 164) shall be transferred to the Higher Education Grant Fund (fund 4933, Org 0441) established by W.Va. Code §18C-5-3.

Total TITLE II, Section 4 - Lottery Revenue. ............... $166,698,215

Sec. 5. Appropriations from state excess lottery revenue fund. - In accordance with W.Va. Code §29-22-18a, the following appropriations shall be deposited and disbursed by the director of the lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.Va. Code §29-22-18a, the director of the lottery shall provide funding from the state excess lottery revenue fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the state excess lottery revenue fund are not sufficient to meet all the appropriations made pursuant to this section, then the director of the lottery shall first provide the necessary funds to meet the appropriation for Fund 7208, activity 482 of this section; next, to provide the funds necessary for Fund 3517, activity 775 of this section; next, to provide the funds necessary for Fund 7208, activity 095 of this section. Allocation of the funds for each appropriation shall be allocated in succession before any funds are provided for the next subsequent appropriation.

272-Lottery Commission - Refundable Credit

Fund 7207 FY 2012 Org 0705
<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total - Transfer... 402 $10,000,000</td>
</tr>
<tr>
<td>2</td>
<td>The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the state tax commissioner and shall be completed by the director of the lottery upon the commissioner’s request.</td>
</tr>
</tbody>
</table>

273-Lottery Commission - General Purpose Account

Fund 7206 FY 2012 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total - Transfer... 402 $65,000,000</td>
</tr>
<tr>
<td>2</td>
<td>The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the General Revenue Fund as determined by the director of the lottery.</td>
</tr>
</tbody>
</table>

274-Education Improvement Fund

Fund 4295 FY 2012 Org 0441

<table>
<thead>
<tr>
<th>Activity</th>
<th>Lottery Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified - Total - Transfer... 402 $29,000,000</td>
</tr>
<tr>
<td>2</td>
<td>The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.</td>
</tr>
</tbody>
</table>

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.
275-Economic Development Authority - Economic Development Project Fund

Fund 9065 FY 2012 Org 0944

1 Debt Service - Total.................. 310 $ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and W.Va. Code §29-22-18, subsection (f).

276-School Building Authority

Fund 3514 FY 2012 Org 0402

1 Unclassified - Total.................. 096 $ 19,000,000

277-West Virginia Infrastructure Council

Fund 3390 FY 2012 Org 0316

1 Unclassified - Total - Transfer....... 402 $ 46,000,000

*CLERK’S NOTE: The Chief Executive deleted all language in Item 277, lines 2 through 5, which read “The above appropriation for Unclassified - Total - Transfer (activity 402) shall be transferred to the West Virginia Infrastructure Fund (fund 3384, org 0316) created by W.Va. Code §31-15A-9.”
278-Higher Education Improvement Fund

Fund 4297 FY 2012 Org 0441

1 Unclassified - Total. ............... 096 $ 15,000,000

279-State Park Improvement Fund

Fund 3277 FY 2012 Org 0310

1 Unclassified - Total (R). .......... 096 $ 5,000,000

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

Appropriations to the State Park Improvement Fund are not to be expended on personal services or employee benefits.

280-Racing Commission -

Fund 7308 FY 2012 Org 0707

1 Special Breeders Compensation
2 (WVC §29-22-18a, subsection (1)) 218 $ 2,000,000

*CLERK’S NOTE: The Chief Executive deleted all language in Item 280, lines 4 through 7, which read “The above appropriation for Unclassified - Transfer (fund 7308, activity 482) shall be transferred to the Unredeemed Pari-Mutuel Tickets Fund (fund 7301, org 0707) in support of W.Va., Code §19-23-13.
281—Lottery Commission -
Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2012 Org 0705

1 Teachers’ Retirement Savings
2 Realized 095 $34,216,000
3 Unclassified - Transfer 482 62,900,000
4 Total .......................... $97,116,000

The above appropriation for Unclassified - Transfer (fund 7208, activity 482) shall be transferred to the General Revenue Fund.

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).

282—Joint Expenses

(WV Code Chapter 4)

Fund 1736 FY 2012 Org 2300

1 Any unexpended balance remaining in the appropriation for Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) - Lottery Surplus (fund 1736, activity 929) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

283—Governor’s Office

(WV Code Chapter 5)

Fund 1046 FY 2012 Org 0100
Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses — Lottery Surplus (fund 1046, activity 066) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

284-Division of Finance

(WV Code Chapter 5A)

Fund 2208 FY 2012 Org 0209

Any unexpended balance remaining in the appropriation Enterprise Resource Planning System Planning Project (fund 2208, activity 087) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

The above appropriation for Enterprise Resource Planning System Planning Project, activity 087, shall be expended upon consultation with the executive and legislative branches.

285—West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2012 Org 0307

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

Any unexpended balances remaining in the appropriations for Recreational Grants or Economic Development Loans (fund 3170, activity 253), and Connectivity Research and Development - Lottery Surplus (fund 3170, activity 923) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.
The above appropriation to Connectivity Research and Development - Lottery Surplus shall be used by the West Virginia Development Office for the coordinated development of technical infrastructure in areas where expanded resources and technical infrastructure may be expected or required pursuant to the provisions of W.Va. Code §5A-6-4.

286-State Department of Education
(WV Code Chapters 18 and 18A)

Fund 3517 FY 2012 Org 0402

1 Retirement Systems-Unfunded Liability..................... 775 $ 47,139,292

The above appropriation for Retirement Systems - Unfunded Liability (fund 3517, activity 775) shall be transferred to the Consolidated Public Retirement Board - West Virginia Teachers’ Retirement System Employers Accumulation Fund (fund 2601).

287—Higher Education Policy Commission - Administration - Control Account
(WV Code Chapter 18B)

Fund 4932 FY 2012 Org 0441

1 Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, activity 028) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.
Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 5219, activity 755) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

Any unexpended balance remaining in the appropriation for Interoperable Communications System (fund 6005, activity 303) at the close of the fiscal year 2011 is hereby reappropriated for expenditure during the fiscal year 2012.

Any unexpended balances remaining in the appropriations for Capital Outlay, Repairs and Equipment (fund 6283, activity 589), and Capital Outlay and Maintenance (fund 6283, activity 755) at the close of the fiscal year 2011 are hereby reappropriated for expenditure during the fiscal year 2012.
Sec. 6. Appropriations of federal funds. - In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2012.

LEGISLATIVE

291-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2012 Org 2300

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<tbody>
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JUDICIAL

292-Supreme Court

Fund 8867 FY 2012 Org 2400

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</table>

EXECUTIVE

293-Governor's Office -
American Recovery and Reinvestment Act

(WV Code Chapter 5)
The above appropriation for Federal Economic Stimulus shall be used in accordance with regulations and guidelines provided by the U.S. Department of Education which include restoring funding levels in the public education funding formula and higher education institutions.

294-Governor’s Office -
ARRA NTIA Broadband Infrastructure Grant Fund

(WV Code Chapter 5)

Fund 8717 FY 2012 Org 0100

1 Federal Economic Stimulus ........ 891 $ 105,000,000

295-Governor’s Office

(WV Code Chapter 5)

Fund 8742 FY 2012 Org 0100

1 Unclassified - Total ............... 096 $ 27,500,000

296-Governor’s Office -
Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8797 FY 2012 Org 0100

1 Unclassified - Total ............... 096 $ 7,276,899
2 Federal Economic Stimulus ........ 891 $ 15,006,906
3 Total .................................. $ 22,283,805
### 297-Governor’s Office - Commission for National and Community Service

(WV Code Chapter 5)

**Fund 8800 FY 2012 Org 0100**

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### 298-Department of Agriculture

(WV Code Chapter 19)

**Fund 8736 FY 2012 Org 1400**

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### 299-Department of Agriculture - Meat Inspection

(WV Code Chapter 19)

**Fund 8737 FY 2012 Org 1400**

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### 300-Department of Agriculture - State Conservation Committee

(WV Code Chapter 19)

**Fund 8783 FY 2012 Org 1400**

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301-Department of Agriculture -
Land Protection Authority

Fund 8896 FY 2012 Org 1400

1 Unclassified - Total. 096 $500,450

302-Secretary of State -
State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2012 Org 1600

1 Unclassified - Total. 096 $1,652,451

DEPARTMENT OF ADMINISTRATION

303-West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2012 Org 0228

1 Unclassified - Total. 096 $81,343

304—Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2012 Org 0230

1 Unclassified - Total. 096 $37,956,726

DEPARTMENT OF COMMERCE

305-Division of Forestry
### Ch. 11 | Appropriations

(WV Code Chapter 19)

**Fund 8703** FY 2012 Org 0305

| 1 | Unclassified - Total. ................ | 096 | $10,195,448 |

**306-Geological and Economic Survey**

(WV Code Chapter 29)

**Fund 8704** FY 2012 Org 0306

| 1 | Unclassified - Total. ................ | 096 | $380,000 |
| 2 | Federal Economic Stimulus............ | 891 | $1,162,000 |
| 3 | Total. ................................ |     | $1,542,000 |

**307-West Virginia Development Office**

(WV Code Chapter 5B)

**Fund 8705** FY 2012 Org 0307

| 1 | Unclassified - Total. ................ | 096 | $9,698,272 |

**308-Division of Labor**

(WV Code Chapters 21 and 47)

**Fund 8706** FY 2012 Org 0308

| 1 | Unclassified - Total. ................ | 096 | $557,242 |

**309-Division of Natural Resources**

(WV Code Chapter 20)

**Fund 8707** FY 2012 Org 0310
1 Unclassified - Total. .................. 096 $ 11,953,241

310-Division of Miners' Health, Safety and Training
(WV Code Chapter 22)
Fund 8709 FY 2012 Org 0314

1 Unclassified - Total. .................. 096 $ 613,177

311-WorkForce West Virginia
(WV Code Chapter 23)
Fund 8835 FY 2012 Org 0323

1 Unclassified ......................... 099 $ 512,657
2 Reed Act 2002—
3 Unemployment Compensation .......... 622 2,850,000
4 Reed Act 2002-Employment Services 630 1,650,000
5 Total. ................................. $ 5,012,657

6 Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.Va. Code §21A-9-9, the above appropriation to Unclassified shall be used by WorkForce West Virginia for the specific purpose of administration of the state’s unemployment insurance program or job service activities, subject to each and every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

312-Division of Energy
(WV Code Chapter 5B)
### DEPARTMENT OF EDUCATION

**313-State Department of Education**

(WV Code Chapters 18 and 18A)

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**314-State Department of Education - School Lunch Program**

(WV Code Chapters 18 and 18A)

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**315-State Board of Education - Vocational Division**

(WV Code Chapters 18 and 18A)

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### APPROPRIATIONS

#### 316-State Department of Education - Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

**Fund 8715 FY 2012 Org 0402**

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#### 317-West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

**Fund 8716 FY 2012 Org 0403**

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#### DEPARTMENT OF EDUCATION AND THE ARTS

#### 318-Department of Education and the Arts - Office of the Secretary

(WV Code Chapter 5F)

**Fund 8841 FY 2012 Org 0431**

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#### 319-Division of Culture and History

(WV Code Chapter 29)
### APPROPRIATIONS

#### Fund 8718 FY 2012 Org 0432

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#### 320-Library Commission

(WV Code Chapter 10)

#### Fund 8720 FY 2012 Org 0433

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#### 321-Educational Broadcasting Authority

(WV Code Chapter 10)

#### Fund 8721 FY 2012 Org 0439

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#### 322-State Board of Rehabilitation - Division of Rehabilitation Services

(WV Code Chapter 18)

#### Fund 8734 FY 2012 Org 0932

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#### 323-State Board of Rehabilitation - Division of Rehabilitation Services - Disability Determination Services
### DEPARTMENT OF ENVIRONMENTAL PROTECTION

**324-Division of Environmental Protection**

(WV Code Chapter 22)

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### DEPARTMENT OF HEALTH AND HUMAN RESOURCES

**325-Consolidated Medical Service Fund**

(WV Code Chapter 16)

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### DEPARTMENT OF ENVIRONMENTAL PROTECTION

**326-Division of Health - Central Office**

(WV Code Chapter 16)

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**327-Division of Health - West Virginia Safe Drinking Water Treatment**

(WV Code Chapter 16)

**Fund 8824 FY 2012 Org 0506**

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**328-West Virginia Health Care Authority**

(WV Code Chapter 16)

**Fund 8851 FY 2012 Org 0507**

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**329-Human Rights Commission**

(WV Code Chapter 5)

**Fund 8725 FY 2012 Org 0510**

|   | Unclassified - Total.     | 096 | $ 443,117  |

**330-Division of Human Services**

(WV Code Chapters 9, 48 and 49)

**Fund 8722 FY 2012 Org 0511**
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**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

**331-Office of the Secretary**

(WV Code Chapter 5F)

Fund 8876 FY 2012 Org 0601

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**332-Adjutant General - State Militia**

(WV Code Chapter 15)

Fund 8726 FY 2012 Org 0603

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**333-Division of Homeland Security and Emergency Management**

(WV Code Chapter 15)

Fund 8727 FY 2012 Org 0606

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### 334-Division of Corrections

(WV Code Chapters 25, 28, 49 and 62)

**Fund 8836 FY 2012 Org 0608**

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### 335-West Virginia State Police

(WV Code Chapter 15)

**Fund 8741 FY 2012 Org 0612**

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### 336-Division of Veterans' Affairs

(WV Code Chapter 9A)

**Fund 8858 FY 2012 Org 0613**

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### 337-Division of Veterans' Affairs - Veterans' Home

(WV Code Chapter 9A)

**Fund 8728 FY 2012 Org 0618**

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### 338-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2012 Org 0619

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### 339-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 8803 FY 2012 Org 0620

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### DEPARTMENT OF REVENUE

**340-Tax Division - Consolidated Federal Fund**

(WV Code Chapter 11)

Fund 8899 FY 2012 Org 0702

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### 341-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2012 Org 0704

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<td>$14,206,000</td>
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DEPARTMENT OF TRANSPORTATION

342-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2012 Org 0802

1 Unclassified - Total. ................. 096 $ 18,173,534

343 - State Rail Authority

(WV Code Chapter 29)

Fund 8733 FY 2012 Org 0804

1 Unclassified - Total. ................. 096 $ 750,000

344-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2012 Org 0805

1 Unclassified - Total. ................. 096 $ 16,782,368
2 Federal Economic Stimulus. ........ 891 $ 3,500,000
3 Total. .................................. $ 20,282,368

345-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2012 Org 0806

1 Unclassified - Total. ................. 096 $ 3,533,000
### DEPARTMENT OF VETERANS' ASSISTANCE

**346-Department of Veterans' Assistance**

(WV Code Chapter 9A)

Fund 8858 FY 2012 Org 0613

<table>
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<tr>
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**347-Department of Veterans' Assistance - Veterans' Home**

(WV Code Chapter 9A)

Fund 8728 FY 2012 Org 0618

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### BUREAU OF SENIOR SERVICES

**348-Bureau of Senior Services**

(WV Code Chapter 29)

Fund 8724 FY 2012 Org 0508

<table>
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### MISCELLANEOUS BOARDS AND COMMISSIONS

**349-Public Service Commission - Motor Carrier Division**

(WV Code Chapter 24A)
### Fund 8743 FY 2012 Org 0926

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<tr>
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**350-Public Service Commission - Gas Pipeline Division**

(WV Code Chapter 24B)

### Fund 8744 FY 2012 Org 0926

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**351-National Coal Heritage Area Authority**

(WV Code Chapter 29)

### Fund 8869 FY 2012 Org 0941

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**352-Coal Heritage Highway Authority**

(WV Code Chapter 29)

### Fund 8861 FY 2012 Org 0942

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</table>

**Sec. 7. Appropriations from federal block grants.**

The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2012.
### 353-Governor’s Office -
*Office of Economic Opportunity*
*Community Services*

**Fund 8799 FY 2012 Org 0100**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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### 354-West Virginia Development Office -
*Community Development*

**Fund 8746 FY 2012 Org 0307**

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### 355-WorkForce West Virginia -
*Workforce Investment Act*

**Fund 8749 FY 2012 Org 0323**

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### 356-Division of Energy -
*Energy Efficiency and Conservation*

**Fund 8702 FY 2012 Org 0328**

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<tbody>
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<td>$10,000,000</td>
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### 357-Division of Health -
*Maternal and Child Health*

**Fund 8750 FY 2012 Org 0506**
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<td><strong>358-Division of Health - Preventive Health</strong></td>
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<td>Fund 8753 FY 2012 Org 0506</td>
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<td><strong>359-Division of Health - Substance Abuse Prevention and Treatment</strong></td>
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<td>Fund 8793 FY 2012 Org 0506</td>
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<td><strong>360-Division of Health - Community Mental Health Services</strong></td>
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<td>Fund 8794 FY 2012 Org 0506</td>
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<td><strong>361-Division of Health - Abstinence Education Program</strong></td>
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<td>Fund 8825 FY 2012 Org 0506</td>
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<td><strong>362-Division of Human Services - Energy Assistance</strong></td>
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<td>Fund 8755 FY 2012 Org 0511</td>
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<td>Unclassified - Total</td>
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363-Division of Human Services - Social Services

Fund 8757 FY 2012 Org 0511

1 Unclassified - Total. ................. 096 $ 17,198,240

364-Division of Human Services - Temporary Assistance for Needy Families

Fund 8816 FY 2012 Org 0511

1 Unclassified - Total. ................. 096 $ 130,419,061

365-Division of Human Services - Child Care and Development

Fund 8817 FY 2012 Org 0511

1 Unclassified - Total. ................. 096 $ 40,038,906
2 Federal Economic Stimulus. .......... 891 $ 250,000
3 Total. .................................. $ 40,288,906

366-Division of Justice and Community Services - Juvenile Accountability Incentive

Fund 8829 FY 2012 Org 0620

1 Unclassified - Total. ................. 096 $ 500,256
2 Total TITLE II, Section 7 - $367,704,243
3 Federal Block Grants............... $367,704,243

Sec. 8. Awards for claims against the state. – There are hereby appropriated for fiscal year 2012, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $5,957,174, special revenue funds in the amount of $71,197, and state road funds in the amount of $2,390,821 for payment of claims against the state.
Sec. 9. Appropriations from 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 2012 out of surplus funds only, accrued from the fiscal year ending the thirtieth day of June, two thousand eleven, 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 the thirty-first day of July, two thousand eleven from the fiscal year ending the thirtieth day of June, two thousand eleven.

In the event that surplus revenues available on the thirty-first day of July, two thousand eleven, 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 each subsequent appropriation in the order listed in this section.

367-Department of Environmental Protection
(WV Code Chapter 22)

Fund 0273 FY 2012 Org 0313

1 Unclassified - Surplus. . . . . . . . . . . . . . . . . . . 097 $ 3,000,000

The above appropriation for Unclassified - Surplus - Total (fund 0273, activity 097) shall be transferred to the Underground Storage Tank Insurance Fund (fund 3218, org 0313).
369-Division of Finance
(WV Code Chapter 5A)
Fund 0203 FY 2012 Org 0209
Enterprise Resource Planning
System - Surplus. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . 872 $ 15,000,000

370-Division of Corrections -
Correctional Units
(WV Code Chapters 25, 28, 49 and 62)
Fund 0450 FY 2012 Org 0608

*CLERK'S NOTE: The Chief Executive deleted Item 368 in its entirety, which read:

"368-Division of Homeland Security and
Emergency Management
(WV Code Chapter 15)
Fund 0443 FY 2012 Org 0606
Unclassified - Surplus. . . . . . . . 097 $ 5,000,000

The above appropriation for Unclassified-Surplus (fund 0443, activity 097) shall be used to match federal funds for the purpose of relocating the Division of Homeland Security and Emergency Management."
### Capital Outlay, Repairs and Equipment - Surplus

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Capital Outlay, Repairs and</td>
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<tr>
<td></td>
<td>Equipment - Surplus</td>
<td>677 $3,000,000</td>
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<tr>
<td>3</td>
<td>Capital Improvements - Surplus</td>
<td>661 $3,000,000</td>
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<td>4</td>
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371-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2012 Org 1400

1 Soil Conservation Projects - Surplus. 269 $5,400,000

372-Division of Health - Central Office

(WV Code Chapter 16)

Fund 0407 FY 2012 Org 0506

1 Unclassified - Surplus. 097 $1,262,990

373-Higher Education Policy Commission - Administration - Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2012 Org 0441

1 Capital Improvements - Surplus. 661 $5,000,000

374-Adjutant General - State Militia

(WV Code Chapter 15)

Fund 0433 FY 2012 Org 0603
1 Armory Capital Improvements -
2 Surplus.......................... 325 $ 7,000,000

375-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2012 Org 0305

1 Equipment - Surplus.............. 341 $ 819,000

376-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2012 Org 0432

1 Capital Outlay, Repairs
2 and Equipment - Surplus...... 677 $ 750,000

377-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2012 Org 0701

1 Unclassified - Transfer.......... 482 $ 600,000

378-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2012 Org 1400
Sec. 10. Special revenue appropriations. - There are hereby appropriated for expenditure during the fiscal year 2012 appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with and in conformity to the provisions of articles two and three, chapter twelve and article two, chapter eleven-b of the code, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund;

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

In addition to the preceding provisions, from the unexpended balance remaining in Fund 3078, the Courtesy Patrol, at the close of the fiscal year 2011, the State Auditor shall transfer $1,000,000 to Fund 3072, the Tourism Promotion Fund.

Sec. 11. State improvement fund appropriations. - Bequests or donations of nonpublic funds, received by the governor on behalf of the state during the fiscal year 2012, for the purpose of making studies and recommendations

*Clerk's Note: The Chief Executive reduced Item 378, line 2, by $250,000, from $500,000 to $250,000. The total does NOT reflect the reduction by the Governor.*
relative to improvements of the administration and
management of spending units in the executive branch of
state government, shall be deposited in the state treasury in
a separate account therein designated state improvement
fund.

There are hereby appropriated all moneys so deposited
during the fiscal year 2012 to be expended as authorized by
the governor, for such studies and recommendations which
may encompass any problems of organization, procedures,
systems, functions, powers or duties of a state spending unit
in the executive branch, or the betterment of the economic,
social, educational, health and general welfare of the state or
its citizens.

Sec. 12. Specific funds and collection accounts. - A fund
or collection account which by law is dedicated to a specific
use is hereby appropriated in sufficient amount to meet all
lawful demands upon the fund or collection account and shall
be expended according to the provisions of Article 3, Chapter
12 of the Code.

Sec. 13. Appropriations for refunding erroneous
payment. - Money that has been erroneously paid into the
state treasury is hereby appropriated out of the fund into
which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for
the state finds that a sum has been erroneously paid, he or she
shall issue his or her requisition upon the auditor for the
refunding of the proper amount. The auditor shall issue his or
her warrant to the treasurer and the treasurer shall pay the
warrant out of the fund into which the amount was originally
paid.

Sec. 14. Sinking fund deficiencies. - There is hereby
appropriated to the governor a sufficient amount to meet any
deficiencies that may arise in the mortgage finance bond
insurance fund of the West Virginia housing development
fund which is under the supervision and control of the
municipal bond commission as provided by W.Va. Code
§31-18-20b, or in the funds of the municipal bond
commission because of the failure of any state agency for
either general obligation or revenue bonds or any local taxing
district for general obligation bonds to remit funds necessary
for the payment of interest and sinking fund requirements.
The governor is authorized to transfer from time to time such
amounts to the municipal bond commission as may be
necessary for these purposes.

The municipal bond commission shall reimburse the state
of West Virginia through the governor from the first
remittance collected from the West Virginia housing
development fund or from any state agency or local taxing
district for which the governor advanced funds, with interest
at the rate carried by the bonds for security or payment of
which the advance was made.

Sec. 15. Appropriations for local governments. - There
are hereby appropriated for payment to counties, districts and
municipal corporations such amounts as will be necessary to
pay taxes due counties, districts and municipal corporations
and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 16. Total appropriations. - Where only a total sum
is appropriated to a spending unit, the total sum shall include
personal services, annual increment, employee benefits,
current expenses, repairs and alterations, equipment and
capital outlay, where not otherwise specifically provided and
except as otherwise provided in TITLE I - GENERAL
PROVISIONS, Sec. 3.

Sec. 17. General school fund. - The balance of the
proceeds of the general school fund remaining after the
payment of the appropriations made by this act is
appropriated for expenditure in accordance with W.Va. Code
§18-9A-16.

TITLE III - ADMINISTRATION.

Sec. 1. Appropriations conditional. - The expenditure of
the appropriations made by this act, except those
appropriations made to the legislative and judicial branches
of the state government, are conditioned upon the compliance
by the spending unit with the requirements of Article 2,
Chapter 11B of the Code.

Where spending units or parts of spending units have been
absorbed by or combined with other spending units, it is the
intent of this act that appropriations and reappropriations
shall be to the succeeding or later spending unit created,
unless otherwise indicated.

Sec. 2. Constitutionality. - If any part of this act is
declared unconstitutional by a court of competent
jurisdiction, its decision shall not affect any portion of this
act which remains, but the remaining portion shall be in full
force and effect as if the portion declared unconstitutional
had never been a part of the act.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-5A-3a, relating to the State Athletic Commission; authorizing the commission to regulate mixed martial arts; providing for use of the unified rules of mixed martial arts; stating powers of the commission; defining terms; creating licensing requirements; providing for rule-making authority; and prohibiting municipalities from imposing a license tax on mixed martial arts clubs.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-5A-3a, to read as follows:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-3a. Power to regulate mixed martial arts.

(a) The commission has sole power, direction, management and control over all professional mixed martial
arts contests, matches and exhibitions, or any form thereof, to be promoted, conducted, held or given within the state.

(b) As used in this article, the term "mixed martial arts" means a combative sporting contest, the rules of which allow two competitors to attempt to achieve dominance over one another by utilizing a variety of techniques including, but not limited to, striking, grappling and the application of submission holds.

(c) A mixed martial arts contest, match or exhibition promoted, conducted, held or given within the state shall be under the commission's authority and be in accordance with the provision of this section. The provisions of this article that apply to boxing shall also apply to mixed martial arts as appropriate.

(d) In exercising its jurisdiction over professional mixed martial arts contests, matches and exhibitions, the commission shall follow the current unified rules of mixed martial arts as adopted by the Association of Boxing Commissions, to enable the proper licensing of all participants, referees and judges, and the approval of contests, matches or exhibitions conducted under the provisions of this section.

(e) The commission may issue and revoke a license to promote, conduct, hold or give mixed martial arts contests, matches or exhibitions and may issue and revoke a license to be a contestant. Each license is subject to the provisions of this section and article, and the rules of the commission.

(f) The commission 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 section, including:
(1) Procedures and requirements for the issuance and renewal of licenses: Provided, That the procedures and requirements shall not:

(A) Limit or prohibit mixed martial arts contests, matches or exhibitions; nor

(B) Include a provision that a licensee be a West Virginia resident;

(2) Exemptions from licensure;

(3) Procedures for revoking licenses;

(4) Adopting the unified rules of mixed martial arts;

(5) A fee schedule;

(6) Limitations or restrictions necessary to guarantee the safety of the participants;

(7) The requirements for fair and honest conducting of the contests, matches or exhibitions; and

(8) Any other rules necessary to effectuate the provisions of this section.

(g) Notwithstanding the provisions of this code to the contrary, a municipality may not impose a municipal license tax under section four, article thirteen, chapter eight of this code on mixed martial arts clubs. The granting of a license to a club by the commission, or the holding of a license by a club, individual, corporation or association, does not prevent the commission from revoking the license to conduct an event, as provided in this section: Provided, That nothing in this subsection limits the authority of a municipality to impose any other taxes or fees on mixed martial arts contests, matches or exhibitions, pursuant to article thirteen, chapter eight of this code.
CHAPTER 13

(Com. Sub. for H. B. 2693 - By Delegates Fleischauer, Ellem, Overington, Hunt, Skaff, Lane and Rodighiero)

[Passed March 12, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §5-16-7 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-16B-6e; to amend said code by adding thereto a new section, designated §9-5-21; to amend said code by adding thereto a new section, designated §33-16-3v; to amend said code by adding thereto a new section, designated §33-24-7k; and to amend said code by adding thereto a new section, designated §33-25A-8j, all relating to requiring insurance coverage for autism spectrum disorders; providing for an effective date for coverage; providing definitions; setting out age limitations; providing for coverage amounts and time frames; setting forth who may provide appropriate treatment; providing reporting requirements to determine if treatment remains effective; allowing for cost saving measures in specified instances; providing the provisions are only required to the extent required by federal law; and providing reporting requirements by state agencies.

Be it enacted by the Legislature of West Virginia:

That §5-16-7 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 §5-16B-6e; that said code be
amended by adding thereto a new section, designated §9-5-21; that
said code be amended by adding thereto a new section, designated
§33-16-3v; that said code be amended by adding thereto a new
section, designated §33-24-7k; that said code be amended by adding
thereto a new section, designated §33-25A-8j, 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.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES
INSURANCE ACT.

§5-16-7. Authorization to establish group hospital and surgical
insurance plan, group major medical insurance
plan, group prescription drug plan and group life
and accidental death insurance plan; rules for
administration of plans; mandated benefits; what
plans may provide; optional plans; separate rating
for claims experience purposes.

(a) The agency shall establish a group hospital and
surgical insurance plan or plans, a group prescription drug
insurance plan or plans, a group major medical insurance
plan or plans and a group life and accidental death insurance
plan or plans for those employees herein made eligible, and
to establish and promulgate rules for the administration of
these plans, subject to the limitations contained in this article.
Those plans shall include:

(1) Coverages and benefits for X ray and laboratory
services in connection with mammograms when medically
appropriate and consistent with current guidelines from the
United States Preventive Services Task Force; pap smears,
either conventional or liquid-based cytology, whichever is
medically appropriate and consistent with the current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists; and a test for the human papilloma virus (HPV) when medically appropriate and consistent with current guidelines from either the United States Preventive Services Task Force or The American College of Obstetricians and Gynecologists, when performed for cancer screening or diagnostic services on a woman age eighteen or over;

(2) Annual checkups for prostate cancer in men age fifty and over;

(3) Annual screening for kidney disease as determined to be medically necessary by a physician using any combination of blood pressure testing, urine albumin or urine protein testing and serum creatinine testing as recommended by the National Kidney Foundation;

(4) For plans that include maternity benefits, coverage for inpatient care in a duly licensed health care facility for a mother and her newly born infant for the length of time which the attending physician considers medically necessary for the mother or her newly born child: Provided, That no plan may deny payment for a mother or her newborn child prior to forty-eight hours following a vaginal delivery, or prior to ninety-six hours following a caesarean section delivery, if the attending physician considers discharge medically inappropriate;

(5) For plans which provide coverages for post-delivery care to a mother and her newly born child in the home, coverage for inpatient care following childbirth as provided in subdivision (4) of this subsection if inpatient care is determined to be medically necessary by the attending physician. Those plans may also include, among other
things, medicines, medical equipment, prosthetic appliances
and any other inpatient and outpatient services and expenses
considered appropriate and desirable by the agency; and

(6) Coverage for treatment of serious mental illness.

(A) The coverage does not include custodial care, residential care or schooling. For purposes of this section, “serious mental illness” means an illness included in the American Psychiatric Association’s diagnostic and statistical manual of mental disorders, as periodically revised, under the diagnostic categories or subclassifications of: (i) Schizophrenia and other psychotic disorders; (ii) bipolar disorders; (iii) depressive disorders; (iv) substance-related disorders with the exception of caffeine-related disorders and nicotine-related disorders; (v) anxiety disorders; and (vi) anorexia and bulimia. With regard to any covered individual who has not yet attained the age of nineteen years, “serious mental illness” also includes attention deficit hyperactivity disorder, separation anxiety disorder and conduct disorder.

(B) Notwithstanding any other provision in this section to the contrary, in the event that the agency can demonstrate that its total costs for the treatment of mental illness for any plan exceeded two percent of the total costs for such plan in any experience period, then the agency may apply whatever additional cost-containment measures may be necessary, including, but not limited to, limitations on inpatient and outpatient benefits, to maintain costs below two percent of the total costs for the plan for the next experience period.

(C) The agency shall not discriminate between medical-surgical benefits and mental health benefits in the administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness, and it may use recognized health care quality and cost management
tools, including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks and using patient cost sharing in the form of copayments, deductibles and coinsurance.

(7) Coverage for general anesthesia for dental procedures and associated outpatient hospital or ambulatory facility charges provided by appropriately licensed health care individuals in conjunction with dental care if the covered person is:

(A) Seven years of age or younger or is developmentally disabled, and is an individual for whom a successful result cannot be expected from dental care provided under local anesthesia because of a physical, intellectual or other medically compromising condition of the individual and for whom a superior result can be expected from dental care provided under general anesthesia;

(B) A child who is twelve years of age or younger with documented phobias, or with documented mental illness, and with dental needs of such magnitude that treatment should not be delayed or deferred and for whom lack of treatment can be expected to result in infection, loss of teeth or other increased oral or dental morbidity and for whom a successful result cannot be expected from dental care provided under local anesthesia because of such condition and for whom a superior result can be expected from dental care provided under general anesthesia.

(8)(A) Any plan issued or renewed after January 1, 2012, shall include coverage for diagnosis and treatment of autism
spectrum disorder in individuals ages eighteen months through eighteen years. To be eligible for coverage and benefits under this subdivision, the individual must be diagnosed with autism spectrum disorder at age 8 or younger. Such policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist for an individual diagnosed with autism spectrum disorder, in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual, subject to review by the agency every six months. Progress reports are required to be filed with the agency semi-annually. In order for treatment to continue, the agency must receive objective evidence or a clinically supportable statement of expectation that:

(1) The individual’s condition is improving in response to treatment; and

(2) A maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(B) Such coverage shall include, but not be limited to, applied behavioral analysis provided or supervised by a certified behavior analyst: Provided, That the annual maximum benefit for treatment required by this subdivision shall be in amount not to exceed $30,000 per individual, for three consecutive years from the date treatment commences. At the conclusion of the third year, required coverage shall be in an amount not to exceed $2000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the
individual. This section shall not be construed as limiting, replacing or affecting any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this subdivision shall be construed as requiring reimbursement for services provided by public school personnel.

(C) On or before January 1 each year, the agency shall file an annual report with the joint committee on government and finance describing its implementation of the coverage provided pursuant to this subdivision. The report shall include, but shall not be limited to, the number of individuals in the plan utilizing the coverage required by this subdivision, the fiscal and administrative impact of the implementation, and any recommendations the agency may have as to changes in law or policy related to the coverage provided under this subdivision. In addition, the agency shall provide such other information as may be required by the joint committee on government and finance as it may from time to time request.

(D) For purposes of this subdivision, the term:

(i) “Applied Behavior Analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(ii) “Autism spectrum disorder” means any pervasive developmental disorder, including autistic disorder, Asperger’s Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.
(iii) "Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(iv) "Objective evidence" means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and/or after treatment is recommended to quantify progress and support justifications for continued treatment. Such tools are not required, but their use will enhance the justification for continued treatment.

(E) To the extent that the application of this subdivision for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year the agency may apply additional cost containment measures.

(F) To the extent that the provisions of this subdivision requires benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of insurance plans offered by the public employees insurance agency.

(b) The agency shall make available to each eligible employee, at full cost to the employee, the opportunity to purchase optional group life and accidental death insurance as established under the rules of the agency. In addition, each employee is entitled to have his or her spouse and dependents, as defined by the rules of the agency, included in the optional coverage, at full cost to the employee, for each eligible dependent; and with full authorization to the agency to make the optional coverage available and provide an opportunity of purchase to each employee.
(c) The finance board may cause to be separately rated for claims experience purposes:

(1) All employees of the State of West Virginia;

(2) All teaching and professional employees of state public institutions of higher education and county boards of education;

(3) All nonteaching employees of the Higher Education Policy Commission, West Virginia Council for Community and Technical College Education and county boards of education; or

(4) Any other categorization which would ensure the stability of the overall program.

(d) The agency shall maintain the medical and prescription drug coverage for Medicare-eligible retirees by providing coverage through one of the existing plans or by enrolling the Medicare-eligible retired employees into a Medicare-specific plan, including, but not limited to, the Medicare/Advantage Prescription Drug Plan. In the event that a Medicare-specific plan would no longer be available or advantageous for the agency and the retirees, the retirees shall remain eligible for coverage through the agency.

ARTICLE 16B. WEST VIRGINIA CHILDREN’S HEALTH INSURANCE PROGRAM.

§5-16B-6e. Coverage for treatment of autism spectrum disorders.

(a) To the extent that the diagnosis and treatment of autism spectrum disorders are not already covered by this agency, after January 1, 2012, a policy, plan or contract subject to this section shall provide coverage for such
diagnosis and treatment, for individuals ages eighteen months through eighteen years. To be eligible for coverage and benefits under this section, the individual must be diagnosed with autism spectrum disorder at age eight or younger. Such policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist for an individual diagnosed with autism spectrum disorder, in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual subject to review by the agency every six months. Progress reports are required to be filed with the agency semi-annually. In order for treatment to continue, objective evidence or a clinically supportable statement of expectation that:

(1) The individual’s condition is improving in response to treatment; and

(2) Maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(b) Such coverage shall include, but not be limited to, applied behavioral analysis provided or supervised by a certified behavior analyst: Provided, That the annual maximum benefit for treatment required by this section shall be in amount not to exceed $30,000 per individual, for three consecutive years from the date treatment commences. At the conclusion of the third year, required coverage shall be in an amount not to exceed $2000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the
individual. This section shall not be construed as limiting, replacing or affecting any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this section shall be construed as requiring reimbursement for services provided by public school personnel.

(c) On or before January 1 each year, the agency shall file an annual report with the joint committee on government and finance describing its implementation of the coverage provided pursuant to this section. The report shall include, but shall not be limited to the number of individuals in the plan utilizing the coverage required by this section, the fiscal and administrative impact of the implementation, and any recommendations the agency may have as to changes in law or policy related to the coverage provided under this section. In addition, the agency shall provide such other information as may be requested by the joint committee on government and finance as it may from time to time request.

(d) For purposes of this section, the term:

(1) “Applied Behavior Analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(2) “Autism spectrum disorder” means any pervasive developmental disorder, including autistic disorder, Asperger’s Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.
(3) "Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(4) "Objective evidence" means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and/or after treatment is recommended to quantify progress and support justifications for continued treatment. Such tools are not required, but their use will enhance the justification for continued treatment.

(e) To the extent that the application of this section for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year the agency may apply additional cost containment measures.

(f) To the extent that the provisions of this section requires benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of the West Virginia Children’s Health Insurance Program.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-21. Annual report to joint committee on government and finance regarding treatment for autism spectrum disorders provided by the Bureau for Medical Services.

(a) On or before January 1 each year, the agency shall file an annual report with the joint committee on government and
finance describing the number of enrolled individuals with autism spectrum disorder, including the fiscal and administrative impact of treatment of autism spectrum disorders, and any recommendations the agency may have as to changes in law or policy related to such disorder. In addition, the agency shall provide such other information as may be requested by the joint committee on government and finance as it may from time to time request.

(b) For purposes of this section, the term “autism spectrum disorder” means any pervasive developmental disorder, including autistic disorder, Asperger’s Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

CHAPTER 33. INSURANCE.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3v. Required coverage for treatment of autism spectrum disorders.

(a) Any insurer who, on or after January 1, 2012, delivers, renews or issues a policy of group accident and sickness insurance in this State under the provisions of this article shall include coverage for diagnosis and treatment of autism spectrum disorder in individuals ages eighteen months through eighteen years. To be eligible for coverage and benefits under this section, the individual must be diagnosed with autism spectrum disorder at age 8 or younger. Such policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist for an individual diagnosed with autism spectrum disorder, in accordance with
a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual, subject to review by the agency every six months. Progress reports are required to be filed with the insurer semi-annually. In order for treatment to continue, the insurer must receive objective evidence or a clinically supportable statement of expectation that:

(1) The individual's condition is improving in response to treatment; and

(2) A maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(b) Such coverage shall include, but not be limited to, applied behavioral analysis provided or supervised by a certified behavioral analyst. Provided, That the annual maximum benefit for treatment required by this subdivision shall be in amount not to exceed $30,000 per individual, for three consecutive years from the date treatment commences. At the conclusion of the third year, required coverage shall be in an amount not to exceed $2000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavioral analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This section shall not be construed as limiting, replacing or affecting any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this section shall be construed as requiring reimbursement for services provided by public school personnel.
(c) For purposes of this section, the term:

(1) "Applied Behavior Analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(2) "Autism spectrum disorder" means any pervasive developmental disorder, including autistic disorder, Asperger's Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(3) "Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(4) "Objective evidence" means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and/or after treatment is recommended to quantify progress and support justifications for continued treatment. Such tools are not required, but their use will enhance the justification for continued treatment.

(d) The provisions of this section do not apply to small employers. For purposes of this section a small employer shall be defined as any person, firm, corporation, partnership or association actively engaged in business in the state of West Virginia who, during the preceding calendar year, employed an average of no more than twenty-five eligible employees.
(e) To the extent that the application of this section for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year the insurer may apply additional cost containment measures.

(f) To the extent that the provisions of this section requires benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered by a health care insurer in this state.

ARTICLE 24. HOSPITAL MEDICAL AND DENTAL CORPORATIONS.

§33-24-7k. Coverage for diagnosis and treatment of autism spectrum disorders.

(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article, for policies issued or renewed on or after January 1, 2012, delivers, renews or issues a policy of group accident and sickness insurance in this State under the provisions of this article shall include coverage for diagnosis and treatment of autism spectrum disorder in individuals ages eighteen months through eighteen years. To be eligible for coverage and benefits under this section, the individual must be diagnosed with autism spectrum disorder at age 8 or younger. Such policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist for an individual diagnosed with autism spectrum disorder, in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual, subject to review by the corporation every six months. Progress reports are required to be filed with the corporation.
semi-annually. In order for treatment to continue, the agency
must receive objective evidence or a clinically supportable
statement of expectation that:

(1) The individual’s condition is improving in response
to treatment; and

(2) A maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated
improvement is attainable in a reasonable and generally
predictable period of time.

(b) Such coverage shall include, but not be limited to,
applied behavioral analysis provided or supervised by a
certified behavioral analyst: Provided, That the annual
maximum benefit for treatment required by this section shall
be in amount not to exceed $30,000 per individual, for three
consecutive years from the date treatment commences. At
the conclusion of the third year, required coverage shall be in
an amount not to exceed $2000 per month, until the
individual reaches eighteen years of age, as long as the
treatment is medically necessary and in accordance with a
treatment plan developed by a certified behavior analyst
pursuant to a comprehensive evaluation or reevaluation of the
individual. This section shall not be construed as limiting,
replacing or affecting any obligation to provide services to an
individual under the Individuals with Disabilities Education
Act, 20 U.S.C. 1400 et seq., as amended from time to time or
other publicly funded programs. Nothing in this section shall
be construed as requiring reimbursement for services
provided by public school personnel.

(c) For purposes of this section, the term:

(1) “Applied Behavior Analysis” means the design,
implementation, and evaluation of environmental
modifications using behavioral stimuli and consequences, to
produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(2) "Autism spectrum disorder" means any pervasive developmental disorder, including autistic disorder, Asperger's Syndrome, Rett Syndrome, childhood disintegrative disorder, or Pervasive Development Disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(3) "Certified behavior analyst" means an individual who is certified by the Behavior Analyst Certification Board or certified by a similar nationally recognized organization.

(4) "Objective evidence" means standardized patient assessment instruments, outcome measurements tools or measurable assessments of functional outcome. Use of objective measures at the beginning of treatment, during and/or after treatment is recommended to quantify progress and support justifications for continued treatment. Such tools are not required, but their use will enhance the justification for continued treatment.

(d) The provisions of this section do not apply to small employers. For purposes of this section a small employer shall be defined as any person, firm, corporation, partnership or association actively engaged in business in the state of West Virginia who, during the preceding calendar year, employed an average of no more than twenty-five eligible employees.

(e) To the extent that the application of this section for autism spectrum disorder causes an increase of at least one percent of actual total costs of coverage for the plan year the corporation may apply additional cost containment measures.
(f) To the extent that the provisions of this section requires benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered by a corporation in this state.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.


(a) Notwithstanding any provision of any policy, provision, contract, plan or agreement to which this article applies, any entity regulated by this article, for policies issued or renewed on or after January 1, 2012, delivers, renewe or issues a policy of group accident and sickness insurance in this State under the provisions of this article shall include coverage for diagnosis and treatment of autism spectrum disorder in individuals ages eighteen months through eighteen years. To be eligible for coverage and benefits under this section, the individual must be diagnosed with autism spectrum disorder at age 8 or younger. Such policy shall provide coverage for treatments that are medically necessary and ordered or prescribed by a licensed physician or licensed psychologist for an individual diagnosed with autism spectrum disorder, in accordance with a treatment plan developed by a certified behavioral analyst pursuant to a comprehensive evaluation or reevaluation of the individual, subject to review by the health maintenance organization every six months. Progress reports are required to be filed with the health maintenance organization semi-annually. In order for treatment to continue, the health maintenance organization must receive objective evidence or a clinically supportable statement of expectation that:
(1) The individual’s condition is improving in response to treatment; and

(2) A maximum improvement is yet to be attained; and

(3) There is an expectation that the anticipated improvement is attainable in a reasonable and generally predictable period of time.

(b) Such coverage shall include, but not be limited to, applied behavioral analysis provided or supervised by a certified behavioral analyst: Provided, That the annual maximum benefit for treatment required by this subdivision shall be in amount not to exceed $30,000 per individual, for three consecutive years from the date treatment commences. At the conclusion of the third year, required coverage shall be in an amount not to exceed $2000 per month, until the individual reaches eighteen years of age, as long as the treatment is medically necessary and in accordance with a treatment plan developed by a certified behavior analyst pursuant to a comprehensive evaluation or reevaluation of the individual. This section shall not be construed as limiting, replacing or affecting any obligation to provide services to an individual under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended from time to time or other publicly funded programs. Nothing in this section shall be construed as requiring reimbursement for services provided by public school personnel.

(c) For purposes of this section, the term:

(1) “Applied Behavior Analysis” means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and
functional analysis of the relationship between environment
and behavior.

(2) "Autism spectrum disorder" means any pervasive
developmental disorder, including autistic disorder, Asperger's
Syndrome, Rett Syndrome, childhood disintegrative disorder, or
Pervasive Development Disorder as defined in the most recent
edition of the Diagnostic and Statistical Manual of Mental
Disorders of the American Psychiatric Association.

(3) "Certified behavior analyst" means an individual who
is certified by the Behavior Analyst Certification Board or
certified by a similar nationally recognized organization.

(4) "Objective evidence" means standardized patient
assessment instruments, outcome measurements tools or
measurable assessments of functional outcome. Use of
objective measures at the beginning of treatment, during
and/or after treatment is recommended to quantify progress
and support justifications for continued treatment. Such tools
are not required, but their use will enhance the justification
for continued treatment.

(d) The provisions of this section do not apply to small
employers. For purposes of this section a small employer
shall be defined as any person, firm, corporation, partnership
or association actively engaged in business in the state of
West Virginia who, during the preceding calendar year,
employed an average of no more than twenty-five eligible
employees.

(e) To the extent that the application of this section for
autism spectrum disorder causes an increase of at least one
percent of actual total costs of coverage for the plan year the
health maintenance organization may apply additional cost
containment measures.
(f) To the extent that the provisions of this section requires benefits that exceed the essential health benefits specified under section 1302(b) of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended, the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered by a health maintenance organization in this state.

CHAPTER 14

(Com. Sub. for H. B. 2962 - By Delegates Perry, Hartman, Moore, Reynolds, Hall, Walters, J. Miller, Azinger and Ashley)

[Passed February 22, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2011.]

AN ACT to amend and reenact §31-17-12 of the Code of West Virginia, 1931, as amended, relating to imposition of a fine or penalty by the Commissioner of Banking on residential mortgage brokers and lenders for a violation of the West Virginia Residential Mortgage Lender, Broker and Servicer Act; increasing the maximum amount of a fine or penalty that may be imposed from $1000 to $2000 for each violation; removing the requirement of prior notification from the commissioner before a fine or penalty may be imposed upon an unlicensed person who engages in the business or holds himself or herself out to the public as a mortgage lender or mortgage broker; and clarifying that a fine or penalty may be imposed for a violation of the Act.

Be it enacted by the Legislature of West Virginia:
That §31-17-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-12. Grounds for suspension or revocation of license; suspension and revocation generally; reinstatement or new license; penalties and fines for violation of this article.

(a) The commissioner may suspend or revoke any broker or lender license issued hereunder if he or she finds that the licensee or any owner, director, officer, member, partner, stockholder, employee or agent of the licensee:

1. Has knowingly violated any provision of this article or any order, decision or rule of the commissioner lawfully made pursuant to the authority of this article;

2. Has knowingly made any material misstatement in the application for the license;

3. Does not have available the net worth required by the provisions of section four of this article, if applicable;

4. Has failed or refused to keep the bond required by this article in full force and effect, if applicable;

5. In the case of a foreign corporation, does not remain qualified to do business in this state;

6. Has committed any fraud or engaged in any dishonest activities with respect to any mortgage loan business in this state or failed to disclose any of the material particulars of
any mortgage loan transaction in this state to anyone entitled
to the information; or

(7) Has otherwise demonstrated bad faith, dishonesty or
any other quality indicating that the business of the licensee
in this state has not been or will not be conducted honestly or
fairly within the purpose of this article. It shall be a
demonstration of bad faith and an unfair or deceptive act or
practice to engage in a pattern of making loans where the
consumer has insufficient sources of income to timely repay
the debt and the lender had the primary intent to acquire the
property upon default rather than to derive profit from the
loan. This section may not limit any right the consumer may
have to bring an action for a violation of section one hundred
four, article six, chapter forty-six-a of this code in an
individual case.

The commissioner may also suspend or revoke the
license of a licensee if he or she finds the existence of any
ground upon which the license could have been refused or
any ground which would be cause for refusing a license to
the licensee were he or she then applying for the same. The
commissioner may also suspend or revoke the license of a
licensee pursuant to his or her authority under section
thirteen, article two, chapter thirty-one-a of this code.

(b) The suspension or revocation of the license of any
licensee does not impair or affect the obligation of any
preexisting lawful mortgage loan between the licensee and
any obligor.

(c) The commissioner may reinstate a suspended license,
or issue a new license to a licensee whose license has been
revoked, if the grounds upon which any license was
suspended or revoked have been eliminated or corrected and
the commissioner is satisfied that the grounds are not likely
to recur.
(d) In addition to the authority conferred under this section, the commissioner may impose a fine or penalty not exceeding $2,000 upon any lender or broker required to be licensed under this article who the commissioner determines has violated any of the provisions of this article. For the purposes of this section, each separate violation is subject to the fine or penalty provided in this section. Each day excluding Sundays and holidays, that an unlicensed person engages in the business or holds himself or herself out to the general public as a mortgage lender or broker is a separate violation.

CHAPTER 15

(Com. Sub. for H. B. 2882 - By Delegates Perry, Moore, Reynolds, Hall, Walters, Hartman, J. Miller, Azinger and Ashley)

[Passed February 22, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 3, 2011.]
That §31A-2-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 2. DIVISION OF BANKING.

§31A-2-8. Commissioner’s assessments and examination fund; assessments, costs and expenses of examinations; collection.

(a) All moneys collected by the commissioner from financial institutions and bank holding companies for assessments, examination fees, investigation fees or other necessary expenses incurred by the commissioner in administering such duties shall be paid to the commissioner and paid by the commissioner to the treasurer of the state to the credit of a special revenue account to be known as the “commissioner’s assessment and examination fund” which is hereby established. The assessments and fees paid into this account shall be appropriated by law and used to pay the costs and expenses of the Division of Banking and all incidental costs and expenses necessary for its operations. At the end of each fiscal year, if the fund contains a sum of money in excess of twenty percent of the appropriated budget of the Division of Banking, the amount of the excess shall be transferred to the General Revenue Fund of the state. The Legislature may appropriate money to start the special revenue account.

(b) The Commissioner of Banking shall charge and collect from each state banking institution or other financial institution or bank holding company and pay into a special revenue account in the State Treasury for the Division of Banking assessments as follows:

(1) For each state banking institution, a quarterly assessment payable on January 1, April 1, July 1, and October 1 each year, computed upon the total assets of the banking institution shown on the report of condition of the banking institution filed as of
the preceding June 30, September 30, December 31 and March 31, respectively, as follows:

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(2) For each regulated consumer lender, an annual assessment payable on July 1, each year, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest of the regulated consumer lender shown on the report of condition of the regulated consumer lender as of the preceding thirty-first day of December, respectively, as follows:

<table>
<thead>
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<th>Total Outstanding Balances</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Of Excess Over</th>
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<tr>
<td>Over Million</td>
<td>Under Million</td>
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<tr>
<td>$0</td>
<td>$1,000,000</td>
<td>800</td>
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<td>1,000,000</td>
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<tr>
<td>10,000,000</td>
<td>-</td>
<td>4,200</td>
<td>.000100</td>
</tr>
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</table>

57 If a regulated consumer lender’s records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.
In addition to the assessment provided in this subdivision, the commissioner shall charge and collect from each regulated consumer lender the actual and necessary costs and expenses incurred in connection with any examination of a regulated consumer lender.

(3) For each credit union, an annual assessment as provided for in section eight, article one, chapter thirty-one-c of this code as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Of Excess Of</th>
<th>Over</th>
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<tbody>
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<td>$0 Over</td>
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<td>3,100 .000100</td>
<td>10,000,000</td>
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</table>

(4) For each bank holding company, an annual assessment as provided for in section eight, article eight-a of this chapter. The annual assessment may not exceed ten dollars per million dollars in deposits rounded off to the nearest million dollars.

(c) The commissioner shall each December, March, June and September prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall further, each June, prepare and send to each regulated consumer lender and each state credit union a statement of the amount of the assessment due. The commissioner shall annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

State banking institution assessments may be prescribed every three months, not later than June 15, September 15,
December 15 and March 15 by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the Division of Banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act under chapter twenty-nine-a of this code.

(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the Division of Banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner. Banks that provide only trust or other nondepository services, nonbanking subsidiaries of bank holding companies that provide trust services, nonbanking subsidiaries of banks that provide trust services and any trust entity that is jointly owned by federally insured depository institutions may be assessed for necessary costs and expenses associated with an examination pursuant to this subsection.

(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.
(f) The Commissioner of Banking may maintain an action for the recovery of all assessments, costs and expenses in any court of competent jurisdiction.

CHAPTER 16

(S. B. 507 - By Senators Kessler (Acting President), Unger, Browning, Foster, Plymale, Stollings, Klempa and Williams)

[Passed February 25, 2011; in effect ninety days from passage.] [Approved by the Governor on March 9, 2011.]

AN ACT to amend and reenact §31-15C-3 and §31-15C-14 of the Code of West Virginia, 1931, as amended, all relating to the continuation of the Broadband Deployment Council.

Be it enacted by the Legislature of West Virginia:

That §31-15C-3 and §31-15C-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 15C. BROADBAND DEPLOYMENT.

§31-15C-3. Broadband Deployment Council established; members of council; administrative support.

(a) The Broadband Deployment Council is continued. The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be,
essential governmental functions and for a public purpose. The council is created under the Department of Commerce for administrative, personnel and technical support services only.

(b) The council shall consist of eleven voting members, designated as follows:

(1) The Governor or his or her designee;

(2) The Secretary of Commerce or his or her designee;

(3) The Secretary of Administration or his or her designee;

(4) The Director of Homeland Security and Emergency Management or his or her designee; and

(5) Seven public members that serve at the will and pleasure of the Governor and are appointed by the Governor with the advice and consent of the Senate, as follows:

(i) One member representing employees of communications and cable providers who is a member or representative of a union representing communications workers;

(ii) One member representing telecommunications providers who provide broadband services in this state;

(iii) One member representing cable operators who provide broadband services in this state;

(iv) One member representing broadband equipment or device manufacturers;
(v) One member representing higher education or secondary education; and

(vi) Two members representing the general public who are residents of the state, one of whom shall represent rural communities, and who may not reside in the same congressional district.

(6) In addition to the eleven voting members of the council, the President of the Senate shall name two senators from the West Virginia Senate and the Speaker of the House shall name two delegates from the West Virginia House of Delegates, each to serve in the capacity of an ex officio, nonvoting advisory member of the council.

(c) The Secretary of Commerce or his or her designee shall chair the council and appoint one of the other council members to serve as vice chair. In the absence of the Secretary of Commerce or his or her designee, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(d) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.

(e) Six voting members of the council constitutes a quorum and the affirmative vote of at least the majority of those members present is necessary for any action taken by vote of the council.

(f) The council is part-time. Public members appointed by the Governor may pursue and engage in another business
or occupation or gainful employment. Any person employed
by, owning an interest in or otherwise associated with a
broadband deployment project, project sponsor or project
participant may serve as a council member and is not
disqualified from serving as a council member because of a
conflict of interest prohibited under section five, article two,
chapter six-b of this code and is not subject to prosecution for
violation of said section when the violation is created solely
as a result of his or her relationship with the broadband
deployment project, project sponsor or project participant so
long as the member recuses himself or herself from board
participation regarding the conflicting issue in the manner set
forth in legislative rules promulgated by the West Virginia
Ethics Commission.

(g) No member of the council who serves by virtue of his
or her office receives any compensation or reimbursement of
expenses for serving as a member. The public members and
members of any committees or subcommittees are entitled to
be reimbursed for actual and necessary expenses incurred for
each day or portion thereof engaged in the discharge of his or
her official duties in a manner consistent with the guidelines
of the Travel Management Office of the Department of
Administration.

§31-15C-14. Expiration of council.

The council shall continue to exist until December 31,
2014, unless sooner terminated, continued or reestablished
pursuant to an act of the Legislature.
AN ACT to amend and reenact §5B-2-6a of the Code of West Virginia, 1931, as amended, relating to brownfield economic development districts; and providing that governing bodies of municipalities and counties have regulatory and oversight authority over these districts.

Be it enacted by the Legislature of West Virginia:

That §5B-2-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-6a. Brownfield economic development districts; applications; fees; rules.

(a) Any property owner of a tract of land that is a brownfield or voluntary remediated site pursuant to article twenty-two, chapter twenty-two of this code may, if the site and surrounding area were involved in the extraction and processing of coal, limestone or other natural resources, apply to the Development Office to become a brownfield economic development district.
(1) Applicants for a brownfield economic development district must demonstrate that the district when designated will create significant economic development activity;

(2) Applicants shall submit a development plan that provides specific details on proposed financial investment, direct and indirect jobs to be created and the viability of the district;

(3) Brownfield economic development districts:

(A) May not contain single-family housing;

(B) Shall provide all the infrastructure within the district without cost to the state, county, public service district or local municipal government;

(4) Applicants shall demonstrate that were it not for this designation, the contemplated development would not be possible and that the development is in the best interest of the state;

(5) The applicant shall own or control the property within the district;

(6) All costs for the application process shall be borne by the applicant;

(7) An applicant shall demonstrate that the applicant has attempted to work in good faith with local officials in regard to land-use issues;

(8) Beginning July 1, 2011, an application for a brownfield economic development district may not be approved unless the district conforms to a county’s or municipality’s planning and zoning laws established pursuant
to the provisions of article seven, eight and nine, of chapter
eight-a of this code.

(9) Prior to granting a designation of brownfield economic
development district, the applicant shall provide
documentation that the applicant has met all the requirements
set forth in article twenty-two, chapter twenty-two of this code
to be designated as a brownfield site or voluntary remediated
site and is in compliance with the remediation plan;

(10) Nothing may be construed by this section to exempt
brownfield economic districts from environmental regulation
that would pertain to the development;

(11) The decision of the development office in regard to
an application is final; and

(12) Once designated, the district shall work in
conjunction with the regional brownfield assistance centers of
Marshall University and West Virginia University as specified
in section seven, article eleven, chapter eighteen-b of this
code.

(b) The development office shall propose rules for
legislative approval in accordance with the provisions of
article three, chapter twenty-nine-a of this code to implement
this section and the rules shall include, but not be limited to,
the application and time line process, notice provisions,
additional application consideration criteria and application
fees sufficient to cover the costs of the consideration of an
application. The development office shall promulgate
emergency rules pursuant to the provisions of section fifteen,
article three, chapter twenty-nine-a of this code by October 1,
2008, to facilitate the initial implementation of this section.
CHAPTER 18

(Com. Sub. for H. B. 3225 - By Delegates
M. Poling, Paxton, Perry, Ennis, Pethel,
Shaver, Moye, Smith, Lawrence and L. Phillips)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18-2C-2 and §18-2C-3 of the Code of West Virginia, 1931, as amended, all relating to harassment, intimidation or bullying of students; expanding the definition of harassment, intimidation or bullying; expanding the areas where harassment, intimidation and bullying are prohibited to include school buses and school bus stops; requiring county board and West Virginia Department of Education policies regarding harassment, intimidation or bullying; and establishing reporting requirements.

Be it enacted by the Legislature of West Virginia:

That §18-2C-2 and §18-2C-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2C. HARASSMENT, INTIMIDATION OR BULLYING PROHIBITION.

§18-2C-2. Definitions.

(a) As used in this article, "harassment, intimidation or bullying" means any intentional gesture, or any intentional
electronic, written, verbal or physical act, communication, transmission or threat that:

(1) A reasonable person under the circumstances should know will have the effect of any one or more of the following:

(A) Physically harming a student;

(B) Damaging a student’s property;

(C) Placing a student in reasonable fear of harm to his or her person; or

(D) Placing a student in reasonable fear of damage to his or her property;

(2) Is sufficiently severe, persistent or pervasive that it creates an intimidating, threatening or emotionally abusive educational environment for a student; or

(3) Disrupts or interferes with the orderly operation of the school.

(b) As used in this article, an electronic act, communication, transmission or threat includes but is not limited to one which is administered via telephone, wireless phone, computer, pager or any electronic or wireless device whatsoever, and includes but is not limited to transmission of any image or voice, email or text message using any such device.

§18-2C-3. Policy prohibiting harassment, intimidation or bullying.

(a) Each county board shall establish a policy prohibiting harassment, intimidation or bullying. Each county board has
control over the content of its policy as long as the policy contains, at a minimum, the requirements of subdivision (b) of this section. The policy shall be adopted through a process that includes representation of parents or guardians, school employees, school volunteers, students and community members.

(b) Each county board policy shall, at a minimum, include the following components:

(1) A statement prohibiting harassment, intimidation or bullying of any student on school property, a school bus, at a school bus stop or at school sponsored events;

(2) A definition of harassment, intimidation or bullying no less inclusive than that in section two of this article;

(3) A procedure for reporting prohibited incidents;

(4) A requirement that school personnel report prohibited incidents of which they are aware;

(5) A requirement that parents or guardians of any student involved in an incident prohibited pursuant to this article be notified;

(6) A procedure for documenting any prohibited incident that is reported;

(7) A procedure for responding to and investigating any reported incident;

(8) A strategy for protecting a victim from additional harassment, intimidation or bullying, and from retaliation following a report;
(9) A disciplinary procedure for any student guilty of harassment, intimidation or bullying;

(10) A requirement that any information relating to a reported incident is confidential, and exempt from disclosure under the provisions of chapter twenty-nine-b of this code; and

(11) A requirement that each county board shall input into the uniform integrated regional computer information system (commonly known as the West Virginia Education Information System) described in section twenty-six, article two of this chapter, and compile an annual report regarding the means of harassment, intimidation or bullying that have been reported to them, and the reasons therefor, if known. The West Virginia Department of Education shall compile the information and report it annually beginning July 1, 2012, to the Legislative Oversight Committee on Education Accountability.

(c) Each county board shall adopt the policy and submit a copy to the State Superintendent of Schools by December 1, 2011.

(d) To assist county boards in developing their policies, the West Virginia Department of Education shall develop a model policy applicable to grades kindergarten through twelfth. The model policy shall be issued by September 1, 2011.

(e) Notice of the county board’s policy shall appear in any student handbook, and in any county board publication that sets forth the comprehensive rules, procedures and standards of conduct for the school.
CHAPTER 19

(Com. Sub. for H. B. 2542 -
By Delegate Brown)

[Amended and again passed, in an effort to meet the objections of
the Governor, March 18, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §37-13A-1, §37-13A-2 and §37-
13A-5 of the Code of West Virginia, 1931, as amended, all
relating to access to cemeteries and grave sites located on
privately owned land generally; allowing access for the
purposes of installation of monuments or grave markers;
allowing access to an authorized person who has the written
permission of a family member or descendant of a deceased
person to enter the property solely for the purpose of installing
monuments or grave markers or preparing the cemetery plot for
burying a deceased person by those granted rights of burial to
that plot; requiring notice and description of monuments or
grave markers to be installed; permitting denial of installation
by property owner; and providing injunctive relief.

Be it enacted by the Legislature of West Virginia:

West Virginia, 1931, as amended, be amended and reenacted, all to
read as follows:
ARTICLE 13A. GRAVES LOCATED UPON PRIVATELY OWNED LANDS.

§37-13A-1. Access of certain persons to cemeteries and graves located on private land.

(a) Any authorized person who wishes to visit a cemetery or grave site located on privately owned land and for which no public ingress or egress is available, shall have the right to reasonable ingress or egress for the purposes described in subsection (c) of this section after providing the owner of the privately owned land with reasonable notice as defined in subsection (b) of this section.

(b) An authorized person intending to visit the cemetery or grave site for the purpose of installing a monument or grave marker pursuant to subdivision (2), subsection (c) of this section, shall give reasonable notice to the property owner which is to include a description of the monument or grave marker to be installed. As used in this article, "reasonable notice" means written notice of the date and time the authorized person intends to visit the cemetery or grave site delivered to the property owner at least ten days prior to the date of the intended visit.

(c) The right of access to cemeteries or grave sites provided in subsection (a) of this section shall be during reasonable hours and only for the purposes of:

(1) Visiting graves;

(2) Maintaining the grave site or cemetery, including the installation of a monument or a grave marker: Provided, That a property owner may deny access to the cemetery or grave site because the owner objects to the installation of the type or style of the monument or grave marker that has been described in the notice given pursuant to subsection (b) of this section;

(3) Burying a deceased person in a cemetery plot by those granted rights of burial to that plot; and
(4) Conducting genealogy research.

(d)(1) The access route to the cemetery or grave site may be designated by the landowner if no traditional access route is obviously visible by a view of the property. If no traditional access route is obviously visible by a view of the property, the landowner is not required to incur any expense in improving a designated access route.

(2) Unless the property owner has caused a traditional access route to the cemetery or grave site to be unusable or unavailable, the property owner is not required to make any improvements to their property to satisfy the requirement of providing reasonable ingress and egress to a cemetery or burial site pursuant to this section.

(e) A property owner who is required to permit authorized persons reasonable ingress and egress for the purpose of visiting a cemetery or grave site and who acts in good faith and in a reasonable manner pursuant to this section is not liable for any personal injury or property damage that occurs in connection with the access to the cemetery or grave site.

(f) Nothing in this section shall be construed to limit or modify the power or authority of a court in any action of law or equity to order the disinterment and removal of the remains from a cemetery and interment in a suitable location.


In this article:

(1) “Authorized person” means:

(A) A family member, close friend or descendant of a deceased person;
(B) A cemetery plot owner;

(C) A person who has the written permission of a family member or descendant of a deceased person to enter the property solely for the purpose of installing monuments or grave markers or preparing the cemetery plot for burying a deceased person by those granted rights of burial to that plot; or

(D) A person engaged in genealogy research.

(2) “Governmental subdivision” means any county commission or municipality.

(3) “Reasonable ingress and egress” or “reasonable access” means access to the cemetery or grave site within ten days of the receipt of written notice of the intent to visit the cemetery or grave site. If the property owner cannot provide reasonable access to the cemetery or grave site on the desired date, the property owner shall provide reasonable alternative dates when the property owner can provide access within five days of the receipt of the initial notice.


(a) An authorized person denied reasonable access under the provisions of this article, including the denial of permission to use vehicular access or the denial of permission to access the cemetery or grave site to install a monument or grave marker, may institute a proceeding in the circuit court of the county in which the cemetery or grave site is located to enjoin the owner of the private lands on which the cemetery or grave site is located, or his or her agent, from denying the authorized person reasonable ingress and egress to the cemetery or grave site for the purposes set forth in this article. In granting relief, the court may set the frequency of access, hours and duration of the access.
(b) The court or the judge thereof may issue a preliminary injunction in any case pending a decision on the merits of any application filed without requiring the filing of a bond or other equivalent security.

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CHAPTER 20

(H. B. 3134 - By Delegates Brown, Frazier, Moore, Miley, Poore and Fleischauer)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-14-408 and §48-14-410 of said code; and to amend and reenact §48-24-106 of said code, all relating to child support enforcement; lowering the accrued interest rate; requiring employers provide certain information to the Bureau for Child Support Enforcement; extending the time parties may agree to for payment of arrearages from twenty-four to sixty months; and making various technical corrections.

Be it enacted by the Legislature of West Virginia:

That §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-14-408 and §48-14-410 of said code be amended and reenacted; and
that §48-24-106 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-204. Arrearages or past due support defined.

"Arrearages" or "past due support" means the total of any matured, unpaid installments of child support required to be paid by an order entered or modified by a court of competent jurisdiction, or by the order of a magistrate court of this state, and shall stand, by operation of law, as a decretal judgment against the obligor owing such support. The amount of unpaid support shall bear interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time. Except as provided in rule 23 of rules of practice and procedure for family law and as provided in section 1-302, a child support order may not be retroactively modified so as to cancel or alter accrued installments of support.

§48-1-244. Support defined.

"Support" means the payment of money, including interest:

(1) For a child or spouse, ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time;
(2) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or

(3) For a mother, ordered by a court of competent jurisdiction, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

§48-1-302. Calculation of interest.

(a) Notwithstanding any other provisions of the code, if an obligation to pay interest arises under this chapter, the rate of interest is five percent per annum and proportionate thereto for a greater or lesser sum, or for a longer or shorter time. Interest awarded shall only be simple interest and nothing in this section may be construed to permit awarding of compound interest. Interest accrues only upon the outstanding principal of such obligation.

(b) Notwithstanding any other provision of law, no court may award or approve prejudgment interest in a domestic relations action against a party unless the court finds, in writing, that the party engaged in conduct that would violate subsection (b), Rule 11 of the West Virginia Rules of Civil Procedure. If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the offending representation was presented to the court pursuant to subsection (a) of this section.

(c) Upon written agreement by both parties, an obligor may petition the court to enter an order conditionally suspending the collection of all or part of the interest that has accrued on past-due child support prior to the date of the
agreement: Provided, That said agreement shall also establish a reasonable payment plan which is calculated to fully discharge all arrearages within sixty months. Upon successful completion of the payment plan, the court shall enter an order which permanently relieves the obligor of the obligation to pay the accrued interest. If the obligor fails to comply with the terms of the written agreement, then the court shall enter an order which reinstates the accrued interest.

(d) Amendments to this section enacted by the Legislature during the 2006 regular session shall become effective January 1, 2007.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-408. Determination of amounts to be withheld.

Notwithstanding any other provision of this code to the contrary which provides for a limitation upon the amount which may be withheld from earnings through legal process, the amount of an obligor’s aggregate disposable earnings for any given workweek which may be withheld as support payments is to be determined in accordance with the provisions of this subsection, as follows:

(1) After ascertaining the status of the payment record of the obligor under the terms of the support order, the payment record shall be examined to determine whether any arrearage is due for amounts which should have been paid prior to a twelve-week period which ends with the workweek for which withholding is sought to be enforced.

(2) Prior to January 1, 2001, when none of the withholding is for amounts which came due prior to such twelve-week period, then:
(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty percent of the obligor’s disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty percent of the obligor’s disposable earnings for that week.

(3) Prior to January 1, 2001, when a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) Where the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty-five percent of the obligor’s disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor’s disposable earnings for that week.

(4) Beginning January 1, 2001, when none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty percent of the obligor’s disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this
subdivision, the amount withheld may not exceed fifty percent of the obligor's disposable earnings for that week.

(5) Beginning January 1, 2001, when a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty-five percent of the obligor's disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty-five percent of the obligor's disposable earnings for that week.

(6) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this section, it shall be a further limitation that when the current month's obligation plus arrearages are being withheld from salaries or wages in no case shall the total amounts withheld for the current month's obligation plus arrearage exceed the amounts withheld for the current obligation by an amount greater than twenty-five percent of the current monthly support obligation.

(7) The provisions of this section shall apply directly to the withholding of disposable earnings of an obligor regardless of whether the obligor is paid on a weekly, biweekly, monthly or other basis.

(8) The Bureau for Child Support Enforcement has the authority to prorate the current support obligation in accordance with the pay cycle of the source of income. This prorated current support obligation shall be known as the "adjusted support obligation". The current support obligation
or the adjusted support obligation is the amount, if unpaid, on
which interest will be charged.

(9) When an obligor acts so as to purposefully minimize
his or her income and to thereby circumvent the provisions of
part 4 of this article which provide for withholding from
income of amounts payable as support, the amount to be
withheld as support payments may be based upon the
obligor’s potential earnings rather than his or her actual
earnings, and such obligor may not rely upon the percentage
limitations set forth in this subsection which limit the amount
to be withheld from disposable earnings.

(10) Notwithstanding any other provision of this section,
the Bureau for Child Support Enforcement may withhold not
more than fifty percent of any earnings denominated as an
employment-related bonus to satisfy an outstanding child
support arrearage.

(A) Two weeks prior to issuing any bonus equal to or in
excess of $100 to an employee or employees, an employer
shall notify the Bureau for Child Support Enforcement, in a
manner prescribed by the bureau, of the employee or
employees' name, address, social security number, date of
birth and amount of the bonus.

(B) If it is determined that an employee owes an
arrearage, an income withholding notice shall be issued
pursuant to chapter forty-eight, article fourteen, to the
employer.

§48-14-410. Sending amounts withheld to bureau; notice.

After implementation in accordance with the provisions
of section 14-409, a source of income shall send the amount
to be withheld from the obligor’s income to the Bureau for
Child Support Enforcement and shall notify the Bureau for
5 Child Support Enforcement of the date of withholding, the
6 same date that the obligor is paid. If the source of income has
7 more than fifty employees, the source of income shall submit
8 the support withheld via electronic means in a manner
9 prescribed by the Bureau for Child Support Enforcement.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-106. Establishing paternity by acknowledgment of
natural father.

A written, notarized acknowledgment executed pursuant
1 to the provisions of section ten, article five, chapter sixteen
2 of this code legally establishes the man as the father of the
3 child for all purposes and child support may be established in
4 accordance with the support guidelines set forth in article 13-
5 101, et seq.

CHAPTER 21

(Com Sub. for S. B. 216 - By Senators Prezioso,
Palumbo, Edgell, Foster, Kessler (Acting President),
Minard, Unger, Williams, Boley, Jenkins,
Snyder, Browning, McCabe, Stollings,
Plymale, Laird, Miller, Klempa and Nohe)

[Passed March 7, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §49-1-3 of the Code of West
Virginia, 1931, as amended, relating to modifying the
definition of “imminent danger to the physical well-being of a
child” with regard to child abuse and neglect to include alcohol
and substance abuse on the part of the parent, guardian or custodian.

Be it enacted by the Legislature of West Virginia:

That §49-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PURPOSES; DEFINITIONS.

§49-1-3. Definitions relating to abuse and neglect.

As used in this chapter:

(1) “Abused child” means a child whose health or welfare is harmed or threatened by:

(A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home; or

(B) Sexual abuse or sexual exploitation; or

(C) The sale or attempted sale of a child by a parent, guardian or custodian in violation of section sixteen, article four, chapter forty-eight of this code; or

(D) Domestic violence as defined in section two hundred two, article twenty-seven, chapter forty-eight of this code.

In addition to its broader meaning, physical injury may include an injury to the child as a result of excessive corporal punishment.

(2) “Abusing parent” means a parent, guardian or other custodian, regardless of his or her age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged by the court to constitute child abuse or neglect.
(3) “Battered parent” means a parent, guardian or other custodian who has been judicially determined not to have condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due to being the victim of domestic violence as defined by section two hundred two, article twenty-seven, chapter forty-eight of this code, which domestic violence was perpetrated by the person or persons determined to have abused or neglected the child or children.

(4) “Child abuse and neglect” or “child abuse or neglect” means physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the child's welfare, under circumstances which harm or threaten the health and welfare of the child.

(5) “Child abuse and neglect services” means social services which are directed toward:

(A) Protecting and promoting the welfare of children who are abused or neglected;

(B) Identifying, preventing and remedying conditions which cause child abuse and neglect;

(C) Preventing the unnecessary removal of children from their families by identifying family problems and assisting families in resolving problems which could lead to a removal of children and a breakup of the family;

(D) In cases where children have been removed from their families, providing services to the children and the families so as to reunify such children with their families or some portion thereof;

(E) Placing children in suitable adoptive homes when reunifying the children with their families, or some portion thereof, is not possible or appropriate; and
(F) Assuring the adequate care of children who have been placed in the custody of the department or third parties.

(6) "Child advocacy center" means a community-based organization that is a member in good standing with the West Virginia Child Abuse Network, Inc., and is working to implement the following program components:

(A) Child-appropriate/child-friendly facility: A child advocacy center provides a comfortable, private, child-friendly setting that is both physically and psychologically safe for clients.

(B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse allegations includes representation from the following: Law enforcement; child protective services; prosecution; mental health; medical; victim advocacy; child advocacy center.

(C) Organizational capacity: A designated legal entity responsible for program and fiscal operations has been established and implements basic sound administrative practices.

(D) Cultural competency and diversity: The CAC promotes policies, practices and procedures that are culturally competent. Cultural competency is defined as the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the local community.

(E) Forensic interviews: Forensic interviews are conducted in a manner which is of a neutral, fact finding nature and coordinated to avoid duplicative interviewing.

(F) Medical evaluation: Specialized medical evaluation and treatment are to be made available to CAC clients as part of the team response, either at the CAC or through coordination and referral with other specialized medical providers.
(G) Therapeutic intervention: Specialized mental health services are to be made available as part of the team response, either at the CAC or through coordination and referral with other appropriate treatment providers.

(H) Victim support/advocacy: Victim support and advocacy are to be made available as part of the team response, either at the CAC or through coordination with other providers, throughout the investigation and subsequent legal proceedings.

(I) Case review: Team discussion and information sharing regarding the investigation, case status and services needed by the child and family are to occur on a routine basis.

(J) Case tracking: CACs must develop and implement a system for monitoring case progress and tracking case outcomes for team components: Provided, That a child advocacy center may establish a safe exchange location for children and families who have a parenting agreement or an order providing for visitation or custody of the children that require a safe exchange location.

(7) “Imminent danger to the physical well-being of the child” means an emergency situation in which the welfare or the life of the child is threatened. Such emergency situation exists when there is reasonable cause to believe that any child in the home is or has been sexually abused or sexually exploited, or reasonable cause to believe that the following conditions threaten the health or life of any child in the home:

(A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling or a babysitter or other caretaker;

(B) A combination of physical and other signs indicating a pattern of abuse which may be medically diagnosed as battered child syndrome;

(C) Nutritional deprivation;
(D) Abandonment by the parent, guardian or custodian; (E) Inadequate treatment of serious illness or disease; (F) Substantial emotional injury inflicted by a parent, guardian or custodian; (G) Sale or attempted sale of the child by the parent, guardian or custodian; or (H) The parent, guardian or custodian’s abuse of alcohol, or drugs or other controlled substance as defined in section one hundred one, article one, chapter sixty-a of this code, has impaired his or her parenting skills to a degree as to pose an imminent risk to a child’s health or safety.

(8) “Legal guardianship” means the permanent relationship between a child and caretaker, established by order of the circuit court having jurisdiction over the child, pursuant to the provisions of this chapter and chapter forty-eight of this code.

(9) “Multidisciplinary team” means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, child care and law-enforcement personnel, social workers, psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children. “Community team” means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

(10) (A) “Neglected child” means a child:
(i) Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child's parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or

(ii) Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child's parent or custodian;

(B) "Neglected child" does not mean a child whose education is conducted within the provisions of section one, article eight, chapter eighteen of this code.

(11) "Parent" means an individual defined as a parent by law or on the basis of a biological relationship, marriage to a person with a biological relationship, legal adoption or other recognized grounds.

(12) "Parental rights" means any and all rights and duties regarding a parent to a minor child, including, but not limited to, custodial rights and visitational rights and rights to participate in the decisions affecting a minor child.

(13) "Parenting skills" means a parent's competencies in providing physical care, protection, supervision and psychological support appropriate to a child's age and state of development.

(14) "Sexual abuse" means:

(A) As to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may
have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact;

(B) As to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in, or knowingly procure another person to engage in, with such child, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct:

(i) Sexual intercourse;

(ii) Sexual intrusion; or

(iii) Sexual contact.

(C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.

(15) “Sexual contact” means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(16) “Sexual exploitation” means an act whereby:

(A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to
engage in sexually explicit conduct as that term is defined in
section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian or custodian persuades, induces,
entices or coerces a child to display his or her sex organs for
the sexual gratification of the parent, guardian, custodian or
a third person, or to display his or her sex organs under
circumstances in which the parent, guardian or custodian
knows such display is likely to be observed by others who
would be affronted or alarmed.

(17) “Sexual intercourse” means sexual intercourse as
that term is defined in section one, article eight-b, chapter
sixty-one of this code.

(18) “Sexual intrusion” means sexual intrusion as that
term is defined in section one, article eight-b, chapter
sixty-one of this code.

(19) “Placement” means any temporary or permanent
placement of a child who is in the custody of the state in any
foster home, group home or other facility or residence.

(20) “Serious physical abuse” 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.

(21) “Siblings” means children who have at least one
biological parent in common or who have been legally
adopted by the same parents or parent.

(22) “Time-limited reunification services” means
individual, group and family counseling, inpatient, residential
or outpatient substance abuse treatment services, mental
health services, assistance to address domestic violence,
services designed to provide temporary child care and
therapeutic services for families, including crisis nurseries
and transportation to or from any such services, provided
during fifteen of the most recent twenty-two months a child
has been in foster care, as determined by the earlier date of
the first judicial finding that the child is subjected to abuse or
neglect, or the date which is sixty days after the child is
removed from home.

CHAPTER 22

(Com Sub. for H. B. 2750 - By Delegates Frazier,
Mahan, Fleischauer, Caputo, Moore, Hunt and Skaff)

[Passed March 9, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §49-6-3 and §49-6-5 of the Code of
West Virginia, 1931, as amended, all relating to making the
commission of sexual assault or sexual abuse against certain
persons a basis for denying someone temporary or permanent
custody of a minor child or children.

Be it enacted by the Legislature of West Virginia:

That §49-6-3 and §49-6-5 of the Code of West Virginia, 1931,
as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT
OR ABUSE.

§49-6-3. Petition to court when child believed neglected or
abused -- Temporary custody.

(a) Upon the filing of a petition, the court may order that
the child alleged to be an abused or neglected child be
delivered for not more than ten days into the custody of the state department or a responsible person found by the court to be a fit and proper person for the temporary care of the child pending a preliminary hearing, if it finds that:

(1) There exists imminent danger to the physical well-being of the child; and

(2) There are no reasonably available alternatives to removal of the child, including, but not limited to, the provision of medical, psychiatric, psychological or homemaking services in the child’s present custody: Provided, That where the alleged abusing person, if known, is a member of a household, the court shall not allow placement pursuant to this section of the child or children in said home unless the alleged abusing person is or has been precluded from visiting or residing in said home by judicial order. In a case where there is more than one child in the home, or in the temporary care, custody or control of the alleged offending parent, the petition shall so state, and notwithstanding the fact that the allegations of abuse or neglect may pertain to less than all of such children, each child in the home for whom relief is sought shall be made a party to the proceeding. Even though the acts of abuse or neglect alleged in the petition were not directed against a specific child who is named in the petition, the court shall order the removal of such child, pending final disposition, if it finds that there exists imminent danger to the physical well-being of the child and a lack of reasonable available alternatives to removal. The initial order directing such custody shall contain an order appointing counsel and scheduling the preliminary hearing, and upon its service shall require the immediate transfer of custody of such child or children to the department or a responsible relative which may include any parent, guardian, or other custodian. The court order shall state:
(A) That continuation in the home is contrary to the best interests of the child and why; and

(B) Whether or not the department made reasonable efforts to preserve the family and prevent the placement or that the emergency situation made such efforts unreasonable or impossible. The order may also direct any party or the department to initiate or become involved in services to facilitate reunification of the family.

(b) Whether or not the court orders immediate transfer of custody as provided in subsection (a) of this section, if the facts alleged in the petition demonstrate to the court that there exists imminent danger to the child, the court may schedule a preliminary hearing giving the respondents at least five days' actual notice. If the court finds at the preliminary hearing that there are no alternatives less drastic than removal of the child and that a hearing on the petition cannot be scheduled in the interim period, the court may order that the child be delivered into the temporary custody of the department or a responsible person or agency found by the court to be a fit and proper person for the temporary care of the child for a period not exceeding sixty days: Provided, That the court order shall state:

(1) That continuation in the home is contrary to the best interests of the child and set forth the reasons therefor;

(2) whether or not the department made reasonable efforts to preserve the family and to prevent the child’s removal from his or her home;

(3) Whether or not the department made reasonable efforts to preserve the family and to prevent the placement or that the emergency situation made such efforts unreasonable or impossible; and
(4) What efforts should be made by the department, if any, to facilitate the child’s return home: Provided, however, that if the court grants an improvement period as provided in section twelve of this article, the sixty-day limit upon temporary custody is waived.

(c) If a child or children shall, in the presence of a child protective service worker, be in an emergency situation which constitutes an imminent danger to the physical well-being of the child or children, as that phrase is defined in section three, article one of this chapter, and if such worker has probable cause to believe that the child or children will suffer additional child abuse or neglect or will be removed from the county before a petition can be filed and temporary custody can be ordered, the worker may, prior to the filing of a petition, take the child or children into his or her custody without a court order: Provided, that after taking custody of such child or children prior to the filing of a petition, the worker shall forthwith appear before a circuit judge or a juvenile referee of the county wherein custody was taken, or if no such judge or referee be available, before a circuit judge or a juvenile referee of an adjoining county, and shall immediately apply for an order ratifying the emergency custody of the child pending the filing of a petition. The circuit court of every county in the state shall appoint at least one of the magistrates of the county to act as a juvenile referee, who shall serve at the will and pleasure of the appointing court, and who shall perform the functions prescribed for such position by the provisions of this subsection. The parents, guardians or custodians of the child or children may be present at the time and place of application for an order ratifying custody, and if at the time the child or children are taken into custody by the worker, the worker knows which judge or referee is to receive the application, the worker shall so inform the parents, guardians or custodians. The application for emergency custody may be on forms prescribed by the Supreme Court of Appeals or
prepared by the prosecuting attorney or the applicant, and shall set forth facts from which it may be determined that the probable cause described above in this subsection exists. Upon such sworn testimony or other evidence as the judge or referee deems sufficient, the judge or referee may order the emergency taking by the worker to be ratified. If appropriate under the circumstances, the order may include authorization for an examination as provided for in subsection (b), section four of this article. If a referee issues such an order, the referee shall by telephonic communication have such order orally confirmed by a circuit judge of the circuit or an adjoining circuit who shall on the next judicial day enter an order of confirmation. If the emergency taking is ratified by the judge or referee, emergency custody of the child or children shall be vested in the department until the expiration of the next two judicial days, at which time any such child taken into emergency custody shall be returned to the custody of his or her parent or guardian or custodian unless a petition has been filed and custody of the child has been transferred under the provisions of section three of this article.

(d) For purposes of the court’s consideration of temporary custody pursuant to the provisions of subsection (a) or (b) of this section, the department is not required to make reasonable efforts to preserve the family if the court determines:

(1) The parent has subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child’s other parent, guardian or custodian, another child of the parent, or any
other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime;

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(E) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent.

(3) The parental rights of the parent to another child have been terminated involuntarily.

§49-6-5. Disposition of neglected or abused children.

(a) Following a determination pursuant to section two of this article wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term case plan means a written document that includes, where applicable, the requirements of the family case plan as provided for in section three, article six-d of this chapter and that also includes at least the following: A description of the type of home or institution in which the
child is to be placed, including a discussion of the appropriateness of the placement and how the agency which receives proper care and that services are provided to the parents, child and foster parents in order to improve the conditions in the parent(s) home; facilitate return of the child to his or her own home or the permanent placement of the child; and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child. The term “permanency plan” refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian may be made at the same time reasonable efforts are made to prevent removal or to make it possible for a child to safely return home. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative placement for the child to include approximate time lines for when such placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child’s case plan shall be sent to the child’s attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard. The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;
45 (3) Return the child to his or her own home under
supervision of the department;

47 (4) Order terms of supervision calculated to assist the
child and any abusing parent or battered parent or parents or
custodian which prescribe the manner of supervision and care
of the child and which are within the ability of any parent or
parents or custodian to perform;

52 (5) Upon a finding that the abusing parent or battered
parent or parents are presently unwilling or unable to provide
adequately for the child’s needs, commit the child
temporarily to the custody of the state department, a licensed
private child welfare agency or a suitable person who may be
appointed guardian by the court. The court order shall state:

58 (A) That continuation in the home is contrary to the best
interests of the child and why;

60 (B) Whether or not the department has made reasonable
efforts, with the child’s health and safety being the
paramount concern, to preserve the family, or some portion
thereof, and to prevent or eliminate the need for removing the
child from the child’s home and to make it possible for the
child to safely return home;

66 (C) What efforts were made or that the emergency
situation made such efforts unreasonable or impossible; and

68 (D) The specific circumstances of the situation which
made such efforts unreasonable if services were not offered
by the department. The court order shall also determine under
what circumstances the child’s commitment to the
department shall continue. Considerations pertinent to the
determination include whether the child should:

74 (i) Be continued in foster care for a specified period;
(ii) Be considered for adoption;

(iii) Be considered for legal guardianship;

(iv) Be considered for permanent placement with a fit and willing relative; or

(v) Be placed in another planned permanent living arrangement, but only in cases where the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i), (ii), (iii) or (iv) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with section five, article seven of this chapter; or

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child's need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and
(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child fourteen years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child’s health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child’s home and to make it possible for the child to safely return home, or that the emergency situation made such efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that such efforts were unreasonable due to specific circumstances.

(7) For purposes of the court’s consideration of the disposition custody of a child pursuant to the provisions of this subsection, the department is not required to make
reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit such a murder or voluntary manslaughter or been an accessory before or after the fact to either such crime;

(iv) Committed a felonious assault that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(v) Committed sexual assault or sexual abuse of the child, the child’s other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent.
(C) The parental rights of the parent to another child have been terminated involuntarily.

(b) As used in this section, "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected" shall mean that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Such conditions shall be considered to exist in the following circumstances, which shall not be exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and such person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child’s return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare or life of the child;

(4) The abusing parent or parents have abandoned the child;
(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems or assist the abusing parent or parents in fulfilling their responsibilities to the child;

(6) The abusing parent or parents have incurred emotional illness, mental illness or mental deficiency of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills; or

(7) The battered parent’s parenting skills have been seriously impaired and said person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(c) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.
AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Attorney General; Department of Environmental Protection; Department of Health and Human Resources; Department of Health and Human Resources/Bureau for Public Health; Division of Corrections; Division of Highways; Educational Broadcasting Authority; Public Service Commission; Regional Jail and Correctional Facility Authority and the State Tax Department to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the state and agencies thereof and in respect to each of the following claims, the
Legislature adopts those findings of fact as its own and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the Auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Attorney General's Office:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Angela Walters .................. $2,740.00

(b) Claims against the Department of Environmental Protection:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) George V. Piper .................. $180.00

(c) Claim against the Department of Health and Human Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Charleston Area Medical Center .... $478.29

(d) Claim against the Department of Health and Human Resources/Bureau for Public Health:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) National Medical Services Inc .... $28,664.28
(2) Verizon Network Integration Corp.. $14,766.66
(e) Claims against the Division of Corrections:

(TO BE PAID FROM GENERAL REVENUE FUND)

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332  (249) Connie Marino. ............................. $199,000.00
333  (250) Michael Markus. ........................... $106.43
334  (251) James Marshall. ........................... $181.79
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<td>Michael W. Steele</td>
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(g) Claim against the Educational Broadcasting Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

1. Atlantic Broadband Group LLC ........ $9,650.15

(h) Claim against the Public Service Commission:

(TO BE PAID FROM SPECIAL REVENUE FUND)
(1) Pomeroy IT Solutions. .................. $695.40

(h) Claims against the Regional Jail and Correctional Facility Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Sammy Ray Copley. ...................... $43.09
(2) Shawn Edwards. .......................... $25.00
(3) Charles E. Jarrett. ...................... $326.00
(4) Huong Thi Phung. ....................... $15,100.00
(5) Donald Berkley Surber Jr. ............... $500.00
(6) Calvin C. Love. .......................... $464.00
(7) Anthony R. White. ...................... $304.00

(i) Claim against the State Tax Department:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) George V. Piper. ....................... $150.00

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Court of Claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Court of Claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22A-6-11; relating to directing the Board of Coal Mine Health and Safety to conduct study of whether to require installation of mining machines automatic shut-offs when methane is detected.

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 §22A-6-11, to read as follows:

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.


Study of Automatic shut-down of mining machines. -- The Board of Coal Mine Health and Safety is directed to conduct a study of the safety of installation of methane detection shut-off devices on machine extraction apparatus, including, but not limited to, long wall sheers and cutter heads. The Board shall study the benefits and appropriateness of requiring the
installation of these devices, to determine if there are safety benefits, and whether the Board recommends to the Legislature that requirements regarding mandating these devices in underground mines is warranted. The Board shall report to the Legislature’s Joint Committee on Government and Finance by December 31, 2011 with recommendations regarding whether it is appropriate to implement any requirements.

CHAPTER 25


AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22A-6-12; relating to directing the Board of Coal Mine Health and Safety to conduct a study of strengthening of protections for whistleblowers of unsafe working conditions in mines.

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 §22A-6-12, to read as follows:
ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-12. Study of whistleblower protections.

Study of Whistleblower protections. -- The Board of Coal Mine Health and Safety is directed to conduct a study of the need to expand protections for whistleblowers and other miners who refuse to work in situations they perceive as unsafe in underground mines. The Board shall study the benefits and appropriateness of requiring additional protections that will encourage miners to withdrawal from and report unsafe working conditions. The Board shall investigate whether any pattern of retribution exists against these persons, and if so make recommendations to the Legislature regarding implementing additional protections. The Board shall report to the Legislature's Joint Committee on Government and Finance by December 31, 2011 with recommendations regarding whether it is appropriate to implement any additional protections.

CHAPTER 26

(H. B. 2935 - By Delegates Miley, Ferro and Frazier)

[Passed March 8, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]
Code of West Virginia, 1931, as amended, all relating to outdated and obsolete sections concerning voting machines in general no longer approved for use in elections.

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

§1. **Repeal of article creating use of certain voting machines in West Virginia**

§3-4-1, §3-4-2, §3-4-3, §3-4-4, §3-4-5, §3-4-6, §3-4-7, §3-4-8, §3-4-9, §3-4-10, §3-4-11, §3-4-12, §3-4-12a, §3-4-13, §3-4-14, §3-4-15, §3-4-16, §3-4-17, §3-4-18, §3-4-19, §3-4-20, §3-4-21, §3-4-22, §3-4-23, §3-4-24, §3-4-25, §3-4-26, §3-4-27, §3-4-28, §3-4-29, §3-4-30, §3-4-31 and §3-4-32 of the Code of West Virginia, 1931, as amended, are hereby repealed.

**CHAPTER 27**

(Com. Sub. for S. B. 582 - By Senators Miller and Williams)

[Passed March 4, 2011; in effect July 1, 2011.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §29-4-15 of the Code of West Virginia, 1931, as amended, relating to commissioners appointed by the Governor to acknowledge signatures; and designating specific criteria for seals of commissioners.

*Be it enacted by the Legislature of West Virginia:*
That §29-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. NOTARIES PUBLIC AND COMMISSIONERS.

§29-4-15. Seal of such commissioner.

(a) Each commissioner shall have an official seal which shall be a rubber stamp and shall contain:

(1) The words “Official Seal”;  

(2) The words “Commissioner for West Virginia”;  

(3) The commissioner’s name exactly as it is written as an official signature;  

(4) The city and state of residence of the commissioner;  

(5) The words “My Commission Expires” and the date of expiration of the commission.

(b) A stamped imprint of the seal, together with the official signature, shall be filed in the office of the Secretary of State.

(c) A person holding a commission prior to July 1, 2011, is not required to obtain or use a rubber stamp seal with the specifications set out in subsection (a) of this section, prior to the expiration of that commission.
AN ACT to amend and reenact §36B-3-102 of the Code of West Virginia, 1931, as amended, relating to permitting unit owners’ associations to institute legal action against a unit owner to collect dues or assessments that are overdue or in arrears to the association.

Be it enacted by the Legislature of West Virginia:

That §36B-3-102 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. MANAGEMENT OF THE COMMON INTEREST COMMUNITY.

§36B-3-102. Powers of unit owners’ association.

1 (a) Except as provided in subsection (b), and subject to the provisions of the declaration, the association, even if unincorporated, may:

2 (1) Adopt and amend bylaws and rules and regulations;

3 (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;
(3) Hire and discharge managing agents and other employees, agents, and independent contractors;

(4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the common interest community;

(5) Make contracts and incur liabilities;

(6) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(7) Cause additional improvements to be made as a part of the common elements;

(8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real estate or personal property, but (i) common elements in a condominium or planned community may be conveyed or subjected to a security interest only pursuant to section one hundred twelve of this article and (ii) part of a cooperative may be conveyed, or all or part of a cooperative may be subjected to a security interest, only pursuant to section one hundred twelve of this article;

(9) Grant easements, leases, licenses, and concessions through or over the common elements;

(10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in subsections (1) and (4), section one hundred two, article two of this chapter, and for services provided to unit owners;

(11) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable
fines for violations of the declaration, bylaws, rules, and regulations of the association;

(12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by section one hundred nine, article four of this chapter, or statements of unpaid assessments;

(13) Provide for the indemnification of its officers and executive board and maintain directors’ and officers’ liability insurance;

(14) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration expressly so provides;

(15) Exercise any other powers conferred by the declaration or bylaws;

(16) Exercise all other powers that may be exercised in this state by legal entities of the same type as the association;

(17) Institute litigation or administrative proceedings in its own name against a unit owner for the collection of dues or assessments that are overdue or in arrears; and

(18) Exercise any other powers necessary and proper for the governance and operation of the association.

(b) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.
AN ACT to amend and reenact §60A-1-101 the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-204 of said code; and to amend and reenact §60A-4-401 of said code, all relating to adding certain cannabinoids, hallucinogens and stimulants to the Schedule I list of controlled substances; proving penalties; and clarifying references to definitions.

Be it enacted by the Legislature of West Virginia:

That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-2-204 of said code be amended and reenacted; and that §60A-4-401 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS.


1 As used in this act:

2 (a) “Administer” means the direct application of a controlled substance whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:
(1) A practitioner (or, in his presence, by his authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

c) "Analogue" means a substance that, in relation to a controlled substance, has a substantially similar chemical structure.

d) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States Department of Justice" or its successor agency.

e) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of article two.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) "Imitation controlled substance" means: (1) A controlled substance which is falsely represented to be a different controlled substance; (2) a drug or substance which is not a controlled substance but which is falsely represented to be a controlled substance; or (3) a controlled substance or other drug or substance or a combination thereof which is
shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed or priced so as to cause a reasonable person to believe that it is a controlled substance.

(h) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of: (1) A controlled substance, whether or not there is an agency relationship; (2) a counterfeit substance; or (3) an imitation controlled substance.

(i) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(j) "Dispenser" means a practitioner who dispenses.

(k) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance, a counterfeit substance or an imitation controlled substance.

(l) "Distributor" means a person who distributes.

(m) "Drug" means: (1) Substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary", or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(n) "Immediate derivative" means a substance which the "West Virginia Board of Pharmacy" has found to be and by
rule designates as being the principal compound or any analogue of the parent compound manufactured from a known controlled substance primarily for use and which has equal or similar pharmacologic activity as the parent compound which is necessary to prevent, curtail or limit manufacture.

(o) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the State Board of Pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(q) "Marijuana" means all parts of the plant "Cannabis sativa L.", whether growing or not; the seeds thereof; the
resin extracted from any part of the plant; and every compound, manufacture, salt, immediate derivative, mixture or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, immediate derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

"Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, immediate derivative or preparation of opium or opiate.

(2) Any salt, compound, isomer, immediate derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) of this subdivision, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, immediate derivative or preparation of coca leaves and any salt, compound, isomer, immediate derivative or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

"Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine.
or being capable of conversion into a drug having addiction-
forming or addiction-sustaining liability. It does not include,
unless specifically designated as controlled under section two
hundred one, article two of this chapter, the dextrorotatory
isomer of 3-methoxy-n-methylmorphinan and its salts
(dextromethorphan). It does not include its racemic and
levorotatory forms.

(t) "Opium poppy" means the plant of the species
"Papaver somniferum L.", except its seeds.

(u) "Person” means individual, corporation, government
or governmental subdivision or agency, business trust, estate,
trust, partnership or association, or any other legal entity.

(v) "Placebo” means an inert medicament or preparation
administered or dispensed for its psychological effect, to
satisfy a patient or research subject or to act as a control in
experimental series.

(w) "Poppy straw” means all parts, except the seeds, of
the opium poppy after mowing.

(x) “Practitioner” means:

(1) A physician, dentist, veterinarian, scientific
investigator or other person licensed, registered or otherwise
permitted to distribute, dispense, conduct research with
respect to, or to administer a controlled substance in the
course of professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed,
registered or otherwise permitted to distribute, dispense,
conduct research with respect to, or to administer a controlled
substance in the course of professional practice or research in
this state.

(y) “Production” includes the manufacture, planting,
cultivation, growing or harvesting of a controlled substance.
(z) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

(aa) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-204. Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of subdivision (34) of this subsection only, the term isomer includes the optical and geometric isomers):

1 (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);

2 (2) Acetylmethadol;

3 (3) Allylprodine;

4 (4) Alphacetylmethadol (except levoalphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM);
(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl] -N-phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimepheptanol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) Furethidine;
(30) Hydroxypethidine;
(31) Ketobemidone;
(32) Levomoramide;
(33) Levophenacylmorphan;
(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
(35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
(36) Morpheridine;
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(38) Noracymethadol;
(39) Norlevorphanol;

(40) Normethadone;

(41) Norpipanone;

(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);

(43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);

(44) Phenadoxone;

(45) Phenampromide;

(46) Phenomorphan;

(47) Phenoperidine;

(48) Piritramide;

(49) Proheptazine;

(50) Properidine;

(51) Propiram;

(52) Racemoramide;

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);

(54) Tilidine;

(55) Trimeperidine.
82 (c) Opium derivatives. -- Unless specifically excepted or
83 unless listed in another schedule, any of the following opium
84 immediate derivatives, its salts, isomers and salts of isomers
85 whenever the existence of such salts, isomers and salts of
86 isomers is possible within the specific chemical designation:

87   (1) Acetorphine;
88   (2) Acetyldihydrocodeine;
89   (3) Benzylmorphine;
90   (4) Codeine methylbromide;
91   (5) Codeine-N-Oxide;
92   (6) Cyprenorphine;
93   (7) Desomorphine;
94   (8) Dihydromorphine;
95   (9) Drotebanol;
96   (10) Etorphine (except HCl Salt):
97   (11) Heroin;
98   (12) Hydromorphinol;
99   (13) Methyldesorphine;
100  (14) Methyldihydromorphine;
101  (15) Morphine methylbromide;
102  (16) Morphine methylsulfonate;
CONTROLLED SUBSTANCES

(17) Morphine-N-Oxide;

(18) Myrophine;

(19) Nicocodeine;

(20) Nicomorphine;

(21) Normorphine;

(22) Pholcodine;

(23) Thebacon.

(d) Hallucinogenic substances. -- Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position and geometric isomers):

(1) Alpha-ethyltryptamine; some trade or other names: etryptamine; Monase; alpha-ethyl-1H-indole-3-ethanamine;

3-(2-aminobutyl) indole; alpha-ET; and AET;

(2) 4-bromo-2,5-dimethoxy-amphetamine; some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA;

(3) 4-Bromo-2,5-dimethoxyphenethylamine; some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus;

(4) 2,5-dimethoxyamphetamine; some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;
(5) 2,5-dimethoxy-4-ethylamphetamine; some trade or other names: DOET;

(6) 4-methoxyamphetamine; some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;

(7) 5-methyloxy-3, 4-methylenedioxy-amphetamine;

(8) 4-methyl-2,5-dimethoxy-amphetamine; some trade and other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP”;

(9) 3,4-methylenedioxyamphetamine;

(10) 3,4-methylenedioxymethamphetamine (MDMA);

(11) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA);

(12) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-hydroxy MDA);

(13) 3,4,5-trimethoxyamphetamine;

(14) Bufotenine; some trade and other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(15) Diethyltryptamine; some trade and other names: N, N-Diethyltryptamine; DET;

(16) Dimethyltryptamine; some trade or other names: DMT;
CONTROLLED SUBSTANCES

157  (17) Ibogaine; some trade and other names: 7-Ethyl-6, 6
158  Beta, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6,
159  9-methano-5H-pyrido [1', 2': 1, 2] azepino [5,4-b] indole;
160  Tabernanthe iboga;
161  (18) Lysergic acid diethylamide;
162  (19) Marijuana;
163  (20) Mescaline;
164  (21) Parahexyl-7374; some trade or other names:
165  3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-
166  6H-dibenzo [b,d] pyran; Synhexyl;
167  (22) Peyote; meaning all parts of the plant presently
168  classified botanically as Lophophora williamsii Lemaire,
169  whether growing or not, the seeds thereof, any extract from
170  any part of such plant, and every compound, manufacture,
171  salts, immediate derivative, mixture or preparation of such
172  plant, its seeds or extracts;
173  (23) N-ethyl-3-piperidyl benzilate;
174  (24) N-methyl-3-piperidyl benzilate;
175  (25) Psilocybin;
176  (26) Psilocybin;
177  (27) Tetrahydrocannabinols; synthetic equivalents of the
178  substances contained in the plant, or in the resinous
179  extractives of Cannabis, sp. and/or synthetic substances,
180  immediate derivatives and their isomers with similar
181  chemical structure and pharmacological activity such as the
182  following:
183 delta-1 Cis or trans tetrahydrocannabinol, and their optical isomers;
184 delta-6 Cis or trans tetrahydrocannabinol, and their optical isomers;
187 delta-3,4 Cis or trans tetrahydrocannabinol, and its optical isomers;
189 (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)
193 (28) Ethylamine analog of phencyclidine; some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
197 (29) Pyrrolidine analog of phencyclidine; some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
200 (30) Thiophene analog of phencyclidine; some trade or other names: 1-[1-(2-thienyl)cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine; TPCP, TCP;
203 (31) 1[1-(2-thienyl)cyclohexyl]pyrrolidine; some other names: TCPy.
205 (32) Synthetic Cannabinoids as follows:
206 (a) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol) {also known as CP 47,497 and homologues};
208 (b) rel-2-[(1S,3R)-3-hydroxycyclohexyl]-5-(2-methylnonan-2-yl)phenol {also known as CP 47,497-C8 homolog};
(c) [(6aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-
   methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-
   1-ol)] {also known as HU-210};

(d) (dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-
   dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-
   tetrahydrobenzol[c]chromen-1-ol) {also known as HU-211};

(e) 1-Pentyl-3-(1-naphthoyl)indole {also known as JWH-
   018};

(f) i-Butyl-3-(1-naphthoyl)indole {also known as JWH-
   073};

(g) (2-methyl-1-propyl-1H-indol-3-yl)-1napthalenyl-
   methanone {also known as JWH-015};

(h) (1-hexyl-1H-indol-3-yl)-1-napthalenyl-methanone
   {also known as JWH-019};

(i) [1-[2-(4-morpholinyl)ethyl]-1H-indol-3-yl]-1-
   napthalenyl-methanone {also known as JWH-200};

(j) 1-(1-pentyl-1H-indol-3-yl)-2-(3-hydroxyphenyl)-
   ethanone {also known as JWH-250};

(k) 2-((1S,2S,5S)-5-hydroxy-2-(3-hydroxypropyl)
   cyclohexyl)-5-(2-methyloctan-2-yl)phenol {also known as
   CP 55,940};

(l) (4-methyl-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)-
   methanone {also known as JWH-122};

(m)(4-methyl-1-naphthalenyl)(1-pentyl-1H-indol-3-yl)-
   methanone {also known as JWH-398;}

(n) (4-methoxyphenyl)(1-pentyl-1H-indol-3-
   yl)methanone {also known as RCS-4};
(o) 1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenyl)ethanone {also known as RCS-8}; and

(Since nomenclature of these substances is not internationally standardized, any immediate precursor or immediate derivative of these substances shall be covered).

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex; some other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine;

(2) Cathinone; some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone;

(3) Fenethylline;

(4) Methcathinone, its immediate precursors and immediate derivatives, its salts, optical isomers and salts of
optical isomers; some other names: (2-(methylamino)-
propiophenone; alpha-(methylamino) propiophenone;
2-(methylamino)-1-phenylpropan-1-one; alpha--
methylenedioxypyrovalerone; monomethylpropion; 3,4-
methylenedioxypyrovalerone and/or mephedrone; 3,4-
methylenedioxypyrovalerone (MPVD); ephedrone; –
methylcathinone; methylcathinone; AL-464; AL-422; AL-
463 and UR1432;

(5) (+-) cis-4-methylaminorex; (+-)cis-4,5-dihydro-4-
methyl-5-phenyl-2-oxazolamine);

(6) N-ethylamphetamine;

(7) N,N-dimethylamphetemine; also known as
N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-
trimethylphenethyamine.

(g) Temporary listing of substances subject to
emergency scheduling. Any material, compound, mixture or
preparation which contains any quantity of the following
substances:

(1) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide
(benzylfentanyl), its optical isomers, salts, and salts of
isomers.

(2) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide
(thenylfentanyl), its optical isomers, salts and salts of
isomers.

(8) N-benzylpiperazine, also known as BZP.
ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:
(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both: Provided, That notwithstanding
any other provision of this act to the contrary, any first offense for possession of Synthetic Cannabinoids as defined by subdivision (32) subsection, (d), section 101, article 1 of this chapter; 3,4-methylenedioxypyrovalerone (MPVD) and 3,4-methylenedioxypyrovalerone and/or mephedrone as defined in subsection (f), section 101, article 1 of this chapter; or less than 15 grams of marijuana, shall be disposed of under said section.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, may be imprisoned in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both. Any person being eighteen years old or more who violates subdivision (1) of this subsection and, in so doing, distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than such person is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.
CHAPTER 30

(Com. Sub. for H. B. 3205 - By Delegates Boggs and Swartzmiller)

[Passed March 9, 2011; in effect from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §31-20-5d of the Code of West Virginia, 1931, as amended, relating to providing persons convicted of a criminal offense and sentenced to confinement in a regional jail a reduction in sentence for successful completion of education and rehabilitation programs; increasing the time permitted by a sentence reduction from one day to five days per program; adding an alcohol abuse program to the programs offered; increasing the total time permitted by sentence reduction to thirty days; and establishing an enrollment fee for each program.

Be it enacted by the Legislature of West Virginia:

That §31-20-5d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-5d. Good time credit.

(a) Any person convicted of a criminal offense and sentenced to confinement in a regional jail is to be granted
reduction of his or her sentence for good conduct in accordance with this section.

(b) The reduction of sentence or good time is to be deducted from the fixed term of determinate sentences. An inmate under two or more consecutive sentences is allowed good time as if the several sentences, when the maximum terms thereof are added together, were all one sentence.

(c) Every inmate sentenced to a regional jail for a term of confinement exceeding six months who, in the judgment of the administrator of the regional jail facility, faithfully complies with all rules of the regional jail during his or her term of confinement is entitled to a deduction of five days from each month of his or her sentence. No inmate may be granted any good time under the provisions of this section for time spent on bond or for time served on parole or in any other status in which he or she is not physically incarcerated.

(d) Each inmate sentenced to a term of confinement in a regional jail facility who participates in a general equivalency diploma program is to be granted three days of good time for the completion of each educational literacy level, as demonstrated by achieving a passing score on standardized tests required by the department of education, and ten days of good time for completion of the requirements for a general equivalency diploma or high school diploma.

(e) Each inmate sentenced to a term of confinement in a regional jail in excess of six months shall be granted five days of good time for successful completion for each of the following rehabilitation programs: Domestic violence, parenting, substance abuse, life skills, alcohol abuse, and anger management or any special rehabilitation or educational program designated by the executive director. A maximum of thirty days good time shall be granted for successful completion of all six programs. The fee for each
class is $25 which is due upon enrollment. If an inmate is unable to pay a fee or fees in full at the time of enrollment, it may be paid by deductions from his or her inmate trust account, subject to the provisions of subsection (f), section thirty-one of this article. No more than one half of the amount in the inmate trust account during any one week period may be so deducted.

(f) The administrator of a regional jail facility may, with the approval of the Governor, allow extra good time for inmates who perform exceptional work or service.

(g) The Regional Jail and Correctional Facility Authority shall promulgate disciplinary rules for the regional jail facilities. The rules are to describe prohibited acts, procedures for charging individual inmates for violations of the rules and for determining the guilt or innocence of inmates charged with the violations, and sanctions that may be imposed for the violations. For each violation by an inmate, any part or all of the good time that has been granted to the inmate may be forfeited and revoked by the administrator of the regional jail facility. The administrator, when appropriate and with approval of the executive director may restore any good time forfeited for a violation of the rules promulgated or adopted pursuant to this subsection.

(h) Each inmate sentenced to a term of confinement in a regional jail in excess of six months shall, within seventy-two hours of being received into a regional jail, be given a copy of the disciplinary rules, a statement setting forth the term or length of his or her sentence or sentences, and the time of his or her minimum discharge.
AN ACT to amend and reenact §7-7-2, §7-7-3, §7-7-4, §7-7-4a, §7-7-6b, §7-7-6d, §7-7-7, §7-7-7a, §7-7-9, §7-7-11, §7-7-12, §7-7-13, §7-7-14, §7-7-15, §7-7-16, §7-7-16a and §7-7-20 of the Code of West Virginia, 1931, as amended, all relating generally to eliminating outmoded language concerning compensation of county elected officials by certain county classes; repealing the requirement that the compensation of certain county employees be in compliance with the Economic Stabilization Act of 1970; transferring some training program responsibilities and valuation classification of property responsibilities from the State Tax Commissioner to the State Auditor in accordance with existing code provisions; authorizing the State Tax Commissioner and State Auditor to establish training programs for certain employees; eliminating language regarding the transition from part-time to full-time prosecutors inconsistent with other code provisions; removing the limitations on food, lodging, registration fees and mileage on authorized training; eliminating the outdated property valuations used to determine the compensation of elected county officials; permitting a county sheriff to turn over an impounded dog to the local humane society instead of killing it; eliminating references to county positions that no longer exist; and removing the limitation of the costs for the housing and feeding of prisoners in counties having a population of thirty thousand or less.
Be it enacted by the Legislature of West Virginia:

That §7-7-2, §7-7-3, §7-7-4, §7-7-4a, §7-7-6b, §7-7-6d, §7-7-7, §7-7-7a, §7-7-9, §7-7-11, §7-7-12, §7-7-13, §7-7-14, §7-7-15, §7-7-16, §7-7-16a and §7-7-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-2. Establishment of county in-service training programs; further additional duties for prosecuting attorney in any county in excess of two hundred thousand.

(a) There is hereby established county in-service training programs as hereinafter set forth.

(b) The Attorney General is hereby authorized and directed to establish such in-service training programs as in his or her opinion will do most to assist the prosecuting attorneys in the performance of their duties. The Attorney General is authorized to accept any federal aid which may be made available or any financial assistance which may be available from any private nonprofit organization for the purposes of this section. The prosecuting attorney in any county having a population in excess of two hundred thousand shall also discharge the additional duties imposed upon him or her by the provisions of section thirteen-a, article five, chapter forty-nine of this code.

(c) The State Auditor is hereby authorized and directed to establish such in-service training programs for county commissioners, county clerks, sheriffs and their assistants and employees as in his or her opinion will do most to modernize and improve the services of their respective offices. The State Auditor in conjunction with the West Virginia Supreme Court of Appeals is authorized and directed to establish such in-service training programs for
counties for purpose of determining compensation of elected county officials.

(a) Effective July 1, 1996, and thereafter, for the purpose of determining the compensation of elected county officials, the counties of the State of West Virginia will be grouped into ten classes based on their assessed valuation of property, all classes. These ten classes and the minimum and maximum valuation of property, all classes, established to determine the classification of each county are as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Assessed Valuation of Property</th>
<th>Maximum Assessed Valuation of Property</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$ 2,000,000,000</td>
<td>No Limit</td>
</tr>
<tr>
<td>Class II</td>
<td>$ 1,500,000,000</td>
<td>$ 1,999,999,999</td>
</tr>
</tbody>
</table>
(b) The assessed valuation of property, all classes, that shall be used as the base to determine the class of a county shall be the assessed valuation of property, all classes, of the county as certified by the county assessor, State Auditor and county clerk prior to March 29, 1996.

(c) Prior to March 29, 1998, and each second year thereafter, the county commission of each county, shall determine if the assessed valuation of property, all classes, of the county, as certified by the county assessor, State Auditor and county clerk is within the minimum and maximum limits of a class above or below the class in which the county then is. If the county commission so determines, it shall record the new classification of the county with the State Auditor and State Tax Commissioner and record its action on its county commission record.

(d) The classification of each county shall be subject to review by State Auditor. He or she shall determine if the classification of each county is correct based on the final assessed valuation of property, all classes, certified to him or her by the county assessor, State Auditor and county clerk. If he or she finds that a county is incorrectly classified, he or she shall notify the county commission of that county promptly of his or her finding and in any case shall notify the county prior to June 30 of that current fiscal year. Any county commission so notified shall correct its classification immediately and make any necessary corrections in the salaries of its elected county officials for the next fiscal year.
(e) Notwithstanding the provisions of this article, whenever any other provision of this code refers to classifications of counties for purposes of imposing any right, duty or responsibility, the classification system set forth in subsection (a) of this section shall be utilized for determining the classification of a particular county.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

(1) The increased salaries to be paid to the county commissioners and the other elected county officials described in this subsection on and after July 1, 2006, are set out in subdivisions (5) and (7) of this subsection. Every county commissioner and elected county official in each county, whose term of office commenced prior to or on or after July 1, 2006, shall receive the same annual salary by virtue of legislative findings of extra duties as set forth in section one of this article.

(2) Before the increased salaries, as set out in subdivisions (5) and (7) of this subsection, are paid to the county commissioners and the elected county officials, the following requirements must be met:

(A) The Auditor has certified that the proposed annual county budget for the fiscal year beginning the first days of July, 2006, has increased over the previous fiscal year in an amount sufficient for the payment of the increase in the salaries, set out in subdivisions (5) and (7) of this subsection, and the related employment taxes: Provided, That the Auditor may not approve the budget certification for any proposed annual county budget containing anticipated receipts which are unreasonably greater or lesser than that of the previous year. For purposes of this subdivision, the term “receipts” does not include unencumbered fund balance or federal or state grants; and
(B) Each county commissioner or other elected official described in this subsection in office on the effective date of the increased salaries provided by this subsection who desires to receive the increased salary has prior to that date filed in the office of the clerk of the county commission his or her written agreement to accept the salary increase. The salary for the person who holds the office of county commissioner or other elected official described in this subsection who fails to file the written agreement as required by this paragraph shall be the salary for that office in effect immediately prior to the effective date of the increased salaries provided by this subsection until the person vacates the office or his or her term of office expires, whichever first occurs.

(3) If there is an insufficient projected increase in revenues to pay the increased salaries and the related employment taxes, then the salaries of that county’s elected officials and commissioners shall remain at the level in effect at the time certification was sought.

(4) In any county having a tribunal in lieu of a county commission, the county commissioners of that county may be paid less than the minimum salary limits of the county commission for that particular class of the county.

(5) COUNTY COMMISSIONERS

<table>
<thead>
<tr>
<th>Class</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$36,960</td>
</tr>
<tr>
<td>Class II</td>
<td>$36,300</td>
</tr>
<tr>
<td>Class III</td>
<td>$35,640</td>
</tr>
<tr>
<td>Class IV</td>
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<td>Class V</td>
<td>$34,320</td>
</tr>
<tr>
<td>Class VI</td>
<td>$28,380</td>
</tr>
<tr>
<td>Class VII</td>
<td>$27,720</td>
</tr>
<tr>
<td>Class VIII</td>
<td>$25,080</td>
</tr>
<tr>
<td>Class IX</td>
<td>$24,420</td>
</tr>
<tr>
<td>Class X</td>
<td>$19,800</td>
</tr>
</tbody>
</table>
For the purpose of determining the salaries to be paid to the elected county officials of each county, the salaries for each county office by class, set out in subdivision (7) of this subsection, are established and shall be used by each county commission in determining the salaries of each of their county officials other than salaries of members of the county commission.

(7) OTHER ELECTED OFFICIALS

<table>
<thead>
<tr>
<th>Class</th>
<th>County Clerk</th>
<th>Circuit Clerk</th>
<th>Clerk Assessor</th>
<th>Attorney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class I</td>
<td>$44,880</td>
<td>$55,440</td>
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<tr>
<td>Class II</td>
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<tr>
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<tr>
<td>Class IV</td>
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<tr>
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<tr>
<td>Class VI</td>
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<td>$42,900</td>
</tr>
<tr>
<td>Class VII</td>
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<tr>
<td>Class VIII</td>
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<td>Class IX</td>
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<td>Class X</td>
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<td>$42,240</td>
<td>$42,240</td>
<td>$38,280</td>
</tr>
</tbody>
</table>

(8) Any county clerk, circuit clerk, county assessor or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full-time to his or her public duties to the exclusion of any other employment: Provided, That any public official, whose term of office begins when his or her county’s classification imposes no restriction on his or her outside activities, may not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.
§7-7-4a. Authorizing the option of full-time status for part-time prosecuting attorneys.

(a) On or before the first day of January, two thousand nine, a county may not have a part-time prosecutor. The county commissions of counties in Class VI through X shall then compensate all prosecuting attorneys that have changed to full-time by virtue of this section at the same rate of compensation established for a prosecuting attorney in a Class V county: Provided, That, upon mutual agreement of the prosecuting attorney and the county commission, the prosecuting attorney may choose to remain a part-time prosecuting attorney.

(b) If, after the first day of January, two thousand nine, during the course of a term of office, pursuant to subsection (a) of this section, any prosecutor who becomes full-time or chooses to remain part-time who believes that the responsibilities of his or her office either no longer requires a full-time position or believes that the duties of the part-time position have become full-time, may, by mutual agreement with the county commission, either return to part-time status or change to full-time status: Provided, That, if the decision to change to full-time or part-time status is made during an election year, the decision must be by mutual agreement between the county commission and the prosecutor-elect: Provided, however, That any prosecutor who returns to part-time status shall, thereafter, be compensated at the rate of compensation set forth in section four of this article for a prosecuting attorney of his or her class county and any prosecutor that changes to full-time status shall, thereafter, be compensated at the same rate of compensation established for a prosecuting attorney in a Class V county.

(c) If, after the first day of January, two thousand nine, any prosecutor or prosecutor-elect desires to change to full-time status and the county commission objects to such change due to an alleged financial condition of the county, then either party may request the State Auditor’s office to
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35 examine the county’s financial condition and certify whether
36 or not there are sufficient funds to support a full-time
37 position. The State Auditor shall then, within ninety days of
38 such request, certify whether or not there are sufficient funds
39 available to support a full-time prosecutor in the county. If
40 the State Auditor certifies that there are sufficient funds
41 available, then the prosecutor or prosecutor elect must be
42 changed to full-time status and be compensated at the same
43 rate of pay as a prosecutor in a Class V county.

44 (d) Nothing in this section may be construed to prohibit
45 a part-time prosecuting attorney from remaining part-time
46 with the mutual agreement of the county commission.

§7-7-6b. Additional compensation of assessors according to
county classification.

1 For the purpose of determining the additional
2 compensation to be paid to the county assessor of each
3 county for the additional duties provided by section six-a of
4 this article, the following compensations for each county
5 assessor by class, as provided in section three of this article,
6 are hereby established and shall be used by each county
7 commission in determining the compensation of each county
8 assessor; for assessors in Class I - V counties, inclusive,
9 $15,000; for assessors in Class VI and VII counties, $10,000;
10 for assessors in Class VIII and IX counties, $9,000; for
11 assessors in Class X counties, $6,500.

§7-7-6d. Collection of head tax on dogs; duties of assessor and
sheriff; registration of dogs; disposition of head tax;
taxes on dogs not collected by assessor.

1 (a) It shall be the duty of the county assessor and the
2 assessor’s deputies of each county within the state, at the
3 time they are making assessment of the personal property
4 within such county, to assess and collect a head tax of $1 on
5 each male or spayed female dog and of $2 on each unspayed
6 female dog; and in addition to the above, the assessor and the
7 assessor’s deputies shall have the further duty of collecting
any such head tax on dogs as may be levied by the
ordinances of each and every municipality within the county.
In the event that the owner, keeper, or person having in his or
her possession or allowing to remain on any premises under
his or her control any dog above the age of six months, shall
refuse or fail to pay such tax, when the same is assessed or
within fifteen days thereafter, to the assessor or deputy
assessor, then such assessor or deputy assessor shall certify
such tax to the county dog warden; if there be no county dog
warden he or she shall certify such tax to the county sheriff,
who shall take charge of the dog for which the tax is
delinquent and impound the same for a period of fifteen days,
for which service he or she shall be allowed a fee of $1.50 to
be charged against such delinquent taxpayer in addition to the
taxes herein provided for. In case the tax and impounding
charge herein provided for shall not have been paid within
the period of fifteen days, then the sheriff may sell the
impounded dog and deduct the impounding charge and the
delinquent tax from the amount received therefor, and return
the balance, if any, to the delinquent taxpayer. Should the
sheriff fail to sell the dog so impounded within the time
specified herein, he or she shall turn the animal over to the
local humane society or similar organization.

(b) At the same time as the head tax is assessed, the
assessor and the assessor's deputies shall, on the forms
prescribed under section four, article twenty, chapter nineteen
of this code, take down the age, sex, color, character of hair
(long or short) and breed (if known) and the name and
address of the owner, keeper or harborer thereof. When the
head tax, and extra charges, if any, are paid, the officer to
whom payment is made shall issue a certificate of registration
and a registration tag for such dog.

(c) In addition to the assessment and registration above
provided for, whenever a dog either is acquired or becomes
six months of age after the assessment of the personal
property of the owner, keeper or harborer thereof, the said
owner, keeper or harborer of said dog shall, within ten days after the acquisition or maturation, register the said dog with the assessor, and pay the head tax thereon unless the prior owner, keeper or harborer paid the head tax.

(d) All certificates of registration and registration tags issued pursuant to the provisions of this section shall be issued for the fiscal year and shall be valid from the date on which issued until June 30 of that fiscal year, or until reissued by the assessor or the assessor's deputy in the regular performance of his or her duties, but in no case shall previous registration tags be valid after September 30 of the next ensuing fiscal year.

(e) The assessor collecting the head tax on dogs shall be allowed a commission of ten percent upon all such taxes collected by the assessor and shall turn in to the county treasurer ninety percent of such taxes so collected, as are levied by this section; and the assessor shall turn over to the treasurer or other proper officer of each and every municipality within the county ninety percent of such taxes levied by the ordinances of such municipality. All such dog taxes, except those belonging to municipalities, shall be accredited to the dog and kennel fund provided for in section ten, article twenty, chapter nineteen of this code. Such dog taxes as are collected for and turned over to municipalities shall be deposited by the proper officer of such municipality to such fund and shall be expended in such manner as the law of such municipality may provide. All taxes on dogs not collected by the assessor shall be collected by the regular tax collecting officer of the county and placed to the credit of the dog and kennel fund.

§7-7-7. County assistants, deputies and employees; their number and compensation; county budget.

(a) The county clerk, circuit clerk, sheriff, county assessor and prosecuting attorney, by and with the advice and
consent of the county commission, may appoint and employ, to assist them in the discharge of their official duties for and during their respective terms of office, assistants, deputies and employees. The county clerk may designate one or more of his or her assistants as responsible for all probate matters.

(b) The county clerk, circuit clerk, sheriff, county assessor and prosecuting attorney shall, prior to March 2 of each year, file with the county commission a detailed request for appropriations for anticipated or expected expenditures for their respective offices, including the compensation for their assistants, deputies and employees, for the ensuing fiscal year.

(c) The county commission shall, prior to March 29 of each year by order fix the total amount of money to be expended by the county for the ensuing fiscal year, which amount shall include the compensation of county assistants, deputies and employees. Each county commission shall enter its order upon its county commission record.

(d) The county clerk, circuit clerk, sheriff, county assessor and prosecuting attorney shall then fix the compensation of their assistants, deputies and employees based on the total amount of money designated for expenditure by their respective offices by the county commission and the amount expended shall not exceed the total expenditure designated by the county commission for each office.

(e) The county officials, in fixing the individual compensation of their assistants, deputies and employees and the county commission in fixing the total amount of money to be expended by the county, shall give due consideration to the duties, responsibilities and work required of the assistants, deputies and employees and their compensation shall be reasonable and proper.
(f) After the county commission has fixed the total amount of money to be expended by the county for the ensuing fiscal year and after each county official has fixed the compensation of each of his or her assistants, deputies and employees, as provided in this section, each county official shall file prior to June 30, with the clerk of the county commission, a budget statement for the ensuing fiscal year setting forth the name, or the position designation if then vacant, of each of his or her assistants, deputies and employees, the period of time for which each is employed, or to be employed if the position is then vacant, and his or her monthly or semimonthly compensation.

(g) All budget statements required to be filed by this section shall be verified by an affidavit by the county official making them. Among other things contained in the affidavit shall be the statement that the amounts shown in the budget statement are the amounts actually paid or intended to be paid to the assistants, deputies and employees without rebate, and without any agreement, understanding or expectation that any part thereof shall be repaid to him or her, and that, prior to the time the affidavit is made, nothing has been paid or promised him or her on that account, and that if he or she shall thereafter receive any money, or thing of value, on account thereof, he or she will account for and pay the same to the county. Until the statements required by this section have been filed, no allowance or payments shall be made to any county official or their assistants, deputies and employees.

(h) Each county official named in this section shall have the authority to discharge any of his or her assistants, deputies or employees by filing with the clerk of the county commission a discharge statement specifying the discharge action: Provided, That no deputy sheriff appointed pursuant to the provisions of article fourteen, chapter seven of this code, shall be discharged contrary to the provisions of that article.
§7-7-7a. Limit of budget expenditures.

(a) No county clerk, circuit clerk, sheriff, county assessor or prosecuting attorney may, without the approval of the county commission, spend or obligate, before the end of the calendar year, more than fifty percent of the funds allocated for his or her office in the fiscal year budget, in any fiscal year where the person holding the office is leaving office due to either resignation or the results of an election.

(b) As used in subsection (a) of this section, "spend or obligate" includes, but is not limited to, increasing employee salaries to a level that would create a deficit in the budget if paid during the remainder of the fiscal year in addition to other anticipated expenditures.

§7-7-9. Procedure for payment of compensation.

(a) The compensation of the county clerk, circuit clerk, sheriff, county assessor, prosecuting attorney, and their assistants, deputies and employees shall be paid monthly or semimonthly by the county court, which compensation shall be paid out of the county treasury in the manner prescribed by law.

(b) The county commission, after the filing of the budget statement specified in section seven of this article, may, by order of record, authorize and order a draft on the county treasurer, payable out of the general county fund, to be drawn in favor of the county official, assistant, deputy or employee named in this statement, in payment of the compensation to which the person is entitled.

(c) The draft shall not be issued to the county official, assistant, deputy or employee until the proper county official has filed a detailed monthly or semimonthly statement with the county treasurer and has filed with the county clerk a duplicate copy of the monthly or semimonthly statement,
together with a receipt from the county treasurer, showing that the person to be paid has paid into the county treasury all moneys belonging to the county that have been collected by him or her during that pay period as shown by the monthly or semimonthly statement.

(d) When the order for the draft has been entered of record, the president and clerk of the county court shall be authorized to issue and approve by their signature the draft.

§7-7-11. Illegal orders for compensation.

If any clerk shall issue and deliver a draft to any county clerk, circuit clerk, sheriff, county assessor, prosecuting attorney, or any of their assistants, deputies or employees, in payment of their compensation, without all the applicable requirements of this article being complied with, the draft so issued and delivered shall be illegal and invalid. The clerk and the sureties on his or her bond shall be liable to the county commission of his or her county for the payment thereof.

§7-7-12. Sharing compensation prohibited.

No county official shall receive or be paid, directly or indirectly, any part of the compensation of any assistant, deputy or employee, or any fee or reward for appointing him or her to his or her position. No member of a county commission shall receive or be paid, directly or indirectly, any part of the compensation of any other county officer named in this article, or of any county assistant, deputy or employee. If any county commissioner or county official violates the provisions of this section, he or she shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $500, or imprisoned in the county jail not more than one year, or both fined and imprisoned. Any county commissioner or county official so convicted shall forfeit his or her office.
§7-7-13. Allowance for expenses of sheriff.

(a) The county commission of every county shall allow the actual and necessary expenses incurred by the sheriff in the discharge of his or her duties including, but not limited to, those incurred in arresting, pursuing or transporting persons accused or convicted of crimes and offenses; in the cost of law-enforcement and safety equipment; in conveying or transporting a prisoner from and to jail to participate in court proceedings; and in conveying or transferring any person to or from any state institution where he or she may be committed from his or her county, where the sheriff is authorized to convey or transfer the person: Provided, That the law-enforcement agency that places a person under arrest shall be responsible for the person's initial transportation to a regional or county jail, except where there is a preexisting agreement between the county and the political body the other law-enforcement agency serves. Any person transported to the regional jail as provided for by the provisions of this section shall, upon conviction for the offense causing his or her incarceration, pay the reasonable costs of the transportation. The money is to be collected by the court of conviction at the current mileage reimbursement rate. The county commission shall allow the actual and necessary expenses incurred in serving summonses, notices or other official papers in connection with the sheriff's office.

(b) Every sheriff shall file monthly, under oath, an accurate account of all the actual and necessary expenses incurred by him or her, his or her deputies, assistants and employees in the performance and discharge of their official duties supported by verified accounts before reimbursement thereof shall be allowed by the county commission. Reimbursement, properly allowed, shall be made from the general county fund.
§7-7-14. Training of sheriffs and deputies; payment of expenses thereof by county commission.

The county commission of each county is authorized, at its discretion, to expend from the general county fund, upon request and requisition by the sheriff of the county, the necessary and proper travel expenses and tuition expenses for the training of the sheriff and his or her deputies of the county in the performance of their duties, as sheriff and deputy.

§7-7-15. Allowance for expenses of prosecuting attorney.

In addition to his or her compensation, the prosecuting attorney and his or her assistants shall be reimbursed for actual traveling expenses within the state in the performance of their official duties, and when out of the state for the purpose of taking depositions in cases in which other counsel is not employed by the court under section one, article three, chapter sixty-two of this code, which expenses shall be duly itemized and verified, and shall, if found correct, be allowed by the county commission and be paid monthly out of the general county fund.

§7-7-16. Mileage allowance for county officials and employees.

(a) The county commission of each county shall allow to each county official and to their deputies, assistants and employees, when they are required to drive their personally owned vehicles in the actual performance and discharge of their official duties, reimbursement at a uniform rate for all individuals as approved by the county commission.

(b) Every county official shall file monthly, under oath, a full and accurate account of all the actual mileage driven by him or her, his or her deputies, assistants and employees, in the performance and discharge of their official duties supported by verified accounts before reimbursement thereof.
shall be allowed by the county commission. Reimbursement, properly allowed, shall be made from the general county fund.

§7-7-16a. Motor vehicles owned by the county.

The sheriff of each county and his or her deputies who are engaged in law-enforcement activities may, in the discretion of the sheriff, use a motor vehicle owned by the county to travel from his or her residence to his or her workplace and return. Any other county official or employee may, or may not, in the discretion of the county commission, be furnished with the use of a motor vehicle owned by the county to travel from his or her residence to his or her workplace and return: Provided, That such usage is subject to the supervision of said sheriff or commission and is directly connected with and required by the nature and in the performance of such sheriff's, deputy's, county official or employee's duties and responsibilities.

§7-7-20. Penalties.

If any county clerk, circuit clerk, sheriff, county assessor or prosecuting attorney fail to file the detailed request for appropriations or the budget statement as provided in section seven of this article or fail to file the monthly or semimonthly statement as provided in section nine of this article or fail to file the statement of expenditures as provided for in section seventeen of this article, or if any county clerk, circuit clerk, sheriff, county assessor, prosecuting attorney, their assistants, deputies or employees, fail to comply with any of the requirements provided in this article, he or she shall, except where another penalty is prescribed, be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $100, or confined in jail not less than thirty days nor more than six months, or both fined and confined.
AN ACT to amend and reenact §7-14D-7 of the Code of West Virginia, 1931, as amended, relating to increasing the maximum contribution rate to be paid by the county commission or concurrent employer.

Be it enacted by the Legislature of West Virginia:

That §7-14D-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-7. Members' contributions; employer contributions.

(a) 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 of his or her monthly salary. An additional amount shall be paid to the fund by the county commission of the county in which the member is employed in covered employment in an amount determined by the board: Provided, That in any year preceding July 1, 2011, the total of the contributions provided in this section, to be paid by the county commission, may not exceed ten and one-half percent of the total payroll for the members in the
employ of the county commission: Provided, however, That on or after July 1, 2011, the total of the contributions provided in this section, to be paid by the county commission, may not exceed thirteen percent of the total payroll for the members in the employ of the county commission. If the board finds that the benefits provided by this article can be actually funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than fifteen days following the end of the calendar month.

(b) Any active member who has concurrent employment in an additional job or jobs and the additional 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 shall make an additional contribution to the fund of eight and one-half percent of his or her monthly salary earned from any additional employment which requires the deputy sheriff to be a member of another retirement which is administered by the Consolidated Public Retirement Board pursuant to article ten-d, chapter five of this code. An additional amount shall be paid to the fund by the concurrent employer for which the member is employed in an amount determined by the board: Provided, That in any year preceding July 1, 2011, the total of the contributions provided in this section, to be paid by the concurrent employer, may not exceed ten and one-half percent of the monthly salary of the employee: Provided, however, That on or after July 1, 2011, the total of the contributions provided in this section, to be paid by the concurrent employer, may not exceed thirteen percent of the monthly salary of the employee. If the board finds that the benefits provided by this article can be funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than fifteen days following the end of the calendar month.
(c) 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 retirement board reinstatement interest as established in Legislative Rule 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.

CHAPTER 33

(Com. Sub. for H. B. 3185 - By Delegates Lawrence and Manchin)

[Passed March 12, 2011; in effect ninety days from passage.]  
[Approved by the Governor on April 5, 2011.]  

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-20-7a, relating to impact fees; providing legislative findings; requiring
counties to have an affordable housing component in the county's impact fees ordinance; providing requirements for the affordable housing component; and requiring a vote by the county commission to increase or decrease impact fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-20-7a, to read as follows:

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-7a. Impact fees for affordable housing.

(a) The Legislature finds that:

1. There is a lack of affordable housing in counties that impose impact fees because the cost of the fees along with the economic conditions in those counties has resulted in low and moderate income persons, persons on fixed incomes, the elderly and persons with special needs, not being able to obtain safe, decent and affordable housing;

2. A lack of affordable housing affects the ability of a community to develop and maintain strong and stable economies, and impairs the health, stability and self-esteem of individuals and families; and

3. Financing affordable housing particularly in high growth counties is becoming increasingly difficult.

For these reasons, it is in the public interest to encourage counties that have imposed impact fees and those considering
the imposition of impact fees to fairly assess and discount impact fees so as not to limit safe, decent and affordable housing.

(b) On or before July 1, 2012, a county imposing impact fees shall enact an affordable housing component with a discount impact fees schedule, based upon the new homes value compared to the most recent annual single dwelling residential housing index created in section two-b, article one, chapter eleven of this code, to the county’s impact fees ordinance. The impact fees schedule shall be updated annually to reflect the changes to the single dwelling residential housing index.

(c) The affordable housing component shall:

(1) Take into account all the different types of housing, including single family detached, single family attached, duplex, town house, apartment, condominium and manufactured home; and

(2) Include a discount for mobile homes, as defined in section one, article one, chapter seventeen-a of this code, based upon the value set out in the National Automobile Dealers Association book.

(d) The county commission shall annually approve, by a majority vote, any increase or decrease in the impact fees schedule.
AN ACT to amend and reenact §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, all relating to revising the County Economic Opportunity Development District Act generally; defining the term "remediation"; including remediation of landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites as permissible development expenditures for approved projects; changing standard by which the maximum amounts of reserves that may be established in the financing of a project are measured; reducing the amount of capital investment required for project approval; providing that the Development Office cannot approve a project involving remediation unless all development expenditures proposed within a certain time frame result in more than $25 million in capital investment in the district; changing "ordinance" to "order"; correcting language by changing "municipality" to "county"; providing that the Development Office may not approve a project involving remediation unless the county commission submits clear and convincing information that the proposed remediation expenditures to be financed with bonds or notes do not constitute more than twenty-five percent of a project's total development expenditures; allowing for minor modifications of
districts without public hearing or approval by the Development Office or the Legislature under certain circumstances; and providing technical and clerical cleanup.

Be it enacted by the Legislature of West Virginia:

That §7-22-3, §7-22-4, §7-22-5, §7-22-7, §7-22-10, §7-22-12, §7-22-14, §7-22-15, §7-22-17 and §7-22-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

§7-22-3. Definitions.

For purposes of this article, the term:

(1) “County commission” means the governing body of a county of this state;

(2) “Development expenditures” means payments for governmental functions, programs, activities, facility construction, improvements and other goods and services which a district board is authorized to perform or provide under section five of this article;

(3) “District” means an economic opportunity development district created pursuant to this article;

(4) “District board” means a district board created pursuant to section ten of this article; and

(5) “Eligible property” means any taxable or exempt real property located in a district established pursuant to this article.
(6) "Remediation" means measures undertaken to bring about the reconditioning or restoration of property located within the boundaries of an economic opportunity development district that has been affected by exploration, mining, industrial operations or solid waste disposal and which measures, when undertaken, will eliminate or ameliorate the existing state of the property and enable the property to be commercially developed.

§7-22-4. Authorization to create economic opportunity development districts.

A county commission may, in accordance with the procedures and subject to the limitations set forth in this article:

(1) Create one or more economic opportunity development districts within its county;

(2) Provide for the administration and financing of development expenditures within the districts; and

(3) Provide for the administration and financing of a continuing program of development expenditures within the districts.


Any county commission that has established an economic opportunity development district under this article may make, or authorize to be made by a district board and other public or private parties, development expenditures as will promote the economic vitality of the district and the general welfare of the county, including, but not limited to, expenditures for the following purposes:

(1) Beautification of the district by means including landscaping and construction and erection of fountains,
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10 shelters, benches, sculptures, signs, lighting, decorations and
11 similar amenities;

12 (2) Provision of special or additional public services such
13 as sanitation, security for persons and property and the
14 construction and maintenance of public facilities, including,
15 but not limited to, sidewalks, parking lots, parking garages
16 and other public areas;

17 (3) Making payments for principal, interest, issuance
18 costs, any of the costs described in section twenty of this
19 article and appropriate reserves for bonds and other
20 instruments and arrangements issued or entered into by the
21 county commission for financing the expenditures of the
22 district described in this section and to otherwise implement
23 the purposes of this article;

24 (4) Providing financial support for public transportation
25 and vehicle parking facilities open to the general public,
26 whether physically situate within the district’s boundaries or
27 on adjacent land;

28 (5) Acquiring, building, demolishing, razing,
29 constructing, repairing, reconstructing, refurbishing,
30 renovating, rehabilitating, expanding, altering, otherwise
31 developing, operating and maintaining real property
32 generally, parking facilities, commercial structures and other
33 capital improvements to real property, fixtures and tangible
34 personal property, whether or not physically situate within
35 the district’s boundaries: Provided, That the expenditure
36 directly benefits the district;

37 (6) Developing plans for the architectural design of the
38 district and portions thereof and developing plans and
39 programs for the future development of the district;
(7) Developing, promoting and supporting community events and activities open to the general public that benefit the district;

(8) Providing the administrative costs for a district management program;

(9) Providing for the usual and customary maintenance and upkeep of all improvements and amenities in the district as are commercially reasonable and necessary to sustain its economic viability on a permanent basis;

(10) Providing any other services that the county commission or district board is authorized to perform and which the county commission does not also perform to the same extent on a countywide basis;

(11) Making grants to the owners or tenants of economic opportunity development district for the purposes described in this section;

(12) Acquiring an interest in any entity or entities that own any portion of the real property situate in the district and contributing capital to any entity or entities;

(13) Remediation of publicly or privately owned landfills, former coal or other mining sites, solid waste facilities or hazardous waste sites to facilitate commercial development which would not otherwise be economically feasible; and

(14) To do any and all things necessary, desirable or appropriate to carry out and accomplish the purposes of this article notwithstanding any provision of this code to the contrary.
§7-22-7. Application to development office for approval of an economic opportunity development district project.

(a) General. -- The development office shall receive and act on applications filed with it by county commissions pursuant to section six of this article. Each application must include:

1. A true copy of the notice described in section six of this article;

2. The total cost of the project;

3. A reasonable estimate of the number of months needed to complete the project;

4. A general description of the capital improvements, additional or extended services and other proposed development expenditures to be made in the district as part of the project;

5. A description of the proposed method of financing the development expenditures, together with a description of the reserves to be established for financing ongoing development expenditures necessary to permanently maintain the optimum economic viability of the district following its inception: Provided, That the amounts of the reserves may not exceed the amounts that would be required by prevailing commercial capital market considerations;

6. A description of the sources and anticipated amounts of all financing, including, but not limited to, proceeds from the issuance of any bonds or other instruments, revenues from the special district excise tax and enhanced revenues from property taxes and fees;

7. A description of the financial contribution of the county commission to the funding of development expenditures;
(8) Identification of any businesses that the county commission expects to relocate their business locations from the district to another place in the state in connection with the establishment of the district or from another place in this state to the district: Provided, That for purposes of this article, any entities shall be designated “relocated entities”;

(9) Identification of any businesses currently conducting business in the proposed economic opportunity development district that the county commission expects to continue doing business there after the district is created;

(10) A good faith estimate of the aggregate amount of consumers sales and service tax that was actually remitted to the Tax Commissioner by all business locations identified as provided in subdivisions (8) and (9) of this subsection with respect to their sales made and services rendered from their then current business locations that will be relocated from, or to, or remain in the district, for the twelve full calendar months next preceding the date of the application: Provided, That for purposes of this article, the aggregate amount is designated as “the base tax revenue amount”;

(11) A good faith estimate of the gross annual district tax revenue amount;

(12) The proposed application of any surplus from all funding sources to further the objectives of this article;

(13) The Tax Commissioner’s certification of: (i) The amount of consumers sales and service taxes collected from businesses located in the economic opportunity district during the twelve calendar months preceding the calendar quarter during which the application will be submitted to the development office; (ii) the estimated amount of economic opportunity district excise tax that will be collected during the first twelve months after the month in which the Tax
Commissioner would first begin to collect that tax; and (iii) the estimated amount of economic opportunity district excise tax that will be collected during the first thirty-six months after the month in which the Tax Commissioner would first begin to collect that tax; and

(14) Any additional information the development office may require.

(b) Review of applications. -- The development office shall review all project proposals for conformance to statutory and regulatory requirements, the reasonableness of the project's budget and timetable for completion and the following criteria:

(1) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(2) The merits of the project determined by a cost-benefit analysis that incorporates all costs and benefits, both public and private;

(3) Whether the project is supported by significant private sector investment and substantial credible evidence that, but for the existence of sales tax increment financing, the project would not be feasible;

(4) Whether the economic opportunity district excise tax dollars will leverage or be the catalyst for the effective use of private, other local government, state or federal funding that is available;

(5) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;
(6) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(7) Whether the project will, directly or indirectly, assist in the creation of additional long-term employment opportunities in the area and the quality of jobs created in all phases of the project, to include, but not be limited to, wages and benefits;

(8) Whether the project will fulfill a pressing need for the area, or part of the area, in which the economic opportunity district is located;

(9) Whether the county commission has a strategy for economic development in the county and whether the project is consistent with that strategy;

(10) Whether the project helps to diversify the local economy;

(11) Whether the project is consistent with the goals of this article;

(12) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(13) (A) The ability of the county commission and the project developer or project team to carry out the project: Provided, That no project may be approved by the development office unless the amount of all development expenditures proposed to be made in the first twenty-four months following the creation of the district results in capital investment of more than $25 million in the district and the county submits clear and convincing information, to the
satisfaction of the development office, that the investment
will be made if the development office approves the project
and the Legislature authorizes the county commission to levy
an excise tax on sales of goods and services made within the
economic opportunity district as provided in this article.

(B) Notwithstanding any provision of paragraph (A) of
this subdivision to the contrary, no project involving
remediation may be approved by the Development Office
unless the amount of all development expenditures proposed
to be made in the first forty-eight months following the
creation of the district results in capital investment of more
than $25 million in the district. In addition to the remaining
provisions of paragraph (A) of this subdivision the
development office may not approve a project involving
remediation authorized under section five of this article
unless the county commission submits clear and convincing
information, to the satisfaction of the development office,
that the proposed remediation expenditures to be financed by
the issuance of bonds or notes pursuant to section sixteen of
this article do not constitute more than twenty-five percent of
the total development expenditures associated with the
project.

(c) Additional criteria. -- The development office may
establish other criteria for consideration when approving the
applications.

(d) Action on the application. -- The executive director
of the development office shall act to approve or not approve
any application within thirty days following the receipt of the
application or the receipt of any additional information
requested by the development office, whichever is the later.

(e) Certification of project. -- If the executive director of
the development office approves a county's economic
opportunity district project application, he or she shall issue
to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the Tax Commissioner and the Tax Commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the Tax Commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(f) Certification of enlargement of geographic boundaries of previously certified district. -- If the executive director of the development office approves a county’s economic opportunity district project application to expand the geographic boundaries of a previously certified district, he or she shall issue to the county commission a written certificate evidencing the approval.

The certificate shall expressly state a base tax revenue amount, the gross annual district tax revenue amount and the estimated net annual district tax revenue amount which, for purposes of this article, is the difference between the gross annual district tax revenue amount and the base tax revenue amount, all of which the development office has determined
with respect to the district’s application based on any investigation it considers reasonable and necessary, including, but not limited to, any relevant information the development office requests from the tax commissioner and the tax commissioner provides to the development office: Provided, That in determining the net annual district tax revenue amount, the development office may not use a base tax revenue amount less than that amount certified by the tax commissioner but, in lieu of confirmation from the Tax Commissioner of the gross annual district tax revenue amount, the development office may use the estimate of the gross annual district tax revenue amount provided by the county commission pursuant to subsection (a) of this section.

(g) Promulgation of rules. -- The executive director of the development office may promulgate rules to implement the economic opportunity development district project application approval process and to describe the criteria and procedures it has established in connection therewith. These rules are not subject to the provisions of chapter twenty-nine-a of this code but shall be filed with the Secretary of State.

§7-22-10. Order to create district as approved by Development Office and authorized by the Legislature.

(a) General. -- If an economic opportunity development district project has been approved by the executive director of the development office and the levying of a special district excise tax for the district has been authorized by the Legislature, all in accordance with this article, the county commission may create the district by order entered of record as provided in article one of this chapter: Provided, That the county commission may not amend, alter or change in any manner the boundaries of the economic opportunity development district authorized by the Legislature. In addition to all other requirements, the order shall contain the following:
(1) The name of the district and a description of its boundaries;

(2) A summary of any proposed services to be provided and capital improvements to be made within the district and a reasonable estimate of any attendant costs;

(3) The base and rate of any special district excise tax that may be imposed upon sales by businesses for the privilege of operating within the district, which tax shall be passed on to and paid by the consumer, and the manner in which the taxes will be imposed, administered and collected, all of which shall be in conformity with the requirements of this article; and

(4) The district board members’ terms, their method of appointment and a general description of the district board’s powers and duties, which powers may include the authority:

(A) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with any applicable laws;

(B) To elect its own officers, to appoint committees and to employ and fix compensation for personnel necessary for its operations;

(C) To enter into contracts with any person, agency, government entity, agency or instrumentality, firm, partnership, limited partnership, limited liability company or corporation, including both public and private corporations, and for-profit and not-for-profit organizations and generally to do any and all things necessary or convenient for the purpose of promoting, developing and advancing the purposes described in section two of this article;

(D) To amend or supplement any contracts or leases or to enter into new, additional or further contracts or leases upon
the terms and conditions for consideration and for any term
of duration, with or without option of renewal, as agreed
upon by the district board and any person, agency,
government entity, agency or instrumentality, firm,
partnership, limited partnership, limited liability company or
corporation;

(E) To, unless otherwise provided in, and subject to the
provisions of any contracts or leases to operate, repair,
manage and maintain buildings and structures and provide
adequate insurance of all types and in connection with the
primary use thereof and incidental thereto to provide
services, such as retail stores and restaurants, and to
effectuate incidental purposes, grant leases, permits,
concessions or other authorizations to any person or persons
upon the terms and conditions for consideration and for the
term of duration as agreed upon by the district board and any
person, agency, governmental department, firm or
corporation;

(F) To delegate any authority given to it by law to any of
its officers, committees, agents or employees;

(G) To apply for, receive and use grants-in-aid, donations
and contributions from any source or sources and to accept
and use bequests, devises, gifts and donations from any
person, firm or corporation;

(H) To acquire real property by gift, purchase or
construction or in any other lawful manner and hold title
thereto in its own name and to sell, lease or otherwise dispose
of all or part of any real property which it may own, either by
contract or at public auction, upon the approval by the district
board;

(I) To purchase or otherwise acquire, own, hold, sell,
lease and dispose of all or part of any personal property
which it may own, either by contract or at public auction;
(J) Pursuant to a determination by the district board that there exists a continuing need for development expenditures and that moneys or funds of the district are necessary therefor, to borrow money and execute and deliver the district's negotiable notes and other evidences of indebtedness therefor, on the terms as the district shall determine, and give security therefor as is requisite, including, without limitation, a pledge of the district's rights in its subaccount of the economic opportunity development district fund;

(K) To acquire (either directly or on behalf of the county) an interest in any entity or entities that own any real property situate in the district, to contribute capital to any entity or entities and to exercise the rights of an owner with respect thereto; and

(L) To expend its funds in the execution of the powers and authority given in this section, which expenditures, by the means authorized in this section, are hereby determined and declared as a matter of legislative finding to be for a public purpose and use, in the public interest and for the general welfare of the people of West Virginia, to alleviate and prevent economic deterioration and to relieve the existing critical condition of unemployment existing within the state.

(b) Additional contents of order. -- The county commission's order shall also state the general intention of the county commission to develop and increase services and to make capital improvements within the district.

(c) Mailing of certified copies of order. -- Upon entry of an order establishing an economic opportunity development district excise tax, a certified copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.
§7-22-12. Special district excise tax authorized.

(a) General. -- The county commission of a county, authorized by the Legislature to levy a special district excise tax for the benefit of an economic opportunity development district, may, by order entered of record, impose that tax on the privilege of selling tangible personal property and rendering select services in the district in accordance with this section.

(b) Tax base. -- The base of a special district excise tax imposed pursuant to this section shall be identical to the base of the consumers sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district. Sales of gasoline and special fuel are not subject to special district excise tax but remain subject to the tax levied by article fifteen, chapter eleven of this code. Except for the exemption provided in section nine-f of that article, all exemptions and exceptions from the consumers sales and service tax also apply to the special district excise tax.

(c) Tax rate. -- The rate or rates of a special district excise tax levied pursuant to this section shall be identical to the rate or rates of the consumer sales and service tax imposed pursuant to article fifteen, chapter eleven of this code on sales made and services rendered within the boundaries of the district authorized by this section.

(d) Collection by Tax Commissioner. -- The order of the county commission imposing a special district excise tax shall provide for the tax to be collected by the Tax Commissioner in the same manner as the tax levied by section three, article fifteen, chapter eleven of this code is administered, assessed, collected and enforced.

(1) The Tax Commissioner may require the electronic filing of returns related to the special district excise tax
imposed pursuant to this section, and also may require the
electronic payment of the special district excise tax imposed
pursuant to this section. The Tax Commissioner may
prescribe by rules adopted or proposed pursuant to article
three, chapter twenty-nine-a of this code, administrative
notices, and forms and instructions, the procedures and
criteria to be followed to electronically file those returns and
to electronically pay the special district excise tax imposed
pursuant to this section.

(2) Any rules filed by the State Tax Commissioner
relating to the special district excise tax imposed pursuant to
this section shall set forth the following:

(A) Acceptable indicia of timely payment;

(B) Which type of electronic filing method or methods a
particular type of taxpayer may or may not use;

(C) What type of electronic payment method or methods
a particular type of taxpayer may or may not use;

(D) What, if any, exceptions are allowable, and
alternative methods of payment that may be used for any
exceptions;

(E) Procedures for making voluntary or mandatory
electronic payments or both; and

(F) Any other provisions necessary to ensure the timely
electronic filing of returns related to the special district excise
tax and the making of payments electronically of the special
district excise tax imposed pursuant to this section.

(3)(A) Notwithstanding the provisions of section five-d,
article ten, chapter eleven of this code: (i) So long as bonds
are outstanding pursuant to this article, the Tax
Commissioner shall provide on a monthly basis to the trustee
for bonds issued pursuant to this article information on returns submitted pursuant to this article; and (ii) the trustee may share the information so obtained with the county commission that established the economic opportunity development district that issued the bonds pursuant to this article and with the bondholders and with bond counsel for bonds issued pursuant to this article. The Tax Commissioner and the trustee may enter into a written agreement in order to accomplish exchange of the information.

(B) Any confidential information provided pursuant to this subdivision shall be used solely for the protection and enforcement of the rights and remedies of the bondholders of bonds issued pursuant to this article. Any person or entity that is in possession of information disclosed by the Tax Commissioner or shared by the trustee pursuant to subdivision (a) of this subsection is subject to the provisions of section five-d, article ten, chapter eleven of this code as if the person or entity that is in possession of the tax information is an officer, employee, agent or representative of this state or of a local or municipal governmental entity or other governmental subdivision.

(e) Deposit of net tax collected. --

(1) The order of the county commission imposing a special district excise tax shall provide that the Tax Commissioner deposit the net amount of tax collected in the Special Economic Opportunity Development District Fund to the credit of the county commission’s subaccount therein for the economic opportunity development district and that the money in the subaccount may only be used to pay for development expenditures as provided in this article except as provided in subsection (f) of this section.

(2) The State Treasurer shall withhold from the county commission’s subaccount in the Economic Opportunity Development District Fund and shall deposit in the General
Revenue Fund of this state, on or before the twentieth day of each calendar month next following the effective date of a special district excise tax, a sum equal to one twelfth of the base tax revenue amount last certified by the development office pursuant to section seven of this article.

(f) **Effective date of special district excise tax.** -- Any taxes imposed pursuant to the authority of this section are effective on the first day of the calendar month that begins sixty days after the date of adoption of an order entered of record imposing the tax or the first day of any later calendar month expressly designated in the order.

(g) **Copies of order.** -- Upon entry of an order levying a special district excise tax, a certified copy of the order shall be mailed to the State Auditor, as ex officio the chief inspector and supervisor of public offices, the State Treasurer and the Tax Commissioner.

§7-22-14. **Modification of Included area; notice; hearing.**

(a) **General.** -- The order creating an economic opportunity development district may not be amended to include additional contiguous property until after the amendment is approved by the executive director of the Development Office in the same manner as an application to approve the establishment of the district is acted upon under section seven of this article and the amendment is authorized by the Legislature.

(b) **Limitations.** -- Additional property may not be included in the district unless it is situated within the boundaries of the county and is contiguous to the then current boundaries of the district.

(c) **Public hearing required.** --
14 (1) The county commission of any county desiring to
15 amend its order shall designate a time and place for a public
16 hearing upon the proposal to include additional property.
17 The notice shall meet the requirements set forth in section six
18 of this article.

19 (2) At the time and place set forth in the notice, the
20 county commission shall afford the opportunity to be heard
21 to any owners of real property either currently included in or
22 proposed to be added to the existing district and to any other
23 residents of the county.

24 (d) Application to West Virginia Development Office. --
25 Following the hearing, the county commission may, by
26 resolution, apply to the Development Office to approve
27 inclusion of the additional property in the district.

28 (e) Consideration by the Executive Director of the
29 Development Office. -- Before the executive director of the
30 Development Office approves inclusion of the additional
31 property in the district, the Development Office shall
32 determine the amount of taxes levied by article fifteen,
33 chapter eleven of this code that were collected by businesses
34 located in the area the county commission proposes to add to
35 the district in the same manner as the base amount of tax was
36 determined when the district was first created. The State
37 Treasurer shall also deposit one twelfth of this additional tax
38 base amount into the General Revenue Fund each month, as
39 provided in section twelve of this article.

40 (f) Legislative action required. -- After the Executive
41 Director of the Development Office approves amending the
42 boundaries of the district, the Legislature must amend section
43 nine of this article to allow levy of the special district excise
44 tax on business located in geographic area to be included in
45 the district. After the Legislature amends said section, the
46 county commission may then amend its order: Provided, That
the order may not be effective any earlier than the first day of the calendar month that begins sixty days after the effective date of the act of the Legislature authorizing the levy on the special district excise tax on businesses located in the geographic area to be added to the boundaries of the district for which the tax is levied or a later date as set forth in the order of the county commission.

(g) Collection of special district excise tax. -- All businesses included in a district because of the boundary amendment shall on the effective date of the order, determined as provided in subsection (f) of this section, collect the special district excise tax on all sales on tangible property or services made from locations in the district on or after the effective date of the county commission's order or a later date as set forth in the order.

(h) Minor Modifications. Notwithstanding any provision of this article to contrary, a county commission may amend the order creating an economic opportunity development district to make, and may make, modifications to the boundaries of the economic opportunity development district without holding a public hearing or receiving approval of the executive director of the West Virginia Development Office or authorization by the Legislature if the modifications do not increase the total acreage of the economic opportunity development district or result in a change to the base tax revenue amount. The county commission is authorized to levy special district excise taxes on sales of tangible personal property and services made from business locations within the modified boundaries of the economic opportunity development district.
§7-22-15. Abolishment and dissolution of district; notice; hearing.

(a) General. — Except upon the express written consent of the executive director of the development office and of all the holders or obligees of any indebtedness or other instruments the proceeds of which were applied to any development expenditures or any indebtedness the payment of which is secured by revenues payable into the fund provided under section eight of this article or by any public property, a district may only be abolished by the county commission when there is no outstanding indebtedness, the proceeds of which were applied to any development expenditures or the payment of which is secured by revenues payable into the fund provided under section eight of this article, or by any public property, and following a public hearing upon the proposed abolishment.

(b) Notice of public hearing. — Notice of the public hearing required by subsection (a) of this section shall be provided by first-class mail to all owners of real property within the district and shall be published as a Class I-0 legal advertisement in compliance with article three, chapter fifty-nine of this code at least twenty days prior to the public hearing.

(c) Transfer of district assets and funds. — Upon the abolishment of any economic opportunity development district, any funds or other assets, contractual rights or obligations, claims against holders of indebtedness or other financial benefits, liabilities or obligations existing after full payment has been made on all existing contracts, bonds, notes or other obligations of the district are transferred to and assumed by the county commission. Any funds or other assets transferred shall be used for the benefit of the area included in the district being abolished.

(d) Reinstatement of district. — Following abolishment of a district pursuant to this section, its reinstatement requires compliance with all requirements and procedures set forth in
this article for the initial development, approval, establishment and creation of an economic opportunity development district.


(a) General. -- Unless the county commission otherwise determines in the order authorizing the issuance of the bonds or notes under the authority of this article, there is hereby created a statutory lien upon the subaccount created pursuant to section eight of this article and all special district excise tax revenues collected for the benefit of the district pursuant to section eleven-a, article ten, chapter eleven of this code for the purpose of securing the principal of the bonds or notes and the interest thereon.

(b) Security for debt service. -- The principal of and interest on any bonds or notes issued under the authority of this article shall be secured by a pledge of the special district excise tax revenues derived from the economic opportunity development district project by the county commission issuing the bonds or notes to the extent provided in the order adopted by the county commission authorizing the issuance of the bonds or notes.

(c) Trust indenture. --

(1) In the discretion and at the option of the county commission, the bonds and notes may also be secured by a trust indenture by and between the county commission and a corporate trustee, which may be a trust company or bank having trust powers, within or without the State of West Virginia.

(2) The resolution order authorizing the bonds or notes and fixing the details thereof may provide that the trust indenture may contain provisions for the protection and enforcing the rights and remedies of the bondholders as are
reasonable and proper, not in violation of law, including
covenants setting forth the duties of the county commission
in relation to the construction, acquisition or financing of an
economic opportunity development district project, or part
thereof or an addition thereto, and the improvement, repair,
maintenance and insurance thereof and for the custody,
safeguarding and application of all moneys and may provide
that the economic opportunity development district project
shall be constructed and paid for under the supervision and
approval of the consulting engineers or architects employed
and designated by the county commission or, if directed by
the county commission in the resolution order, by the district
board, and satisfactory to the purchasers of the bonds or
notes, their successors, assigns or nominees who may require
the security given by any contractor or any depository of the
proceeds of the bonds or notes or the revenues received from
the district project be satisfactory to the purchasers, their
successors, assigns or nominees.

(3) The indenture may set forth the rights and remedies
of the bondholders, the county commission or trustee and the
indenture may provide for accelerating the maturity of the
revenue bonds, at the option of the bondholders or the county
commission issuing the bonds, upon default in the payment
of the amounts due under the bonds.

(4) The county commission may also provide by
resolution and in the trust indenture for the payment of the
proceeds of the sale of the bonds or notes and the revenues
from the economic opportunity development district project
to any depository it determines, for the custody and
investment thereof and for the method of distribution thereof,
with safeguards and restrictions it determines to be necessary
or advisable for the protection thereof and upon the filing of
a certified copy of the resolution or of the indenture for
record in the office of the clerk of the county commission of
the county in which the economic opportunity development
(5) In the event that more than one certified resolution or indenture is recorded, the security interest granted by the first recorded resolution or indenture has priority in the same manner as an earlier filed deed of trust except to the extent the earlier recorded resolution or indenture provides otherwise.

(d) Mortgage or deed of trust. --

(1) In addition to or in lieu of the indenture provided in subsection (c) of this section, the principal of and interest on the bonds or notes may, but need not, be secured by a mortgage or deed of trust covering all or any part of the economic opportunity development district project from which the revenues pledged are derived and the same may be secured by an assignment or pledge of the income received from the economic opportunity development district project.

(2) The proceedings under which bonds or notes are authorized to be issued, when secured by a mortgage or deed of trust, may contain the same terms, conditions and provisions provided herein when an indenture is entered into between the county commission and a trustee and any mortgage or deed of trust may contain any agreements and provisions customarily contained in instruments securing bonds or notes, including, without limiting the generality of the foregoing, provisions respecting the fixing and collection of revenues from the economic opportunity development district project covered by the proceedings or mortgage, the terms to be incorporated in any lease, sale or financing agreement with respect to the economic opportunity development district project, the improvement, repair, maintenance and insurance of the economic opportunity
district project, the creation and maintenance of special funds from the revenues received from the economic opportunity development district project and the rights and remedies available in event of default to the bondholders or note holders, the county commission, or to the trustee under an agreement, indenture, mortgage or deed of trust, all as the county commission body considers advisable and shall not be in conflict with the provisions of this article or any existing law: Provided, That in making any agreements or provisions, a county commission shall not have the power to incur original indebtedness by indenture, order, resolution, mortgage or deed of trust except with respect to the economic opportunity development district project and the application of the revenues therefrom and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers unless approved by the voters in accordance with article one, chapter thirteen of this code or as otherwise permitted by the Constitution of this state.

(e) Enforcement of obligations. --

(1) The proceedings authorizing any bonds and any indenture, mortgage or deed of trust securing the bonds may provide that, in the event of default in payment of the principal of or the interest on the bonds, or notes, or in the performance of any agreement contained in the proceedings, indenture, mortgage or deed of trust, payment and performance may be enforced by the appointment of a receiver in equity with power to charge and collect rents or other amounts and to apply the revenues from the economic opportunity development district project in accordance with the proceedings or the provisions of the agreement, indenture, mortgage or deed of trust.

(2) Any agreement, indenture, mortgage or deed of trust may provide also that, in the event of default in payment or the violation of any agreement contained in the mortgage or
deed of trust, the agreement, indenture, mortgage or deed of
trust may be foreclosed either by sale at public outcry or by
proceedings in equity and may provide that the holder or
holders of any of the bonds secured thereby may become the
purchaser at any foreclosure sale, if the highest bidder
therefor.

(f) No pecuniary liability. -- No breach of any agreement,
indenture, mortgage or deed of trust may impose any
pecuniary liability upon a county or any charge upon its
general credit or against its taxing powers.

§7-22-20. Use of proceeds from sale of bonds.

(a) General. -- The proceeds from the sale of any bonds
issued under authority of this article shall be applied only for
the purpose for which the bonds were issued: Provided, That
any accrued interest received in any sale shall be applied to
the payment of the interest on the bonds sold: Provided,
however, That if for any reason any portion of the proceeds
may not be needed for the purpose for which the bonds were
issued, then the unneeded portion of the proceeds may be
applied to the purchase of bonds for cancellation or payment
of the principal of or the interest on the bonds, or held in
reserve for the payment thereof.

(b) Payment of costs. -- The costs that may be paid with
the proceeds of the bonds include all development
expenditures described in section five of this article and may
also include, but not be limited to, the following:

(1) The cost of acquiring any real estate determined
necessary;

(2) The actual cost of the construction of any part of an
economic opportunity development district project which
may be constructed, including architects’, engineers’,
may be constructed, including architects', engineers', financial or other consultants’ and legal fees;

(3) The purchase price or rental of any part of an economic opportunity development district project that may be acquired by purchase or lease;

(4) All expenses incurred in connection with the authorization, sale and issuance of the bonds to finance the acquisition and the interest on the bonds for a reasonable time prior to construction during construction and for not exceeding twelve months after completion of construction; and

(5) Any other costs and expenses reasonably necessary in the establishment and acquisition of an economic opportunity development district project and the financing thereof.

CHAPTER 35

(S. B. 428 - By Senators Kessler (Acting President) and Miller)

[Amended and again passed, in an effort to meet the objections of the Governor March 18, 2011; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §59-1-4, §59-1-11 and §59-1-13 of the Code of West Virginia, 1931, as amended, all relating generally to fees charged by the clerk of a circuit court; increasing the fees charged by the clerk of a circuit court for medical professional liability actions; and fees collected by clerks of court to be used to enhance funding for civil legal services for victims of domestic violence and low income citizens in the state.
Be it enacted by the Legislature of West Virginia:

That §59-1-4, §59-1-11 and §59-1-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-4. Fees collected by Secretary of State, Auditor and Clerk of Supreme Court of Appeals to be paid into State Treasury; accounts; reports.

Except as otherwise provided by law, the fees to be charged by the Auditor, Secretary of State and Clerk of the Supreme Court of Appeals, by virtue of this article or any other law, are the property of the State of West Virginia. The Auditor, Secretary of State and Clerk of the Supreme Court of Appeals shall account for and pay into the State Treasury at least once every thirty days all fees collected or appearing to be due to the state, to the credit of the general state fund or other fund as provided by law. The Auditor, Secretary of State and Clerk of the Supreme Court of Appeals shall each keep a complete and accurate itemized account of all fees collected by them and the nature of the services rendered for which all fees were charged and collected, in accordance with generally accepted accounting principles, as provided in article two, chapter five-a of this code. All accounts shall be open to inspection and audit as provided in article two, chapter four of this code.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:
(1) For instituting any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause, suit or proceeding, $155, of which $30 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code and $20 deposited in the special revenue account created in section six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for domestic violence victims;

(2) For instituting an action for medical professional liability, $280, of which $10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate maintenance or annulment, $135;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, $85; and

(5) For petitioning for an expedited modification of a child support order, $35.

(b) In addition to the foregoing fees, the following fees shall be charged and collected:

(1) For preparing an abstract of judgment, $5;

(2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, $1;

(3) For issuing a suggestion and serving notice to the debtor by certified mail, $25;
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(4) For issuing an execution, $25;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, $25;

(6) For vacation or modification of a suggestee execution, $1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, $3;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, $10, of which $5 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For postage and express and for sending or receiving decrees, orders or records, by mail or express, three times the amount of the postage or express charges;

(10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50¢;

(11) For additional service, plaintiff or appellant, where any case remains on the docket longer than three years, for each additional year or part year, $20; and

(12) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, $50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

(c) The clerk shall tax the following fees for services in a criminal case against a defendant convicted in such court:
In the case of a misdemeanor, $85; and

In the case of a felony, $105, of which $10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(d) The clerk of a circuit court shall charge and collect a fee of $25 per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten-percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten-percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for the processing of a personal recognizance bond.
(e) The clerk of a circuit court shall charge and collect a fee of $10 for services rendered by the clerk for processing of bailpiece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(f) No clerk is required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

§59-1-13. Fees to be charged by Clerk of Supreme Court of Appeals.

The Clerk of the Supreme Court of Appeals shall charge the following fees to be paid by the parties for whom the services are rendered:

For all copies of petitions, records, orders, opinions or other papers, per page. .................. 25¢

For each certificate under seal of the court. ....... $5

For license to practice law, suitable for framing. . . $25

For docketing any civil appeals, including appeals from Family Courts, but not including, appeals in workers’ compensations cases, any action in the Supreme Court’s original jurisdiction or any other action, cause or proceeding. ................................. $200

For any other work or services not herein enumerated, the clerk shall charge the fees prescribed for similar services by clerks of circuit courts.
16 Fees collected for docketing civil appeals shall be
17 expended, in the discretion of the West Virginia Supreme
18 Court of Appeals, solely to provide grants to the federally
19 designated provider of civil legal services for low income
20 citizens in the state.

CHAPTER 36

(Com. Sub. for H. B. 2860 - By Delegates Mahan,
Boggs, Brown, Fleischauer, T. Campbell,
Doyle, Cowles, Perdue and Miley)

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §15-9-5, all
relating to authorization of the promulgation of certain rules by
the Governor’s Committee on Crime, Delinquency and
Correction regarding identification, investigation, reporting,
and prosecution of suspected child abuse and neglect;
convening certain meetings of advisory committee to assist in
development of rules; and providing for composition of
advisory committee.

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 §15-9-5, to read as follows:
ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY AND CORRECTION.


(a) The Governor’s Committee on Crime, Delinquency and Correction shall develop and promulgate rules for state, county and municipal law-enforcement officers, law-enforcement agencies and communications and emergency operations centers that dispatch law-enforcement officers with regard to the identification, investigation, reporting and prosecution of suspected child abuse and neglect: Provided, That such rules and procedures must be consistent with the priority criteria prescribed by generally applicable department procedures.

(b) The rules and the revisions thereof as provided in this section shall be proposed as legislative rules for legislative approval in accordance with article three chapter twenty-nine-a of this code.

(c) Prior to the publication of proposed rules, the Governor’s Committee on Crime, Delinquency and Correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules.

(d) The advisory committee shall meet at least on a biennial basis to review the rules and to propose revisions as a result of changes in law or policy.

(e) The advisory committee shall be composed of:

   (1) The Director of the Prosecuting Attorney’s Institute or his or her designee;

   (2) The State Superintendent of the West Virginia State Police or his or her designee;

   (3) One representative of law-enforcement with experience in investigating child abuse and neglect cases
representing municipalities appointed by the Executive Director of the Governor's Committee on Crime, Delinquency and Correction;

(4) One representative of law-enforcement with experience in investigating child abuse and neglect cases representing counties appointed by the Executive Director of the Governor’s Committee on Crime, Delinquency and Correction;

(5) The Commissioner of the Bureau for Children and Families of the Department of Health and Human Resources or his or her designee;

(6) A health care provider with pediatric experience and child abuse expertise;

(7) The Director of the Division of Children’s Services of the Administrative Office of the Courts or his or her designee, as a nonvoting member;

(8) The Director of the West Virginia Child Advocacy Network or his or her designee;

(9) The Director of the West Virginia Developmental Disabilities Council or his or her designee;

(10) An individual representing communications and emergency operations centers that dispatch law-enforcement officers; and

(11) Other persons or organizations who, in the discretion of the Executive Director of the Governor’s Committee on Crime, Delinquency and Corrections have an interest in the rules: Provided, That the total number of the advisory committee may not exceed sixteen.
CHAPTER 37

(Com. Sub. for H. B. 2818 - By Delegates Manchin, Caputo, Fleischauer, Fragale, Guthrie, Poore, Skaff, Doyle and Stowers)

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, relating to increasing the allowable expense under the Crime Victims Award Program; increasing the amount that may be paid for the clean-up of real property damage by a methamphetamine laboratory; increasing allowable reimbursement for funeral expenses; and making technical revisions.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 of the Code of West Virginia, 1931, as amended, be amended to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


As used in this article, the term:

(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:
(1) A victim, except the term “victim” does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse or minor child of a deceased victim or, if the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim or a victim’s dependent when the obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source including, but not limited to, assignees, persons holding power of attorney or others who hold authority to make or submit claims in place of or on behalf of a victim, a dependent or third person who is not a collateral source and if the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, their duly qualified fiduciary;

(5) A person who is a secondary victim in need of mental health counseling due to the person’s exposure to the crime committed whose award may not exceed $1,000; and

(6) A person who owns real property damaged by the operation of a methamphetamine laboratory without the knowledge or consent of the owner of the real property.

(b) “Collateral source” means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to him or her from any of the following sources:
(1) The offender, including restitution received from the offender pursuant to an order by a court sentencing the offender or placing him or her on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or its agencies, a state or its political subdivisions or an instrumentality of two or more states;

(3) Social Security, Medicare and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance or other disability insurance;

(5) Workers’ compensation;

(6) Wage continuation programs of an employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds $25,000.

(c) “Criminally injurious conduct” means conduct that occurs or is attempted in this state, or in any state not having a victim compensation program, which poses a substantial threat of personal injury or death and is punishable by fine, imprisonment or death or would be so punishable but for a finding by a court of competent jurisdiction that the person
committing the crime lacked capacity. Criminally injurious conduct also includes criminally injurious conduct committed outside of the United States against a resident of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle unless the person engaging in the conduct intended to cause personal injury or death or committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, leaving the scene of the accident or reckless driving.

(d) “Dependent” means an individual who received over half of his or her support from the victim. For the purpose of making this determination there shall be taken into account the amount of support received from the victim as compared to the entire amount of support the individual received from all sources including self-support. The term “support” includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term “dependent” includes a child of the victim born after his or her death.

(e) “Economic loss” means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss, however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term “economic loss” includes a lost scholarship as defined in this section.

(f) “Allowable expense” includes the following:

(1) Reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations including those for medical care, mental health counseling,
prosthetic devices, eye glasses, dentures, rehabilitation and
other remedial treatment and care but does not include that
portion of a charge for a room in a hospital, clinic,
convalescent home, nursing home or other institution
engaged in providing nursing care and related services which
is in excess of a reasonable and customary charge for
semiprivate accommodations unless accommodations other
than semiprivate accommodations are medically required;

(2) A total charge not in excess of $10,000 for expenses
in any way related to funerals, cremations and burials;

(3) A charge, not to exceed $10,000, for cleanup of real
property damaged by a methamphetamine laboratory or a
charge not to exceed $1,000 for any other crime scene
cleanup;

(4) Victim relocation costs not to exceed $2,000:

(5) Reasonable travel expenses not to exceed $1,000 for
a claimant to attend court proceedings conducted for the
prosecution of the offender;

(6) Reasonable travel expenses for a claimant to return a
person who is a minor or incapacitated adult who has been
unlawfully removed from this state to another state or
country if the removal constitutes a crime under the laws of
this state which may not exceed $2,000 for expenses to
another state or $3,000 to another country; and

(7) Reasonable travel expenses for the transportation of
a victim to and from a medical facility.

(g) "Work loss" means loss of income from work that the
injured person would have performed if he or she had not
been injured and expenses reasonably incurred or to be
incurred by him or her to obtain services in lieu of those he
or she would have performed for income. "Work loss" is 
reduced by income from substitute work actually performed 
or to be performed by him or her or by income he or she 
would have earned in available appropriate substitute work 
that he or she was capable of performing but unreasonably 
failed to undertake. "Work loss" also includes loss of income 
from work by the parent or legal guardian of a minor victim 
who must miss work to take care of the minor victim.

(h) "Replacement services loss" means expenses 
reasonably incurred or to be incurred in obtaining ordinary 
and necessary services in lieu of those the injured person 
would have performed for the benefit of himself or herself or 
his or her family if he or she had not been injured. 
"Replacement services loss" does not include services an 
injured person would have performed to generate income.

(i) "Dependent's economic loss" means loss after a 
victim's death of contributions or things of economic value to 
his or her dependents but does not include services they 
would have received from the victim if he or she had not 
suffered the fatal injury. This amount is reduced by expenses 
avoided by the dependent due to the victim’s death.

(j) "Dependent’s replacement service loss” means loss 
reasonably incurred or to be incurred by dependents after a 
victim’s death in obtaining ordinary and necessary services in 
lieu of those the victim would have performed for their 
benefit if he or she had not suffered the fatal injury. This 
amount is reduced by expenses avoided due to the victim’s 
death but which are not already subtracted in calculating a 
dependent's economic loss.

(k) "Victim" means the following:

(1) A person who suffers personal injury or death as a 
result of any one of the following:
(A) Criminally injurious conduct;

(B) The good faith effort of the person to prevent criminally injurious conduct; or

(C) The good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(2) The owner of real property damaged by the operation of a methamphetamine laboratory which operation was without his or her knowledge or consent.

(l) “Contributory misconduct” means any conduct of the claimant or of the victim through whom the claimant claims an award that is unlawful or intentionally tortious and that, without regard to the conduct’s proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim and includes the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance, when the intoxication has a causal connection or relationship to the injury sustained.

(m) “Lost scholarship” means a scholarship, academic award, stipend or other monetary scholastic assistance which had been awarded or conferred upon a victim in conjunction with a post-secondary school educational program and which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-14g; and to amend and reenact §61-2-28 of said code, all relating to the creation of the misdemeanor offense of unlawful restraint; distinguishing the offense from that of kidnapping; defining restrain; providing for affirmative defenses; and penalties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-14g; and to amend and reenact §61-2-28 of said code, all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14g. Unlawful restraint; penalties.

(a) Any person who, without legal authority intentionally restrains another with the intent that the other person not be allowed to leave the place of restraint and who does so by physical force or by overt or implied threat of violence or by actual physical restraint but without the intent to obtain any
other concession or advantage as those terms are used in section fourteen-a of this article is guilty of a misdemeanor and upon conviction shall be confined in jail for not more than one year, fined not more than $1,000, or both.

(b) In any prosecution under this section, it is an affirmative defense that:

(1) The defendant acted reasonably and in good faith to protect the person from imminent physical danger; or

(2) The person restrained was a child less than eighteen years old and that the actor was a parent or legal guardian, or a person acting under authority granted by a parent or legal guardian of such child, or by a teacher or other school personnel acting under authority granted by section one, article five, chapter eighteen-a of this code, and that his or her sole purpose was to assume control of such child.

(c) As used in this section to "restrain" means to restrict a person's movement without his or her consent.

(d) This section shall not apply to acts done by a law-enforcement officer in the lawful exercise of his or her duties.


(a) Domestic battery. -- Any person who unlawfully and intentionally makes physical contact of an insulting or provoking nature with his or her family or household member or unlawfully and intentionally causes physical harm to his or her family or household member, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than twelve months, or fined not more than five hundred dollars, or both.
(b) Domestic assault. -- Any person who unlawfully attempts to commit a violent injury against his or her family or household member or unlawfully commits an act which places his or her family or household member in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not more than six months, or fined not more than one hundred dollars, or both.

(c) Second offense. -- Domestic assault or domestic battery.

A person convicted of a violation of subsection (a) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section fourteen-g of this article where the victim was his or her current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or who has previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section, or a violation of subsection (b) or (c), section nine of this article or subsection (a), section fourteen-g of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail for not less than sixty days nor
more than one year, or fined not more than one thousand dollars, or both.

A person convicted of a violation of subsection (b) of this section after having been previously convicted of a violation of subsection (a) or (b) of this section, after having been convicted of a violation of subsection (b) or (c), section nine of this article or subsection (a), section fourteen-g of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense or having previously been granted a period of pretrial diversion pursuant to section twenty-two, article eleven of this chapter for a violation of subsection (a) or (b) of this section or subsection (b) or (c), section nine of this article or subsection (a), section fourteen-g of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense shall be confined in a county or regional jail for not less than thirty days nor more than six months, or fined not more than five hundred dollars, or both.

(d) Any person who has been convicted of a third or subsequent violation of the provisions of subsection (a) or (b) of this section, a third or subsequent violation of the provisions of section nine of this article or subsection (a), section fourteen-g of this article where the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant has a child in common, person with whom the defendant cohabits or has
cohabited, a parent or guardian, the defendant’s child or ward
or a member of the defendant’s household at the time of the
offense or who has previously been granted a period of
pretrial diversion pursuant to section twenty-two, article
eleven of this chapter for a violation of subsection (a) or (b)
of this section or a violation of the provisions of section nine
of this article or subsection (a), section fourteen-g of this
article in which the victim was a current or former spouse,
current or former sexual or intimate partner, person with
whom the defendant has a child in common, person with
whom the defendant cohabits or has cohabited, a parent or
guardian, the defendant’s child or ward or a member of the
defendant’s household at the time of the offense, or any
combination of convictions or diversions for these offenses,
is guilty of a felony if the offense occurs within ten years of
a prior conviction of any of these offenses and, upon
conviction thereof, shall be confined in a state correctional
facility not less than one nor more than five years or fined not
more than two thousand five hundred dollars, or both.

(e) As used in this section, “family or household
member” means “family or household member” as defined in
§48-27-204 of this code.

(f) A person charged with a violation of this section may
not also be charged with a violation of subsection (b) or (c),
section nine of this article for the same act.

(g) No law-enforcement officer may be subject to any
civil or criminal action for false arrest or unlawful detention
for effecting an arrest pursuant to this section or pursuant to
§48-27-1002 of this code.
CHAPTER 39

(Com. Sub. for H. B. 2362 - By Delegates Boggs, Perdue, Ashley and Barker)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §61-2-29b of the Code of West Virginia, 1931, as amended, relating to crimes against the elderly, protected persons or incapacitated persons; financial exploitation of the elderly, protected persons and incapacitated adults for misappropriating or misusing assets; permitting the prosecutor to cumulate amounts or values when charging; permitting banking institutions and others to report suspected financial exploitation to law-enforcement authorities and other entities; permitting financial institutions to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney; providing civil immunity for reporting; ordering restitution; and establishing the criminal penalty of larceny.

Be it enacted by the Legislature of West Virginia:

That §61-2-29b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29b. Financial exploitation of an elderly person, protected person or incapacitated adult; penalties; definitions.

1 (a) Financial exploitation occurs when a person
2 intentionally misappropriates or misuses the funds or assets
of an elderly person, protected person or incapacitated adult. Any person who violates this section is guilty of larceny and shall be ordered to pay restitution.

(b) In determining the value of the money, goods, property or services referred to in subsection (a) of the section, it shall be permissible to cumulate amounts or values where such money, goods, property or services were fraudulently obtained as part of a common scheme or plan.

(c) Financial institutions and their employees, as defined by section one, article two-a, chapter thirty-one-a of this code and as permitted by section four, subsection thirteen of that article, others engaged in financially related activities as defined by section one, article eight-c, chapter thirty-one-a of this code, caregivers, relatives and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney and to the Department of Health and Human Resources, Adult Protective Services Division or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

(d) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.
(e) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(f) For the purposes of this section:

(1) "Incapacitated adult" means a person as defined by section twenty-nine of this article;

(2) "Elderly person" means a person who is sixty-five years or older; and

(3) "Protected person" means any person who is defined as a "protected person" in subsection thirteen, section four, article one, chapter forty-four-a of this code and who is subject to the protections of chapter forty-four-a or forty-four-c of this code.

CHAPTER 40

(Com. Sub. for S. B. 93 - By Senators Laird, Barnes, Green, Yost, Foster and Plymale)

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §61-5-12b of the Code of West Virginia, 1931, as amended, relating to escape from custody of the Director of Juvenile Services; and penalties.

Be it enacted by the Legislature of West Virginia:
That §61-5-12b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12b. Escape from custody of the Director of Juvenile Services.

(a) Any person, under the age of eighteen years of age, who escapes or attempts to escape from the custody of the Director of Juvenile Services, regardless of where such person is confined or where such escape occurs, is guilty of a delinquent act and subject to the jurisdiction of the circuit court of the county in which the escape occurred, pursuant to section two, article five, chapter forty-nine of this code: Provided, That upon agreement of all parties, the prosecution of the escape may be transferred to the circuit court from which the juvenile was originally committed.

(b) Any person, over the age of eighteen years of age or any juvenile who has been transferred to the adult jurisdiction of the committing court, who escapes or attempts to escape from the custody of the Director of Juvenile Services, regardless of where such person is confined or where such escape or attempted escape occurs, is guilty of escape and, if the person is detained or confined for an offense which is a felony or would have been a felony if committed by an adult is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not more than five years. Any person, over the age of eighteen years of age or any juvenile who has been transferred to the adult jurisdiction of the committing court, who is detained for an offense which is a misdemeanor or would have been a misdemeanor if committed by an adult is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a regional jail for not more than one year.
CHAPTER 41


[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-15, relating to creating a criminal offense and adding misdemeanor criminal penalties for picketing or disrupting funerals or memorial services.

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 §61-8-15, to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.


(a) No person may carry out, with respect to any cemetery or building at which a funeral or memorial service or ceremony is to be held, a demonstration within 500 feet of the cemetery or building that:
(1) Is conducted during the period beginning 60 minutes before and ending 60 minutes after the funeral or memorial service or ceremony is held; and

(2) Includes, as a part of such demonstration, any individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.

(b) For purposes of this section, the term “demonstration” includes the following:

(1) Any picketing or similar conduct.

(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct before an assembled group of people that is not part of a funeral or memorial service or ceremony.

(3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral or memorial service or ceremony.

(4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral or memorial service or ceremony.

(c) Any person who violates the provisions of subsection (a) is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for an indeterminate sentence of not more than one year and fined not less than $200 nor more than $500.
AN ACT to amend reenact §61-11A-2 of the Code of West Virginia, 1931, as amended, relating to victim impact statements; including in the definition of “victim” the immediate family members or estate representative of a person killed during the commission of a misdemeanor; and providing that a prosecuting attorney make reasonable efforts to contact certain persons who are known to the prosecuting attorney.

Be it enacted by the Legislature of West Virginia:

That §61-11A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:


(a) For the purposes of this section, “victim” means a person who is a victim of a felony, or, where a death occurs during the commission of a felony or a misdemeanor, the fiduciary of a deceased victim’s estate or a member of a deceased victim’s immediate family, if known to the prosecutor.

(b) Prior to the imposition of sentence upon any defendant who has been found guilty of a felony, or of a misdemeanor if death occurs during the commission of a
crime, or has pleaded guilty or nolo contendere to any felony, or to a misdemeanor if death occurs during the commission of a crime, the court shall permit the victim of the crime to appear before the court to make an oral statement for the record if the victim notifies the court of his or her desire to make such a statement after receiving notification provided in subsection (c) of this section. If the victim fails to notify the court, the failure is a waiver of the right to make an oral statement. In lieu of the appearance and oral statement, the victim may submit a written statement to the court or to the probation officer in charge of the case. The probation officer shall forthwith file the statement delivered to his or her office with the sentencing court and the statement must be made a part of the record at the sentencing hearing. The statement, whether oral or written, must relate solely to the facts of the case and the extent of injuries, financial losses and loss of earnings directly resulting from the crime for which the defendant is being sentenced.

(c) Within a reasonable time prior to the imposition of sentence upon the defendant, the prosecuting attorney or assistant prosecuting attorney in charge of the case shall make reasonable efforts, in writing, to advise the person who was the victim of the crime, the parent or guardian of a minor who was the victim of a crime, the fiduciary of the victim’s estate if the victim is deceased and the immediate family members of the victim if the victim is deceased and if their whereabouts are known to the prosecutor or assistant prosecutor. The writing will provide the date, time and place of the original sentencing hearing and of the victim’s right to submit a written or oral statement to the sentencing court.

(d) The oral or written statement given or submitted by a victim in accordance with the provisions of this section is in addition to and not in lieu of the victim impact statement required by the provisions of section three of this article.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-1G-1 and §62-1G-2, all relating to issuing a subpoena in aid of criminal investigations involving certain crimes against minors; providing legislative declaration of necessity; providing definitions; authorizing issuance of a subpoena upon reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense of a sexual nature against a minor upon written application therefor by law enforcement; providing definitions; requiring that certain information be provided in the subpoena; providing what information is to be disclosed in response to a subpoena; authorizing a fee for information provided in response to subpoena; providing for non-disclosure of subpoena or response to subpoena to account holder; and limiting liability of electronic communication systems or services, remote computing service providers, electronic service providers and telecommunications carriers.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §62-1G-1 and §62-1G-2, all to read as follows:

ARTICLE 1G. SUBPOENA POWERS FOR AID OF CRIMINAL INVESTIGATION RELATING TO CERTAIN OFFENSES AGAINST MINORS.


It is declared, as a matter of legislative determination, that it is necessary to grant subpoena powers in aid of criminal investigations of certain crimes against minors involving electronic communications systems or services or remote computing services.

§62-1G-2. Subpoenas for criminal investigations relating to certain offenses against minors for records concerning an electronic communications system or service or remote computing service; content; fee for providing information; and limiting liability.

(a) As used in this section:

(1)(A) “Electronic communication” means any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted, in whole or in part, by a wire, radio, electromagnetic, photoelectronic or photooptical system.

(B) “Electronic communication” does not include:

(i) Any oral communication;

(ii) Any communication made through a tone-only paging device;
(iii) Any communication from a tracking device; or

(iv) Electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(2) "Electronic communications service" means any service which provides for users the ability to send or receive wire or electronic communications.

(3) "Electronic communications system" means any wire, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or electronic communications, and any computer facilities or related electronic equipment for the electronic storage of the communication.

(4)(A) "Electronic service provider" means a person or entity engaged in the business of providing computer communications through which a consumer may obtain access to the internet.

(B) "Electronic service provider" does not include a common carrier if it provides only telecommunications service.

(5) "Sexual offense against a minor" means:

(A) A violation or attempted violation of section five, article eight-d, chapter sixty-one of this code;

(B) A sexual offense or attempted sexual offense committed against a minor in violation of article eight-b, chapter sixty-one of this code;

(C) The distribution and display or attempted distribution and display of obscene materials to a minor in violation of section two, article eight-a, chapter sixty-one of this code;
(D) The use or attempted use of obscene matter with the intent to seduce a minor in violation of section four, article eight-a, chapter sixty-one of this code;

(E) The employment or use or the attempted employment or use of a minor to produce obscene materials in violation of section five, article eight-a, chapter sixty-one of this code;

(F) The solicitation of a minor by use of a computer in violation of section fourteen-b, article three-c, chapter sixty-one of this code; or

(G) The use of a minor in filming sexually explicit conduct in violation of sections two and three, article eight-c, chapter sixty-one of this code.

(6) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(b) When a law-enforcement agency is investigating a sexual offense against a minor, an offense of stalking under section nine-a, article two, chapter sixty-one of this code when the victim is a minor or an offense of child kidnapping under section fourteen, article two, chapter sixty-one of this code, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a sexual offense against a minor as defined in this section, an offense of stalking when the victim is a minor or an offense of child kidnapping, a magistrate or a circuit court judge may issue a subpoena, upon written application on a form approved by the West Virginia Supreme Court of Appeals, to the electronic communications system or service or remote computing service provider that owns or controls the internet protocol address, websites, electronic mail address or service to a specific telephone number, requiring the production of
the following information, if available, upon providing in the
subpoena the internet protocol address, electronic mail
address, telephone number or other identifier, and the dates
and times the address, telephone number or other identifier
suspected of being used in the commission of the offense:

(1) Names;

(2) Addresses;

(3) Local and long distance telephone connections;

(4) Records of session times and durations;

(5) Length of service, including the start date and types
of service utilized;

(6) Telephone or other instrument subscriber numbers or
other subscriber identifiers, including any temporarily
assigned network address; and

(7) Means and sources of payment for the service,
including any credit card or bank account numbers.

(c) A subpoena issued under this section shall state that
the electronic communications system or service or remote
computing service provider shall produce only those records
listed in subdivisions (1) through (7) of subsection (b) of this
section, that are reasonably necessary to the investigation of
the suspected criminal activity or offense as described in the
subpoena: Provided, that the law-enforcement agency may
not examine the contents of electronic communications
without a warrant.

(d) (1) An electronic communications system or service
or remote computing service provider that provides
information in response to a subpoena issued under this
section may charge a fee, not to exceed the actual cost for providing the information.

(2) The law-enforcement agency conducting the investigation shall pay the fee.

(e) The electronic communications system or service or remote computing service provider served with or responding to the subpoena shall not disclose the existence of the subpoena or its response to the subpoena to the account holder identified in the subpoena.

(f) If the electronic communications system or service or remote computing service provider served with the subpoena does not own or control the internet protocol address, websites or electronic mail address or provide service for the telephone number that is a subject of the subpoena, the provider shall:

(1) Notify the investigating law-enforcement agency that it is not the provider of the service; and

(2) Provide to the investigating law-enforcement agency any information the provider knows, through reasonable effort, that it has regarding how to locate the electronic service provider that does own or control the internet protocol address, websites or electronic mail address, or provides service for the telephone number.

(g) There shall be no cause of action against any electronic communication system or service, remote computing service provider, electronic service provider or telecommunications carrier or its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of the subpoena issued under this section.
Applications for subpoenas authorized by this section may be transmitted to the appropriate court by any means permitted by rules promulgated by the West Virginia Supreme Court of Appeals.

The West Virginia Supreme Court of Appeals shall prescribe a form to be used by law-enforcement agencies applying for a subpoena authorized by this section.

CHAPTER 44

(S. B. 184 - By Senators Wells, D. Facemire, Williams, Yost, Sypolt, Jenkins, Unger, Plymale, Hall, Laird, Minard and Klempa)

[Passed February 4, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 1, 2011.]

AN ACT to amend and reenact §30-6-22 of the Code of West Virginia, 1931, as amended, relating to disposition of the remains of a deceased military service member who dies while serving in the United States armed forces.

Be it enacted by the Legislature of West Virginia:

That §30-6-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§30-6-22. Disposition of body of deceased person; penalty.

(a) No public officer, employee, physician or surgeon, or other person having a professional relationship with the deceased, shall send or cause to be sent to an embalmer, funeral director or crematory operator the body of a deceased without first inquiring the desires of the next of kin or any person who may be chargeable with the funeral expenses of the deceased. If next of kin or person can be found, his or her authority and direction shall be used as to the disposal of the body of the deceased. The provisions of this subsection are not applicable if the remains of the decedent are subject to disposition pursuant to subsection (b) of this section.

(b) Notwithstanding any provision of this code to the contrary, a United States Department of Defense Record of Emergency Data Form (DD Form 93) executed by a declarant who dies while serving in a branch of the United States Military as defined in 10 U.S.C. §1481 constitutes a valid form of declaration instrument and governs the disposition of the declarant’s remains. The person named in the form as the person authorized to direct disposition of the remains may arrange for the final disposition of the declarant’s last remains.

(c) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000, or imprisoned not less than ten days nor more than ninety days, or both.
AN ACT to amend and reenact §48-25A-1, §48-25A-2 and §48–25A-3 of the Code of West Virginia, 1931, as amended, all relating to expanding the responsibilities of the Maternal Mortality Review Team to include infant mortality reviews; and renaming it the Infant and Maternal Mortality Review Team.

Be it enacted by the Legislature of West Virginia:

That §48-25A-1, §48-25A-2 and §48–25A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 25A. INFANT AND MATERNAL MORTALITY REVIEW TEAM.

§48-25A-1. Legislative findings.

1 The Legislature finds that there is a need for a process to study the causes of infant and maternal deaths. It has been found that comprehensive studies indicate that maternal mortalities are more extensive than first appear on death certificates.
The Legislature finds that more extensive studies of infant mortalities and maternal mortalities would enable a more developed plan to avoid these deaths in the future.


(a) The Maternal Mortality Review Team established under the Office of Maternal Child and Family Health is continued and renamed the Infant and Maternal Mortality Review Team. The Infant and Maternal Mortality Review Team is a multidisciplinary team created to review the deaths of all infants and women who die during pregnancy, at the time of birth or within one year of the birth of a child.

(b) The Infant and Maternal Mortality Review Team is to consist of the following members, appointed by the Governor:

(1) The Director of the Office of Maternal Child and Family Health, who is to serve as the chairperson of the Infant and Maternal Mortality Review Team and is responsible for calling and coordinating all meetings;

(2) The Commissioner of the Bureau for Public Health or a designee;

(3) The Chief Medical Examiner in the Bureau for Public Health or a designee;

(4) The Director of the Division of Vital Statistics or a designee;

(5) Representation from each of the three medical schools in the state;

(6) The Director of Obstetrics, the Director of the Neonatal Intensive Care Unit and the Director of Pediatrics at each of the tertiary care hospitals in the state;
(7) One representative of the West Virginia State Medical Association;

(8) One representative of the West Virginia Nurses Association;

(9) One representative of the West Virginia Society of Osteopathic Medicine;

(10) One representative of West Virginia Academy of Family Physicians;

(11) One representative of the West Virginia Chapter of the American College of Nurse Midwives;

(12) One representative of the West Virginia Chapter of the American College of Obstetrics and Gynecology;

(13) One representative of the West Virginia Chapter of the American Academy of Pediatrics;

(14) The Director of the Child Fatality Review Team; and

(15) Any additional person that the chair of the team determines is needed on a particular case being considered.

(c) Each member serves for a term of five years. Of the members of the commission first appointed, one shall be appointed for a term ending June 30, 2009, and one each for terms ending one, two, three and four years thereafter.

(d) Members of the Infant and Maternal Mortality Review Team shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and have qualified.
(e) An appointment of a physician, whether for a full term or to fill a vacancy, is to be made by the Governor from among three nominees selected by the West Virginia State Medical Association or the organization to be represented on the team. When an appointment is for a full term, the nomination is to be submitted to the Governor not later than eight months prior to the date on which the appointment is to become effective. In the case of an appointment to fill a vacancy, the nominations are to be submitted to the Governor within thirty days after the request for the nomination has been made by the Governor to the chairperson or president of the organization. When an association fails to submit to the Governor nominations for the appointment in accordance with the requirements of this section, the Governor may make the appointment without nominations.

(f) Each member of the Infant and Maternal Mortality Review Team shall serve without additional compensation and may not be reimbursed for any expenses incurred in the discharge of his or her duties under the provisions of this article.


(a) The Bureau for Public Health in consultation with the Infant and Maternal Mortality Review Team shall, pursuant to the provisions of article three, chapter twenty-nine-a, promulgate rules applicable to the following:

(1) The standard procedures for the establishment, formation and conduct of the Infant and Maternal Mortality Review Team; and

(2) The protocols for the review of infant and maternal mortalities.
(b) The Infant and Maternal Mortality Review Team shall:

(1) Review deaths of all infants and of all women who die during pregnancy, at the time of birth or within one year of the birth of a child;

(2) Establish the trends, patterns and risk factors;

(3) Provide statistical analysis regarding the causes of infant and maternal fatalities in West Virginia; and

(4) Promote public awareness of the incidence and causes of infant and maternal fatalities, including recommendations for their reduction.

(c) The Infant and Maternal Mortality Review Team shall submit an annual report to the Governor and to the Legislature concerning its activities and the incidents of infant and maternal fatalities within the state. The report is due annually on December 1. The report is to include statistics setting forth the number of infant and maternal fatalities, identifiable trends in infant and maternal fatalities in the state, including possible causes, if any, and recommendations to reduce the number of preventable infant and maternal fatalities in the state. The report is to also include the number of infant and mothers whose deaths have been determined to have been unexpected or unexplained.

(d) The Infant and Maternal Mortality Review Team, in the exercise of its duties as defined in this section, may not:

(1) Call witnesses or take testimony from individuals involved in the investigation of an infant or maternal fatality;

(2) Contact a family member of the deceased infant or mother, except if a member of the team is involved in the
investigation of the death and must contact a family member
in the course of performing his or her duties outside of the
team; or

(3) Enforce any public health standard or criminal law or
otherwise participate in any legal proceeding, except if a
member of the team is involved in the investigation of the
death or resulting prosecution and must participate in a legal
proceeding in the course of performing in his or her duties
outside of the team.

(e) Proceedings, records and opinions of the Infant and
Maternal Mortality Review Team are confidential, in
accordance with section one, article seven, chapter forty-nine
of this code, and are not subject to discovery, subpoena or
introduction into evidence in any civil or criminal
proceeding. Nothing in this subsection is to be construed to
limit or restrict the right to discover or use in any civil or
criminal proceeding anything that is available from another
source and entirely independent of the proceedings of the
Infant and Maternal Mortality Review Team.

(f) Members of the Infant and Maternal Mortality Review
Team may not be questioned in any civil or criminal
proceeding regarding information presented in or opinions
formed as a result of a meeting of the team. Nothing in this
subsection prevents a member of the Infant and Maternal
Mortality Review Team from testifying to information
obtained independently of the team or which is public
information.
AN ACT to amend and reenact §48-27-903 of the Code of West Virginia, 1931, as amended, relating to criminalizing a violation of a restraining order entered upon a conviction for stalking or harassment; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

That §48-27-903 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-903. Misdeameanor offenses for violation of protective order; repeat offenses; penalties.

(a) A person is guilty of a misdemeanor if the person knowingly and willfully violates:

(1) A provision of an emergency or final protective order entered pursuant to:

(A) Subsection (a) or (b) of section five hundred two of this article;
(B) If the court has ordered such relief; subsection (2), (7), (9), or (14) of section five hundred three of this article;

(C) Subsection (b) or (c) of section five hundred nine, article five of this chapter; or (D) subsection (b) or (c) of section six hundred eight, article five of this chapter;

(2) A condition of bail, probation or parole which has the express intent or effect of protecting the personal safety of a particular person or persons; or

(3) A restraining order entered pursuant to section nine-a, article two, chapter sixty-one of this code.

Upon conviction thereof the person shall be confined in jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $250 nor more than $2,000.

(b) Any person who is convicted of a second offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than thirty days, and fined not less than $500 nor more than $3,000, or both.

(c) A respondent who is convicted of a third or subsequent offense under subsection (a) which the violation occurs within ten years of a prior conviction of this offense is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year, which jail term shall include actual confinement of not less than six months, and fined not less than $500 nor more than $4,000.
AN ACT to amend and reenact §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and §15-2B-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §15-2B-15 and §15-2B-16, all relating to the collection and use of DNA data generally; providing for the collection of DNA samples from certain persons; providing for a penalty of contempt for a person refusing to furnish a DNA sample pursuant to a court order; and authorizing the West Virginia State Police to collect certain fees for DNA testing.

Be it enacted by the Legislature of West Virginia:

That §15-2B-3, §15-2B-6, §15-2B-7, §15-2B-9, §15-2B-10 and §15-2B-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §15-2B-15 and §15-2B-16, all to read as follows:
ARTICLE 2B. DNA DATA.


As used in this article:

1. "CODIS" means the Federal Bureau of Investigation’s Combined DNA Index System that allows the storage and exchange of DNA records submitted by federal, state and local forensic DNA laboratories. The term “CODIS” includes the National DNA Index System administered and operated by the Federal Bureau of Investigation.

2. "Conviction" includes convictions by a jury or court, guilty plea, or plea of nolo contendere.

3. "Criminal justice agency" means an agency or institution of a federal, state or local government, other than the office of public defender, which performs as part of its principal function, relating to the apprehension, investigation, prosecution, adjudication, incarceration, supervision or rehabilitation of criminal offenders.

4. "Division" means the West Virginia State Police.

5. "DNA" means deoxyribonucleic acid. DNA is located in the nucleus of cells and provides an individual’s personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification.

6. "DNA record" means DNA identification information stored in any state DNA database pursuant to this article. The DNA record is the result obtained from DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual’s DNA sample are also included as a “DNA record”.

*CLERK’S NOTE: This section was also amended by Com. Sub. for H. B. 2539 (Chapter 160) which passed subsequent to this act.
(7) “DNA sample” means a tissue, fluid or other bodily sample, suitable for testing, provided pursuant to this article or submitted to the division laboratory for analysis pursuant to a criminal investigation.

(8) “FBI” means the Federal Bureau of Investigation.

(9) “Interim plan” means the plan used currently by the Federal Bureau of Investigation for Partial Match Protocol and to be adopted under the management rules of this article.

(10) “Management rules” means the rules promulgated by the West Virginia State Police that define all policy and procedures in the administration of this article.

(11) “Partial match” means that two DNA profiles, while not an exact match, share a sufficient number of characteristics to indicate the possibility of a biological relationship.

(12) “Qualifying offense” means any felony offense as described in section six of this article or any offense requiring a person to register as a sex offender under this code or the federal law. For the purpose of this article, a person found not guilty of a qualifying offense by reason of insanity or mental disease or defect shall be required to provide a DNA sample in accordance with this article.

(13) “Registering Agency” means the West Virginia State Police.

(14) “State DNA database” means all DNA identification records included in the system administered by the West Virginia State Police.

(15) “State DNA databank” means the repository of DNA samples collected under the provisions of this article.
§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.

(a) Any person convicted of an offense described in section one, four, seven, nine, nine-a (when that offense constitutes a felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article two, chapter sixty-one of this code or section twelve, article eight of said chapter (when that offense constitutes a felony), shall provide a DNA sample to be used for DNA analysis as described in this article. Further, any person convicted of any offense described in article eight-b or eight-d of said chapter shall provide a DNA sample to be used for DNA analysis as described in this article.

(b) Any person presently incarcerated in a state correctional facility or in jail in this state after conviction of any offense listed in subsection (a) of this section shall provide a DNA sample to be used for purposes of DNA analysis as described in this article.

(c) Any person convicted of a violation of section five or thirteen, article two, chapter sixty-one of this code, section one, two, three, four, five, seven, eleven, twelve (when that offense constitutes a felony) or subsection (a), section thirteen, article three of said chapter, section three, four, five or ten, article three-e of said chapter or section three, article four of said chapter, shall provide a DNA sample to be used for DNA analysis as described in this article.

(d) Any person convicted of an offense which constitutes a felony violation of the provisions of article four, chapter sixty-a of this code; or of an attempt to commit a violation of section one or section fourteen-a, article two, chapter sixty-one of this code; or an attempt to commit a violation of article eight-b of said chapter shall provide a DNA sample to be used for DNA analysis as described in this article.
(e) The method of taking the DNA sample is subject to the testing methods used by the West Virginia State Police Crime Lab. The DNA sample will be collected using a postage paid DNA collection kit provided by the West Virginia State Police.

(f) When a person required to provide a DNA sample pursuant to this section refuses to comply, the state shall apply to a circuit court for an order requiring the person to provide a DNA sample. Upon a finding of failure to comply, the circuit court shall order the person to submit to DNA testing in conformity with the provisions of this article.

(g) The West Virginia State Police may, where not otherwise mandated, require any person convicted of a felony offense under the provisions of this code, to provide a DNA sample to be used for the sole purpose of criminal identification of the convicted person who provided the sample: Provided, That the person is under the supervision of the criminal justice system at the time the request for the sample is made. Supervision includes prison, the regional jail system, parole, probation, home confinement, community corrections program, and work release.

(h) On the effective date of the amendments to this section enacted during the regular session of the Legislature in 2011, any person required to register as a sex offender in this state and who has not already provided a DNA sample in accordance with this article, shall provide a DNA sample as determined by the registration agency in consultation with the West Virginia State Police Laboratory. The registering agency is responsible for the collection and submission of the sample under this article.

(i) When this state accepts a person from another state under any interstate compact, or under any other reciprocal agreement with any county, state or federal agency or any other provision of law whether or not the person is confined
or released, the transferred person must submit a DNA sample, if the person was convicted of an offense in any other jurisdiction which would be considered a qualifying offense as defined in section six if committed in this state, or if the person was convicted of an equivalent offense in any other jurisdiction. The person shall provide the DNA sample in accordance with the rules of the custodial institution or supervising agency. If the transferred person has already submitted a DNA sample that can be found in the national database, the accepting agency is not required to draw a second DNA sample.

(j) If a person convicted of a qualifying offense is released without giving a DNA sample due to an oversight or error or because of the person’s transfer from another jurisdiction, the person shall give a DNA sample for inclusion in the state DNA database after being notified of this obligation. Any such person may request a copy of the court order requiring the sample prior to the collection of the DNA sample.

§15-2B-7. Tests to be performed on DNA sample.

The tests to be performed on each DNA sample shall analyze and type the genetic markers contained in or derived from the DNA sample in accordance with rules promulgated under this article. Any rule regarding the typing and analysis of the DNA sample shall be consistent with any specifications required by federal law.


(a) Upon incarceration, the Division of Corrections, regional jails and felon facilities shall ensure that the DNA sample is collected from all persons described in section six of this article. When any person convicted of an offense described in section six is not incarcerated, the sheriff in the
county where the person is convicted shall ensure that the
DNA sample is collected from the person: Provided, That a
DNA sample may be collected at a prison, regional facility or
local hospital unit when so ordered by the sentencing court or
other location determined by the sheriff.

(b) The Superintendent of the West Virginia State Police
shall promulgate a legislative rule pursuant to chapter
twenty-nine-a of this code establishing which persons may
withdraw blood and further establishing procedures to
withdraw blood. At a minimum, these procedures shall
require that when blood is withdrawn for the purpose of DNA
identification testing, a previously unused and sterile needle
and sterile vessel shall be used, the withdrawal shall
otherwise be in strict accord with accepted medical practices
and in accordance with any recognized medical procedures
employing universal precautions as outlined by the Centers
for Disease Control and Prevention. No civil liability
attaches to any person when the blood was drawn according
to recognized medical procedures employing the universal
precautions. No person is relieved of liability for negligence
in the drawing of blood for purposes of DNA testing.

(c) The Superintendent of the West Virginia State Police
shall promulgate legislative rules pursuant to chapter
twenty-nine-a of this code governing the procedures to be
used in the collection of DNA samples, submission,
identification, analysis and storage of DNA samples and
typing results of DNA samples submitted under this article
which shall be compatible with recognized federal standards.

(d) The agency having control, custody or supervision of
persons convicted for qualifying offenses may, in
consultation with and approval of the West Virginia State
Police Laboratory, promulgate rules or policies specifying the
time and manner of collection of the DNA samples as well as
any other matter necessary to carry out its responsibilities
under this article.
(e) The agency or institution having custody, control or providing supervision of persons convicted for qualifying offenses, as appropriate, is authorized to contract with third parties to provide for the collection of the DNA samples described in section six of this article.

(f) A person, convicted of a qualifying offense and not incarcerated in a facility described in subsection (a) of this section, who has been put on notice of his or her obligation to provide a DNA sample and has not submitted a court ordered DNA sample at the request of a law-enforcement agency, shall be responsible for notifying the agency designated in the court order and complying with that agency’s directives for submitting a DNA sample. The person shall have thirty days from the receipt of the court order to comply unless there is a documented exception from the agency responsible for the DNA sample collection. A person refusing to comply with a court order directing that person submit a DNA sample may be considered in contempt.

(g) Any court sentencing a person convicted of a qualifying offense to probation, on or after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2011, shall order, as a condition of such probation, that the convicted person report to the local sheriff’s department to provide a DNA sample within thirty days.

§15-2B-10. DNA database exchange.

(a) The West Virginia State Police shall receive DNA samples, store, analyze, classify and file the DNA records consisting of all identification characteristics of DNA profiles from DNA samples submitted pursuant to the procedures for conducting DNA analysis of DNA samples.
(b) The West Virginia State Police may furnish DNA records to authorized law-enforcement and governmental agencies of the United States and its territories, of foreign countries duly authorized to receive them, of other states within the United States and of the State of West Virginia upon proper request stating that the DNA records requested will be used solely:

(1) For law-enforcement identification purposes by criminal justice agencies;

(2) In judicial proceedings, if otherwise expressly permitted by state or federal laws;

(3) If personal identifying information is removed, for a population statistics database, for identification research and protocol development purposes, or for quality control purposes; or

(4) For the identification of unidentified human remains, missing persons and relatives of missing persons.

(c) The Superintendent of the West Virginia State Police shall promulgate legislative rules pursuant to chapter twenty-nine-a of this code governing the methods by which any law-enforcement agency or other authorized entity may obtain information from the state DNA database consistent with this section and federal law.

(d) The West Virginia State Police may release DNA samples, without personal identifying information, to any agency or entity with which the West Virginia State Police contracts pursuant to section five of this article.

(e) The West Virginia State Police may release DNA samples for criminal defense and appeal purposes, to a defendant who is entitled to access to samples and analysis
performed in connection with the case in which the defendant is charged or was convicted.

(f) Searches of the state DNA database shall be performed in accordance with state and federal law and procedures.

§15-2B-12. Confidentiality; unauthorized uses of DNA databank; penalties.

(a) All DNA profiles and samples submitted to the West Virginia State Police pursuant to this article shall be treated as confidential except as provided in this article.

(b) Any person who, by virtue of employment or official position has possession of or access to individually identifiable DNA information contained in the state DNA database or databank and who willfully discloses it in any manner to any person or agency not entitled to receive it is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail for a period not to exceed one year, or both fined and confined.

(c) Any person who, without authorization, willfully obtains individually identifiable DNA information from the state DNA database or databank is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail for a period not to exceed one year, or both fined and confined.

(d) DNA records and DNA samples submitted to the West Virginia State Police Laboratory pursuant to this article are exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code, or any other statutory provision or court opinion requiring the disclosure of public records.
(e) In case of a criminal proceeding, a request to access a person’s DNA record must be made in accordance with rules for criminal discovery as provided in the West Virginia Code and the Rules of Criminal Procedure. The West Virginia State Police Laboratory is not required to provide, for criminal discovery purposes, more than the DNA profile(s) and identifying information generated as a result of the search that led to the match between the case evidence and the defendant.

§15-2B-15. Collection of fees to cover the cost of DNA profile entry into the DNA database and DNA databank; cost of collecting and analyzing DNA sample.

For persons convicted after July 1, 2011, a mandatory fee of $150, which is in addition to any other costs imposed pursuant to statutory authority, shall automatically be assessed on any person convicted of, or adjudicated delinquent for, a qualifying offense, unless the court finds that undue hardship would result. This fee shall be collected by the sentencing court or the agency responsible for the collection of the DNA sample and remitted to the State Treasury on or before the tenth of every month. Notwithstanding any other provision of this code to the contrary, all moneys collected as a result of this fee shall be deposited in a special account within the State Treasury to be known as the “West Virginia State Police DNA Database Account” to be administered by the Superintendent of the West Virginia State Police. Expenditures from the fund are authorized from collections for purposes associated with the processing of DNA samples for the DNA database.


The Division may use the data in the DNA database for partial match analysis for criminal investigations of murder, kidnapping and first and second degree sexual assault, as
4 defined in this code, where all investigated leads have been
5 exhausted. The Division shall follow the standards and
6 procedures defined in the Interim Plan when replying to
7 requests for partial match information from criminal justice
8 agencies from within or outside the state until such time as
9 the Division promulgates management rules.

CHAPTER 48

(S. B. 328 - By Senators Beach,
Klempa and Plymale)

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §17E-1-3, §17E-1-6, §17E-1-9,
§17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and
§17E-1-20 of the Code of West Virginia, 1931, as amended;
and to amend said code by adding thereto a new section,
designated §17E-1-14a, all relating to the issuance,
disqualification, suspension and revocation of driver’s licenses
and privilege to operate a commercial motor vehicle; adding
definitions; creating the offense of operating a commercial
motor vehicle while texting; providing penalties and
exceptions; establishing disqualification penalties for 2nd, 3rd
or subsequent offenses; providing civil penalties for motor
carriers who require or allow a driver to operate a commercial
motor vehicle while texting; providing that a driver is
disqualified from operating a commercial motor vehicle upon
conviction for operating a commercial motor vehicle when
texting; clarifying that out-of-service orders may pertain to a
driver, commercial motor vehicle or a motor carrier operation;
providing that the licensed driver accompanying a driver
holding an instruction permit must be alert and unimpaired; adding additional certifications to the application and the face of a commercial driver’s license; providing for additional requirements related to maintenance and verification of medical certification status; including the United Mexican States as an entity that the commissioner is required to provide driving record information; and prohibiting the division from issuing or renewing a commercial driver’s license to a person who does not possess a valid medical certification status.

Be it enacted by the Legislature of West Virginia:

That §17E-1-3, §17E-1-6, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-17 and §17E-1-20 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 §17E-1-14a, all to read as follows:

ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-3. Definitions.

1 Notwithstanding any other provision of this code, the following definitions apply to this article:

3 (1) “Alcohol” means:

4 (A) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propenyl and isopropanol;

7 (B) Beer, ale, port or stout and other similar fermented beverages, including sake or similar products, of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt;
(C) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form including all dilutions and mixtures thereof from whatever source or by whatever process produced; or

(D) Wine of not less than one half of one percent of alcohol by volume.

(2) “Alcohol concentration” means:

(A) The number of grams of alcohol per one hundred milliliters of blood;

(B) The number of grams of alcohol per two hundred ten liters of breath;

(C) The number of grams of alcohol per sixty-seven milliliters of urine; or

(D) The number of grams of alcohol per eighty-six milliliters of serum.

(3) “At fault traffic accident” means, for the purposes of waiving the road test, a determination of fault by the official filing the accident report as evidenced by an indication of contributing circumstances in the accident report.

(4) “Commercial driver’s license” means a license or an instruction permit issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(5) “Commercial driver’s license information system” is the information system established pursuant to the Federal Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
(6) "Commercial driver instruction permit" means a permit issued pursuant to subsection (d), section nine of this article.

(7) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:

(A) If the vehicle has a gross combination vehicle weight rating of twenty-six thousand one pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than ten thousand pounds;

(B) If the vehicle has a gross vehicle weight rating of twenty-six thousand one pounds or more;

(C) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(D) If the vehicle is of any size and transporting hazardous materials as defined in this section.

(8) "Commissioner" means the Commissioner of Motor Vehicles of this state.

(9) "Controlled substance" means any substance classified under the provisions of chapter sixty-a of this code, the Uniform Controlled Substances Act, and includes all substances listed on Schedules I through V, inclusive, of article two of said chapter, as revised. The term "controlled substance" also has the meaning such term has under 21 U.S.C. §802.6 and includes all substances listed on Schedules I through V of 21 C.F.R. §1308 as they may be amended by the United States Department of Justice.

(10) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by
an authorized administrative tribunal or proceeding; an
unvacated forfeiture of bail or collateral deposited to secure
the persons appearance in court; a plea of guilty or no1o
contendere accepted by the court or the payment of a fine or
court cost or violation of a condition of release without bail
regardless of whether or not the penalty is rebated,
suspended, or probated.

(11) “Division” means the Division of Motor Vehicles.

(12) “Disqualification” means any of the following three
actions:

(A) The suspension, revocation, or cancellation of a
driver’s license by the state or jurisdiction of issuance.

(B) Any withdrawal of a person’s privilege to drive a
commercial motor vehicle by a state or other jurisdiction as
the result of a violation of state or local law relating to motor
vehicle traffic control other than parking or vehicle weight
except as to violations committed by a special permittee on
the coal resource transportation system or vehicle defect
violations.

(C) A determination by the Federal Motor Carrier Safety
Administration that a person is not qualified to operate a

(13) “Drive” means to drive, operate or be in physical
control of a motor vehicle in any place open to the general
public for purposes of vehicular traffic. For the purposes of
sections twelve, thirteen and fourteen of this article, “drive”
includes operation or physical control of a motor vehicle
anywhere in this state.

(14) “Driver” means a person who drives, operates or is
in physical control of a commercial motor vehicle in any
place open to the general public for purposes of vehicular traffic or who is required to hold a commercial driver’s license.

(15) “Driver’s license” means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

(16) “Electronic device” includes, but is not limited to, a cellular telephone, personal digital assistant, pager or any other device used to input, write, send, receive, or read text.

(17) “Employee” means an operator of a commercial motor vehicle, including full time, regularly employed drivers, casual, intermittent or occasional drivers, leased drivers and independent, owner-operator contractors when operating a commercial motor vehicle, who are either directly employed by or under lease to drive a commercial motor vehicle for an employer.

(18) “Employer” means a person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(19) “Endorsement” means an authorization to a person to operate certain types of commercial motor vehicles.

(20) “Farm vehicle” includes a motor vehicle or combination vehicle registered to a farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to the farms or orchards to be used on the farms or orchards.
(21) "Farmer" includes an owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits who is at least eighteen years of age with two years licensed driving experience.

(22) "Farmer vehicle driver" means the person employed and designated by the "farmer" to drive a "farm vehicle" as long as driving is not his or her sole or principal function on the farm and who is at least eighteen years of age with two years licensed driving experience.

(23) "Felony" means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.

(24) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination, articulated vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the gross vehicle weight rating (GVWR) of the power unit and the total weight of the towed unit and load, if any.

(25) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle. In the absence of a value specified by the manufacturer, the GVWR will be determined by the total weight of the vehicle and load, if any.

(26) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. §5103 and is required to be placarded under subpart F of 49 C.F.R., Part §172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R., Part §73.

(27) "Imminent hazard" means existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment
to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

(28) "Issuance of a license" means the completion of a transaction signifying that the applicant has met all the requirements to qualify for, including, but not limited to: The initial issuance of a driver's license, the renewal of a driver's license, the issuance of a duplicate license as a replacement to a lost or stolen driver's license, the transfer of any level of driving privileges including the privilege of operating a commercial motor vehicle from another state or jurisdiction, the changing of driver's license class, restrictions or endorsements or the change of any other information pertaining to an applicant either appearing on the face of a driver's license or within the driver record of the licensee maintained by the division.

(29) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails.

(30) "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle".

(31) "Out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of the Federal Motor Carrier Safety Administration that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.
"Violation of an out-of-service order" means:

(A) The operation of a commercial motor vehicle during the period the driver was placed out-of-service;

(B) The operation of a commercial motor vehicle by a driver after the vehicle was placed out-of-service and before the required repairs are made; or

(C) The operation of any commercial vehicle by a motor carrier operation after the carrier has been placed out of service.

"School bus" means a commercial motor vehicle used to transport preprimary, primary or secondary school students from home-to-school, from school-to-home or to and from school sponsored events. School bus does not include a bus used as a common carrier.

"Serious traffic violation" means conviction for any of the following offenses when operating a commercial motor vehicle:

(A) Excessive speeding involving any single offense for any speed of fifteen miles per hour or more above the posted limits;

(B) Reckless driving as defined in section three, article five, chapter seventeen-c of this code and careless or negligent driving, including, but not limited to, the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(C) Erratic or improper traffic lane changes including, but not limited to, passing a school bus when prohibited, improper lane changes and other passing violations;

(D) Following the vehicle ahead too closely;
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225 (E) Driving a commercial motor vehicle without obtaining a commercial driver’s license;

227 (F) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession. However, any person who provides proof to the law-enforcement agency that issued the citation, by the date the person must appear in court or pay any fine for such violation, that the person held a valid commercial driver’s license on the date the citation was issued, shall not be guilty of this offense;

235 (G) Driving a commercial motor vehicle without the proper class of commercial driver’s license or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported;

239 (H) A violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident; or

242 (I) Any other serious violations determined by the United States Secretary of Transportation.

244 (J) Vehicle defects are excluded as serious traffic violations except as to violations committed by a special permittee on the coal resource transportation road system.

247 (35) “State” means a state of the United States and the District of Columbia or a province or territory of Canada or a state or federal agency of the United Mexican States.

250 (36) “State of domicile” means the state where a person has his or her true, fixed and permanent home and principle residence and to which he or she has the intention of returning whenever absent in accordance with chapter seventeen-a, article three, section one-a.
(37) “Suspension, revocation or cancellation” of a
driver’s license or a commercial driver’s license means the
privilege to operate any type of motor vehicle on the roads
and highways of this state is withdrawn.

(38) “Tank vehicle” means any commercial motor
vehicle that is designed to transport any liquid or gaseous
materials within a tank that is either permanently or
temporarily attached to the vehicle or the chassis. These
vehicles include, but are not limited to, cargo tanks and
This definition does not include portable tanks having a rated
capacity under one thousand gallons.

(39) “Texting” means manually entering alphanumeric
text into or reading text from an electronic device.

(A) This action includes, but is not limited to, short
messaging service, e-mailing, instant messaging and a
command or request to access a World Wide Web page or
engaging in any other form of electronic text retrieval or
entry for present or future communication.

(B) Texting does not include:

(i) Reading, selecting or entering a telephone number, an
extension number or voicemail retrieval codes and
commands into an electronic device for the purpose of
initiating or receiving a phone call or using voice commands
to initiate or receive a telephone call;

(ii) Inputting, selecting or reading information on a global
positioning system or navigation system; or

(iii) Using a device capable of performing multiple
functions including, but not limited to, fleet management
systems, dispatching devices, smart phones, citizen band
radios or music players for a purpose that is not otherwise
prohibited by this section
(40) "Transportation Security Administration" means the United States Department of Homeland Security Transportation Security Administration.

(41) "United States" means the fifty states and the District of Columbia.

(42) "Valid or Certified Medical Certification Status" means that an applicant or driver has a current medical evaluation or determination by a licensed physician that the applicant or driver meets the minimum federal motor carrier safety administration physical qualifications within the prescribed time frames pursuant 49 CFR Part §391. Not-certified means that an applicant or driver does not have a current medical evaluation or has not been certified by a licensed physician as meeting the minimum federal motor carrier safety administration physical qualifications pursuant 49 CFR Part §391.

(43) "Vehicle Group" means a class or type of vehicle with certain operating characteristics.

§17E-1-6. Employer responsibilities.

(a) Each employer shall require the applicant to provide the information specified in section five of this article.

(b) No employer may knowingly allow, permit, require or authorize a driver to drive a commercial motor vehicle during any period in which the driver:

(1) Has a driver's license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state or has been disqualified from driving a commercial motor vehicle;

(2) Has more than one driver's license at one time;
(3) The commercial motor vehicle he or she is driving or the motor carrier operation is subject to an out-of-service order;

(4) Is in violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or

(5) Is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing.

(c) No employer may require or allow a driver to operate a commercial motor vehicle while texting.

(d) The division shall impose a civil penalty in addition to any penalty required under the provisions of section twenty-five of this article on any employer who knowingly allows, permits, requires or authorizes a driver to drive a commercial motor vehicle in violation of subdivision (3) or (4) of subsection (b) or subsection (c) of this section.

(1) If the conviction is for a violation of subdivision (3), of subsection (b) of this section, the penalty is $2,750.

(2) If the conviction is for a violation of subdivision (4), of subsection (b) or (c) of this section, the penalty shall be no more than $25,000.


(a) No person may be issued a commercial driver's license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. Part §383, Subparts G and H (2004) and has satisfied all other requirements of the Federal Motor Carrier Safety
(b) Third party testing. The commissioner may authorize a person, including an agency of this or another state, an employer, private individual or institution, department, agency or instrumentality of local government, to administer the skills test specified by this section so long as:

(1) The test is the same which would otherwise be administered by the state; and

(2) The party has entered into an agreement with the state that complies with the requirements of 49 C.F.R., part § 383.75.

(c) Indemnification of driver examiners. No person who has been officially trained and certified by the state as a driver examiner, who administers a driving test, and no other person, firm or corporation by whom or with which that person is employed or is in any way associated, may be criminally liable for the administration of the tests or civilly liable in damages to the person tested or other persons or property unless for gross negligence or willful or wanton injury.

(d) The commissioner may waive the skills test specified in this section for a commercial driver license applicant who meets the requirements of 49 C.F.R. part § 383.77 and the requirements specified by the commissioner.

(e) A commercial driver’s license or commercial driver’s instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, when the person does not possess a valid or current medical certification status or while the person’s driver’s license is suspended, revoked or canceled.
in any state. A commercial driver's license may not be issued by any other state unless the person first surrenders all such licenses to the division.

(f) Commercial driver’s instruction permit may be issued as follows:

(1) To an individual who holds a valid Class E or Class D driver’s license and has passed the vision and written tests required for issuance of a commercial driver’s license.

(2) The commercial instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver’s instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver’s license valid for the type of vehicle driven, who is twenty-one years of age or older, who is alert and unimpaired and who occupies a seat beside the individual for the purpose of giving instruction or testing.

(3) Only to a person who is at least eighteen years of age and has held a graduated Class E, Class E or Class D license for at least two years.

(4) The applicant for a commercial driver’s instruction permit shall also be otherwise qualified to hold a commercial driver’s license.

§17E-1-10. Application for commercial driver’s license.

(a) The application for a commercial driver’s license or commercial driver’s instruction permit must include at least the following:

(1) The full name and current mailing and residential address of the person;
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(2) A physical description of the person including sex, height, weight and eye color;

(3) Date of birth;

(4) The applicant's social security number;

(5) The person's signature;

(6) The person's color photograph;

(7) Certifications including those required by 49 C.F.R. Part §383.71(a)(2004);

(8) Any other information required by the commissioner;

(9) A consent to release driving record information; and

(10) Certification stating that the applicant is:

(A) Engaged in interstate commerce and subject to 49 C.F.R. Part §391 standards;

(B) Engaged in interstate commerce but excepted from 49 C.F.R. Part §391 standards;

(C) Engaged in intrastate commerce and subject to state medical standards; or

(D) Engaged in intrastate commerce but not subject to state medical standards.

(b) When a licensee changes his or her name, mailing address or residence, or when a licensee's classifications, endorsements, or restrictions or medical certification status changes; the licensee shall submit an application for a duplicate license and obtain a duplicate driver’s license displaying the updated information.
(c) No person who has been a resident of this state for thirty days or more may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

§17E-1-11. Commercial driver’s license.

The commercial driver’s license shall be marked “commercial driver’s license” or “CDL” and, to the maximum extent practicable, tamper proof. It must include, but not be limited to, the following information:

(a) The name and residential address of the person;

(b) The person’s color photograph;

(c) A physical description of the person including sex, height, weight, and eye color;

(d) Date of birth;

(e) The person’s signature;

(f) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsement(s) and or restriction(s);

(g) The name of this state;

(h) The dates between which the license is valid; and

(i) Any information required by the Federal Motor Carrier Safety Administration concerning the driver’s valid or current medical certification status.
§17E-1-12. Classifications, endorsements and restrictions.

(a) Commercial driver's licenses may be issued with the following classifications:

(1) Class A combination vehicle. -- Any combination of vehicles with a gross combined vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand pounds.

(2) Class B heavy straight vehicle. -- Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more and any vehicle towing a vehicle not in excess of ten thousand pounds.

(3) Class C small vehicle. -- Any single vehicle or combination vehicle that does not fall under either Class A or Class B but are:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; and

(B) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 C.F.R. Part §172, Subpart F (2004).

(4) Each applicant who desires to operate a vehicle in a classification different from the class in which the applicant is authorized is required to retake and pass all related tests except the following:

(A) A driver who has passed the knowledge and skills test for a combination vehicle in Class A may operate a heavy straight vehicle in Class B or a small vehicle in Class C provided he or she possesses the required endorsements; and

(B) A driver who has passed the knowledge and skills test for a vehicle in Class B may operate any small vehicle in
Class C provided he or she possesses the required endorsements.

(b) Endorsements and restrictions. -- The commissioner upon issuing a commercial driver’s license may impose endorsements and restrictions determined by the commissioner to be appropriate to assure the safe operation of a specific class, type or category of motor vehicle or a specifically equipped motor vehicle and to comply with 49 U.S.C., et seq., and 49 C.F.R. §383.93 (2004) including, but not limited to, endorsements or restrictions to operate:

(1) Double or triple trailers which requires successful completion of a knowledge test;

(2) Passenger vehicles which requires successful completion of a knowledge and skills test;

(3) Tank vehicles which requires successful completion of a knowledge test;

(4) Vehicles used for the transportation of hazardous materials as defined in section three of this article which requires the completion of a knowledge test and a background security risk check in accordance with 49 C.F.R. §1572.5(2004);

(5) School buses which requires successful completion of a knowledge and skills test unless the applicant meets the criteria for waiver of the skills test in accordance with 49 C.F.R. §383.123(b)(2004); or

(6) Vehicles equipped with air brakes which requires the completion of a skills test.

(c) Applicant record check. -- Before issuing a commercial driver’s license, the commissioner shall obtain
driving record and medical certification status information through the commercial driver’s license information system, the national driver register and from each state in which the person has been licensed.

(d) Notification of license issuance. -- Within ten days after issuing a commercial driver's license, the commissioner shall notify the commercial driver’s license information system of the issuance and provide all information required to ensure identification of the person.

(e) Expiration of license. --

(1) Every commercial driver’s license issued to persons who have attained their twenty-first birthday expires on the applicant’s birthday in those years in which the applicant’s age is evenly divisible by five. Except as provided in subdivision (2) of this subsection, no commercial driver’s license may be issued for less than three years nor more than seven years. The commercial driver’s license shall be renewed by the applicant’s birthday and is valid for a period of five years, expiring on the applicant’s birthday and in a year in which the applicant’s age is evenly divisible by five. No commercial driver’s license with a hazardous materials endorsement may be issued for more than five years.

(2) Every commercial driver’s license issued to persons who have not attained their twenty-first birthday expires thirty days after the applicant’s birthday in the year in which the applicant attains the age of twenty-one years.

(3) Commercial driver’s licenses held by any person in the Armed Forces which expire while that person is on active duty remains valid for thirty days from the date on which that person reestablishes residence in West Virginia.

(4) Any person applying to renew a commercial driver’s license which has been expired for six months or more shall
follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions.

(5) Any commercial driver's license held by a person who does not possess a valid or current medical certification status is no longer valid for the operation of a commercial motor vehicle and is downgraded to the appropriate licensure level commensurate with the licensees qualifications regardless of the expiration date or indicated class on the face of the license within the time frames prescribed by 49 CFR §383.73(j).

(f) When applying for renewal of a commercial driver's license, the applicant shall complete the application form and provide updated information and required certifications.

(g) If the applicant wishes to obtain or retain a hazardous materials endorsement, the applicant shall comply with a background check in accordance with 49 U.S.C. §5103a and 49 C.F.R. Part §1572 (2004) and subject to the following:

(1) The applicant is a citizen of the United States or a lawful permanent resident of the United States;

(2) The applicant completes the application prescribed by the division and submits fingerprints in a form and manner prescribed by the division and the United States Department of Homeland Security Transportation Security Administration at the time of application or at any other time in accordance with 49 C.F.R. §1572.5(2004);

(3) The applicant pays all fees prescribed by the Transportation Security Administration or its agent and the division;

(4) The applicant has not been adjudicated as a mental defective or committed to a mental institution as prescribed in 49 C.F.R. §1572.109(2004);
122 (5) The applicant has not committed a disqualifying criminal offense as described in 49 C.F.R. §1572.103(2004);

124 (6) The applicant has passed the Transportation Security Administration security threat assessment and the division has received a final notification of threat assessment or notification of no security threat from the Transportation Security Administration. An appeal of a decision, determination or ruling of the Federal Bureau of Investigation or the Transportation Security Agency shall be directed to that agency; and

132 (7) The applicant has successfully passed the written test for the issuance or renewal of a hazardous material endorsement.


(a) A person may not operate a commercial motor vehicle if his or her privilege to operate a commercial motor vehicle is disqualified under the provisions of the Federal Motor Carrier Safety Improvement Act of 1999, 49 C.F.R. Part §383, Subpart D (2004) or in accordance with the provisions of this section.

(1) For the purposes of determining first and subsequent violations of the offenses listed in this section, each conviction resulting from a separate incident includes convictions for offenses committed in a commercial motor vehicle or a noncommercial motor vehicle.

(2) Any person disqualified from operating a commercial motor vehicle for life under the provisions of this chapter for offenses described in subsection (b), subdivisions (4) and (6) of this section is eligible for reinstatement of privileges to operate a commercial motor vehicle after ten years and after completion of the Safety and Treatment Program or other appropriate program prescribed by the division. Any person
whose lifetime disqualification has been amended under the provisions of this subdivision and who is subsequently convicted of a disqualifying offense described in subsection (b), subdivisions (1) through (8) of this section, is not eligible for reinstatement.

(3) Any disqualification imposed by this section is in addition to any action to suspend, revoke or cancel the driver's license or driving privileges if suspension, revocation or cancellation is required under another provision of this code.

(4) The provisions of this section apply to any person operating a commercial motor vehicle and to any person holding a commercial driver's license.

(b) Any person is disqualified from driving a commercial motor vehicle for the following offenses and time periods if convicted of:

(1) Driving a motor vehicle under the influence of alcohol or a controlled substance;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one year.

(C) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials
required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or for refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(2) Driving a commercial motor vehicle while the person's alcohol concentration of the person's blood, breath or urine is four hundredths of one percent or more, by weight;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for three years.

(C) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while
operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(3) Refusing to submit to any designated secondary chemical test required by the provisions of this code or the provisions of 49 C.F.R. §383.72 (2004);

(A) For the first conviction or refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction or refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for life.
(4) Leaving the scene of an accident;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver’s license holder is disqualified for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for life.

(5) Using a motor vehicle in the commission of any felony as defined in section three, article one of this chapter except that the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance falls under the provisions of subdivision eight of this subsection;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.
(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(6) Operating a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, the driver's privilege to operate a motor vehicle has been suspended, revoked or canceled or the driver's privilege to operate a commercial motor vehicle has been disqualified.

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F, (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.
(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(7) Causing a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide and negligent homicide as defined in section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F,(2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(8) Using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance, a driver is disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

(c) Any person is disqualified from driving a commercial motor vehicle if convicted of;
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(1) Speeding excessively involving any speed of fifteen miles per hour or more above the posted speed limit;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(2) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, careless, or negligent
driving including, but not limited to, the offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property:

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(3) Making improper or erratic traffic lane changes;
(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor
vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(5) Violating any law relating to traffic control arising in connection with a fatal accident, other than a parking violation;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.
(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(6) Driving a commercial motor vehicle without obtaining a commercial driver’s license;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial
motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(7) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession except that any person who provides proof of possession of a commercial driver’s license to the enforcement agency that issued the citation by the court appearance or fine payment deadline is not guilty of this offense;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(8) Driving a commercial motor vehicle without the proper class of commercial driver’s license or the proper endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.
(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(9) Driving a commercial motor vehicle while engaged in texting and convicted pursuant to section fourteen-a of this article or similar law of this or any other jurisdiction or 49 CFR §392.80;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(d) Any person convicted of operating a commercial motor vehicle in violation of any federal, state or local law or ordinance pertaining to railroad crossing violations described in subdivisions (1) through (6) of this subsection, is disqualified from operating a commercial motor vehicle for the period of time specified;

(1) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;
(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(2) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop, in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(3) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;
(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(4) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(5) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code;
(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(6) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code.

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(e) Any person who is convicted of violating an out-of-service order while operating a commercial motor vehicle is disqualified for the following periods of time:

(1) If convicted of violating a driver or vehicle out-of-service order while transporting nonhazardous materials;
(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one hundred eighty days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for two years.

(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(2) If convicted of violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004) or while operating a vehicle designed to transport sixteen or more passengers including the driver;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one hundred eighty days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.
(f) After disqualifying, suspending, revoking or canceling a commercial driver's license, the division shall update its records to reflect that action within ten days.

(g) In accordance with the provisions of 49 U.S.C. §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), notwithstanding the provisions of section twenty-five, article eleven, chapter sixty-one of this code, no record of conviction, revocation, suspension or disqualification related to any type of motor vehicle traffic control offense, other than a parking violation, of a commercial driver's license holder or a person operating a commercial motor vehicle may be masked, expunged, deferred or be subject to any diversion program.

(h) Notwithstanding any provision in this code to the contrary, the division may not issue any temporary driving permit, work-only driving permit or hardship license or permit that authorizes a person to operate a commercial motor vehicle when his or her privilege to operate any motor vehicle has been revoked, suspended, disqualified or otherwise canceled for any reason.

(i) In accordance with the provisions of 49 C.F.R. §391.15(b), a driver is disqualified from operating a commercial motor vehicle for the duration of any suspension, revocation or cancellation of his or her driver's license or privilege to operate a motor vehicle by this state or by any other state or jurisdiction until the driver complies with the terms and conditions for reinstatement set by this state or by another state or jurisdiction.

(j) In accordance with the provisions of 49 C.F.R. 353.52 (2006), the division shall immediately disqualify a driver's privilege to operate a commercial motor vehicle upon a notice from the Assistant Administrator of the Federal Motor Carrier Safety Administration that the driver poses an imminent hazard. Any disqualification period imposed under
the provisions of this subsection shall be served concurrently with any other period of disqualification if applicable.

(k) In accordance with the provisions of 49 C.F.R. 1572.11(a), the division shall immediately disqualify a driver’s privilege to operate a commercial motor vehicle if the driver fails to surrender his or her driver’s license with a hazardous material endorsement to the division upon proper notice by the division to the driver that the division received notice from the Department of Homeland Security Transportation Security Administration of an initial determination of threat assessment and immediate revocation that the driver does not meet the standards for security threat assessment provided in 49 C.F.R. 1572.5. The disqualification remains in effect until the driver either surrenders the driver’s license to the division or provides the division with an affidavit attesting to the fact that the driver has lost or is otherwise unable to surrender the license.

(l) In accordance with 49 C.F.R §391.41, a driver is disqualified from operating a commercial motor vehicle if the driver is not physically qualified to operate a commercial motor vehicle or does not possess a valid medical certification status.

(m) In accordance with the provisions of 49 C.F.R. §383.73(g), the division shall disqualify a driver’s privilege to operate a commercial motor vehicle if the division determines that the licensee has falsified any information or certifications required under the provisions of 49 C.F.R. 383 Subpart J or 49 C.F.R. §383.71a for sixty days in addition to any other penalty prescribed by this code.

§17E-1-14a. Commercial Drivers Prohibited From Texting.

(a) No commercial driver may engage in texting while driving a commercial motor vehicle.
(b) No motor carrier may allow or require its drivers to engage in texting while driving a commercial motor vehicle.

(c) For the purposes of this section only, and unless a more restrictive prohibition is prescribed in this code, driving means operating a commercial motor vehicle with the motor running, including while temporarily stationed because of traffic, a traffic control device or other momentary delays. Driving does not include operating a commercial motor vehicle with or without the motor running when the driver moved the vehicle to the side of or off a highway, as defined in 49 CFR 390.5, and halted in a location where the vehicle can safely remain stationary.

§17E-1-17. Driving record information to be furnished.

Subject to the provisions of article two-a, chapter seventeen-a of this code, the commissioner shall furnish full information regarding the driving record of any person:

(a) To the driver license administrator of any other state of the United States and the District of Columbia or a province or territory of Canada or a state or federal agency of the United Mexican States requesting that information;

(b) To any motor carrier employer or prospective motor carrier employer;

(c) To the United States Secretary of Transportation; and

(d) To the driver:

Nothing in this section prevents an insurer from obtaining a standard driving record issued in accordance with section two, article two, chapter seventeen-d of this code.

§17E-1-20. Reciprocity.

(a) Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a
commercial driver's license by any state of the United States
and the District of Columbia or a province or territory of
Canada or a state or federal agency of the United Mexican
States in accordance with the minimum federal standards for
the issuance of commercial motor vehicle driver licenses if
the license is not suspended, revoked or canceled, if the
person is not disqualified from driving a commercial motor
vehicle or not subject to an “out-of-service” order.

(b) The commissioner is authorized to suspend, revoke or
cancel the privilege to operate a motor vehicle or disqualify
the privilege to operate a commercial motor vehicle of any
resident of this state or of a nonresident upon receiving notice
of the conviction of such person in another state of an offense
which, if committed in this state, would be grounds for the
suspension, revocation or cancellation of the privilege to
operate a motor vehicle or the disqualification of the
privilege to operate a commercial motor vehicle.

CHAPTER 49

(Com. Sub. for H. B. 2709 - By Delegates
Canterbury, Hamilton, Perry,
Shaver, Walker and Hartman)

[Passed March 1, 2011; in effect from passage.]
[Approved by the Governor on March 11, 2011.]

AN ACT to amend and reenact §18-5-9a of the Code of West
Virginia, 1931, as amended, relating to lease purchase contracts
for energy saving measures and energy-saving contracts
entered into by county boards; and allowing these contracts to
have a term of up to fifteen years.
Be it enacted by the Legislature of West Virginia:

That §18-5-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.


(a) For the purposes of this section:

(1) "Energy-conservation measures" means goods or services, or both, to reduce energy consumption operating costs of school facilities. These include, but are not limited to, installation of two or more of the following:

(A) Insulation of a building structure and systems within a building;

(B) Storm windows or doors, caulking or weather stripping, multi-glazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems or other window or door modifications that reduce energy consumption;

(C) Automatic energy control systems;

(D) Heating, ventilating or air conditioning systems, including modifications or replacements;

(E) Replacement or modification of lighting fixtures to increase energy efficiency;

(F) Energy recovery systems;
(G) Co-generation systems that produce steam or another form of energy for use by the county board of education in a building or complex of buildings owned by the Board of Education; or

(H) Energy-conservation maintenance measures that provide long-term operating cost reductions of the building’s present cost of operation.

(2) “Energy-savings contract” means a contract for the evaluation and recommendation of energy operations conservation measures and for implementation of one or more such measures. The contract shall provide that payments, except obligations upon termination of the contract before its expiration, are to be made over time. A county board of education may supplement these payments with federal, state or local funds to reduce the annual cost or to lower the initial amount to be financed.

(3) “Qualified provider” means a person, firm or corporation experienced in the design, implementation and installation of energy-conservation measures.

(b) County boards of education are hereby authorized to enter into performance-based contracts with qualified providers of energy-conservation measures for the purpose of reducing energy operating costs of school buildings.

(c) A board of education may enter into an energy-savings contract with a qualified provider to significantly reduce energy operating costs. Before entering into such a contract or before the installation of equipment, modifications or remodeling to be furnished under such a contract, the qualified provider shall first issue a proposal summarizing the scope of work to be performed. Such a proposal shall contain estimates of all costs of installation, modifications or remodeling including the costs of design,
engineering, installation, maintenance, repairs or debt service as well as estimates of the amounts by which energy operating costs will be reduced. If the board finds, after receiving the proposal, that the proposal includes more than one energy-conservation measure designed to save energy operating costs, the board may enter into a contract with the provider pursuant to this section.

(d) An energy-savings contract shall include the following:

(1) A guarantee of a specific minimum amount of money that the board will save in energy operating costs each year during the term of the contract; and

(2) A statement of all costs of energy-conservation measures including the costs of design, engineering, installation, maintenance, repairs and operations.

(e) An energy-savings contract which is performance-based and includes a guarantee of savings and a comprehensive approach of energy-conservation measures for improving comfort is subject to competitive bidding requirements. The requirements of article five-a, chapter twenty-one of this code as to prevailing wage rates shall apply to the construction and installation work performed under such a contract.

(f) A board may enter into a “lease with an option to purchase” contract for the purchase and installation of energy-conservation measures if the term of the lease does not exceed fifteen years and the lease contract includes the provisions hereinafter contained in subsection (g) and meets federal tax requirements for tax-exempt municipal leasing or long-term financing.
(g) An energy-savings contract may extend beyond the fiscal year in which it first becomes effective except that such a contract may not exceed a fifteen-year term and shall be void unless such agreement provides the board the option to terminate the agreement during each fiscal year of the contract. The board may include in its annual budget for each fiscal year any amounts payable under long-term energy-savings contracts during that fiscal year.

(h) Nothing contained in this section requires or permits the replacement of jobs performed by service personnel employed by the local school board pursuant to sections eight and eight-a, article four, chapter eighteen-a of the code, as amended.

CHAPTER 50

(S. B. 612 - By Senators Plymale, Browning, Edgell, Laird, Stollings, Tucker and Wills)

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5A-3a; and to amend and reenact §18-5B-10 of said code, all relating to exempting certain schools and school districts from certain statutory provisions pursuant to certain statutory approval and recommendation processes.

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 §18-5A-3a; and that §18-5B-10 of said code be amended and reenacted, all to read as follows:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-3a. Waivers of statutes granted to public schools pursuant to recommendations submitted by local school improvement councils; limitations.

(a) The Legislature hereby grants a waiver from the statute or statutes indicated for the following school or schools pursuant to and for the purposes enumerated in the written statement recommending the waiver, with supporting reasons, approved by the local school improvement council of the respective schools and recommended by the Legislative Oversight Commission on Education Accountability in accordance with the provisions of section three of this article. The grant of a waiver to a statute means that the school or schools granted the waiver may implement the actions as specifically described in their written statement notwithstanding the provisions of this code from which they are specifically waived. These waivers are limited to the purposes as specifically described in the statement upon which the Legislative Oversight Commission on Education Accountability made its recommendation for a waiver to the Legislature and are expressly repealed for any modification or implementation of the described actions which changes those purposes. However, nothing in this section prohibits a local school improvement council school that has been granted a waiver from submitting a request to the Legislative Oversight Commission on Education Accountability for modifications, subject to approval in accordance with section three of this article.
(b) The following waivers are granted:

Section two-b, article three, chapter eighteen-a of this code is waived for the schools of Cabell County for the purpose of implementing a comprehensive new teacher induction program, which purposes are as more specifically described in the schools' written statement approved by the county board and submitted to the Legislative Oversight Commission on Education Accountability on February 24, 2011.

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.

§18-5B-10. Exceptions to statutes granted to innovation zones; limitations.

(a) The Legislature hereby grants an exception to the statute or statutes indicated for the following schools pursuant to and for the purposes enumerated in their innovation zone plans approved by the state board at its meeting on the date specified. The grant of an exception to a statute means that the school or schools granted the exception may implement the actions as specifically described in their approved innovation zone plan notwithstanding the provisions of this code from which they are specifically excepted. These exceptions are limited to the purposes as specifically described in the plan approved on the date indicated and are expressly repealed for any plan modification or plan implementation which changes those purposes. However, nothing in this section prohibits a school or schools with an approved innovation zone plan from requesting plan modifications, subject to approval of the state board, and if the modifications change the purposes for which an exception to a statute was granted, the state board shall request an exception to achieve the new purposes in the manner provided in section five of this article for requesting
exceptions to a statute. If the approved innovation zone plan of a school or schools is withdrawn by the state board, or the innovation zone designation of a school or schools is revoked by the state board, the exception granted to that school or those schools is expressly repealed.

(b) The following exceptions are granted:

(1) Piedmont Elementary School, Kanawha County, is excepted from subsection (3), section fourteen, article four, chapter eighteen-a of this code for the purpose of allowing specialist teachers to take their planning period before and after school totaling one hour, three days per week, and from section eighteen-a, article five of this chapter for the purpose of permitting a number of students in music and physical education classes in excess of the class size limits to provide the time and structure for teams to meet in professional learning communities, which purposes are as more specifically described in the school’s innovation zone plan approved by the state board on January 13, 2010;

(2) Putnam County High Schools Consortium comprised of Buffalo High School, Hurricane High School, Poca High School, Winfield High School and Putnam Career and Technical Center, Putnam County, is excepted from section forty-five, article five of this chapter only to the extent necessary for the purpose of establishing a structured transition program for freshman only one day prior to the beginning of the regular instructional term, and for the purpose of permitting the creation of not more than three hours each month during the school term of structured, regularly scheduled time for all teachers to work in professional learning communities, which purposes are as more specifically described in the schools’ innovation zone plan approved by the state board on January 13, 2010;
(3) Nellis Elementary School, Boone County, is excepted from subsection (a), section two, article five-a of this chapter, for the purpose of expanding the membership of its local school improvement council, which purpose is as more specifically described in the school’s innovation zone plan approved by the state board on January 13, 2010;

(4) Cabell County Secondary School Consortium comprised of Cabell County Career Technical Center, Cabell Midland High School and Huntington High School, Cabell County, is excepted from sections one and one-a, article eight of this chapter for the purpose of raising the compulsory school attendance age to eighteen years old, and from section two-b, article three, chapter eighteen-a of this code for the purpose of providing a customized high quality beginning teacher induction program developed at the county level, which purposes are as more specifically described in the schools’ innovation zone plan approved by the state board on January 13, 2010; and

(5) Clay County Schools is excepted from section fifteen, article five of this chapter for the purpose of allowing persons over the age of twenty-one years to enroll without charge of fees in the Clay County Schools “iREAD” program and upon, successful completion, be awarded a Clay County High School Diploma, which purposes are more specifically described in the Clay County School’s innovation zone plan approved by the state board on January 12, 2011. The grant of this exception does not abrogate the authority of the state board to determine the minimum standards for granting diplomas pursuant to section six, article two of this chapter and does not permit persons over the age of twenty-one who re-enter the public schools to be included in net enrollment for the purposes of funding pursuant to article nine-a of this chapter, except as otherwise provided by law.
AN ACT to amend and reenact §18-5A-5 of the Code of West Virginia, 1931, as amended, relating to increasing the faculty senate allotment for classroom teachers and librarians from $50 to $100, to be spent on academic materials, supplies or equipment to enhance instruction.

Be it enacted by the Legislature of West Virginia:

That §18-5A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-5. Public school faculty senates established; election of officers; powers and duties.

(a) There is established at every public school in this state a faculty senate which is comprised of all permanent, full-time professional educators employed at the school who shall all be voting members. Professional educators, as used in this section, means professional educators as defined in chapter eighteen-a of this code. A quorum of more than one half of the voting members of the faculty shall be present at any meeting of the faculty senate at which official business
is conducted. Prior to the beginning of the instructional term each year, but within the employment term, the principal shall convene a meeting of the faculty senate to elect a chair, vice-chair and secretary and discuss matters relevant to the beginning of the school year. The vice-chair shall preside at meetings when the chair is absent. Meetings of the faculty senate shall be held during the times provided in accordance with subdivision (12), subsection (b) of this section as determined by the faculty senate. Emergency meetings may be held during noninstructional time at the call of the chair or a majority of the voting members by petition submitted to the chair and vice-chair. An agenda of matters to be considered at a scheduled meeting of the faculty senate shall be available to the members at least two employment days prior to the meeting. For emergency meetings the agenda shall be available as soon as possible prior to the meeting. The chair of the faculty senate may appoint such committees as may be desirable to study and submit recommendations to the full faculty senate, but the acts of the faculty senate shall be voted upon by the full body.

(b) In addition to any other powers and duties conferred by law, or authorized by policies adopted by the state or county board of education or bylaws which may be adopted by the faculty senate not inconsistent with law, the powers and duties listed in this subsection are specifically reserved for the faculty senate. The intent of these provisions is neither to restrict nor to require the activities of every faculty senate to the enumerated items except as otherwise stated. Each faculty senate shall organize its activities as it deems most effective and efficient based on school size, departmental structure and other relevant factors.

(1) Each faculty senate shall control funds allocated to the school from legislative appropriations pursuant to section nine, article nine-a of this chapter. From such funds, each classroom teacher and librarian shall be allotted $100 for
expenditure during the instructional year for academic
materials, supplies or equipment which, in the judgment of
the teacher or librarian, will assist him or her in providing
instruction in his or her assigned academic subjects or shall
be returned to the faculty senate: *Provided,* That nothing
contained herein prohibits the funds from being used for
programs and materials that, in the opinion of the teacher,
enhance student behavior, increase academic achievement,
improve self-esteem and address the problems of students at-
risk. The remainder of funds shall be expended for academic
materials, supplies or equipment in accordance with a budget
approved by the faculty senate. Notwithstanding any other
provisions of the law to the contrary, funds not expended in
one school year are available for expenditure in the next
school year: *Provided, however,* That the amount of county
funds budgeted in a fiscal year may not be reduced
throughout the year as a result of the faculty appropriations
in the same fiscal year for such materials, supplies and
equipment. Accounts shall be maintained of the allocations
and expenditures of such funds for the purpose of financial
audit. Academic materials, supplies or equipment shall be
interpreted broadly, but does not include materials, supplies
or equipment which will be used in or connected with
interscholastic athletic events.

(2) A faculty senate may establish a process for faculty
members to interview new prospective professional educators
and paraprofessional employees at the school and submit
recommendations regarding employment to the principal,
who may also make independent recommendations, for
submission to the county superintendent: *Provided,* That
such process shall be chaired by the school principal and
must permit the timely employment of persons to perform
necessary duties.

(3) A faculty senate may nominate teachers for
recognition as outstanding teachers under state and local
teacher recognition programs and other personnel at the school, including parents, for recognition under other appropriate recognition programs and may establish such programs for operation at the school.

(4) A faculty senate may submit recommendations to the principal regarding the assignment scheduling of secretaries, clerks, aides and paraprofessionals at the school.

(5) A faculty senate may submit recommendations to the principal regarding establishment of the master curriculum schedule for the next ensuing school year.

(6) A faculty senate may establish a process for the review and comment on sabbatical leave requests submitted by employees at the school pursuant to section eleven, article two of this chapter.

(7) Each faculty senate shall elect three faculty representatives to the local school improvement council established pursuant to section two of this article.

(8) Each faculty senate may nominate a member for election to the county staff development council pursuant to section eight, article three, chapter eighteen-a of this code.

(9) Each faculty senate shall have an opportunity to make recommendations on the selection of faculty to serve as mentors for beginning teachers under beginning teacher internship programs at the school.

(10) A faculty senate may solicit, accept and expend any grants, gifts, bequests, donations and any other funds made available to the faculty senate: Provided, That the faculty senate shall select a member who has the duty of maintaining a record of all funds received and expended by the faculty senate, which record shall be kept in the school office and is subject to normal auditing procedures.
(11) Any faculty senate may review the evaluation procedure as conducted in their school to ascertain whether the evaluations were conducted in accordance with the written system required pursuant to section twelve, article two, chapter eighteen-a of this code and the general intent of this Legislature regarding meaningful performance evaluations of school personnel. If a majority of members of the faculty senate determine that such evaluations were not so conducted, they shall submit a report in writing to the State Board of Education: Provided, That nothing herein creates any new right of access to or review of any individual’s evaluations.

(12) A local board shall provide to each faculty senate a two-hour block of time for a faculty senate meeting on a day scheduled for the opening of school prior to the beginning of the instructional term, and a two-hour block of time on each instructional support and enhancement day scheduled by the board for instructional activities for students and professional activities for teachers pursuant to section forty-five, article five of this chapter. A faculty senate may meet for an unlimited block of time per month during noninstructional days to discuss and plan strategies to improve student instruction and to conduct other faculty senate business. A faculty senate meeting scheduled on a noninstructional day shall be considered as part of the purpose for which the noninstructional day is scheduled. This time may be utilized and determined at the local school level and includes, but is not limited to, faculty senate meetings.

(13) Each faculty senate shall develop a strategic plan to manage the integration of special needs students into the regular classroom at their respective schools and submit the strategic plan to the superintendent of the county board of education periodically pursuant to guidelines developed by the State Department of Education. Each faculty senate shall encourage the participation of local school improvement
councils, parents and the community at large in developing
the strategic plan for each school.

Each strategic plan developed by the faculty senate shall
include at least: (A) A mission statement; (B) goals; (C)
needs; (D) objectives and activities to implement plans
relating to each goal; (E) work in progress to implement the
strategic plan; (F) guidelines for placing additional staff into
integrated classrooms to meet the needs of exceptional needs
students without diminishing the services rendered to the
other students in integrated classrooms; (G) guidelines for
implementation of collaborative planning and instruction; and
(H) training for all regular classroom teachers who serve
students with exceptional needs in integrated classrooms.

CHAPTER 52

(H. B. 3116 - By Delegates Shaver, M. Poling,
Perry, Pethtel, Lawrence, Ennis, Smith,
Pasdon and Moye)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18-5A-6 of the Code of West
Virginia, 1931, as amended, relating to the authority of school
curriculum teams and local school collaborative processes with
respect to selection and use of testing and assessment
instruments not required by statute or state board when certain
conditions are met; providing purposes of section; clarifying
duties and removing conflicting language; specific exceptions;
providing discretionary use of certain assessments, instructional
strategies and programs for certain teams when certain
conditions are met; vesting powers and duties of curriculum teams with certain collaborative processes if formed; and authorizing collaborative process to incorporate functions of other committees required by rule eliminate the committees at the school.

Be it enacted by the Legislature of West Virginia:

That §18-5A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.


(a) There shall be established at each school in the state a school curriculum team composed of the school principal, the counselor designated to serve that school and no fewer than three teachers representative of the grades taught at the school and chosen by the faculty senate. In instances where the counselor is assigned to an elementary school or a combination elementary and middle school on less than a one-half time basis, a school curriculum team established at that school may meet on days when the counselor is not at the school and the principal shall consult with the counselor on the issues relevant to the meeting agenda.

(b) The purposes of this section are to implement the following goals:

(1) Provide professional opportunities for teachers, administrators and other school personnel that allow them to have a direct voice in the operation of their schools and to create a culture of shared decision-making focused on the ultimate goal of raising student achievement;
(2) Encourage the use of different, high-quality models of teaching, scheduling and other aspects of educational delivery that meet a variety of student needs;

(3) Increase high-quality educational opportunities for all students that close achievement gaps between high-performing and low-performing groups of public school students; and

(4) Provide public schools with increased school-level freedom and flexibility to achieve these purposes when they have achieved exceptional levels of results-driven accountability.

(c) Powers and duties of the school curriculum team. --

(1) Establish for use at the school the programs and methods to be used to implement a curriculum based on state-approved content standards that meet the needs of students at the individual school.

(A) The curriculum shall focus on reading, composition, mathematics, science and technology.

(B) The curriculum thus established shall be submitted to the county board which may approve for implementation at the school or may return to the curriculum team for reconsideration.

(2) Review the list of other, non-required testing and assessment instruments provided by the state board through the statewide assessment program as provided in section five, article two-e of this chapter. The curriculum team may select one or more tests or assessment instruments that are applicable to the grade levels at the school for use at the school to improve student learning.

(3) Establish for use at the school the assessments, instructional strategies and programs that it determines are
best suited to promote student achievement and to achieve content standards for courses required by the state board. The curriculum team shall submit the established assessments, instructional strategies and programs to the county board which shall approve the recommendations for implementation at the school or shall return them to the curriculum team for reconsideration.

(d) Notwithstanding subsection (c) of this section, the school curriculum team established at a school that has achieved adequate yearly progress or has achieved an accreditation status of distinction or exemplary in accordance with section five, article two-e of this chapter, may use the assessments and implement the instructional strategies and programs consistent with the approved curriculum that it determines are best suited to promote student achievement at the school.

(1) The school may not be required to assess students using any specific assessment except the state summative assessment known as the WESTEST2 or any successor tests, the Alternative Performance Task Assessment, the Online Writing Assessment, and the National Assessment of Educational Progress (NAEP); and

(2) The school may not be required to employ any specific instructional strategy or program to achieve content standards for courses required by the state board, except as approved by the school curriculum team.

(e) If a school fails to achieve adequate yearly progress or if it receives any school approval level other than distinction or exemplary as set forth in section five, article two-e of this chapter, the curriculum team may not exercise the options provided in subsections (d) and (i) of this article until the school has regained one or more of these credentials.

(f) Nothing in this section exempts a school from assessments required by statute or state board policy
including, but not limited to, the state summative assessment known as the WESTEST2 or any successor tests, the Alternative Performance Task Assessment, the Online Writing Assessment, and the National Assessment of Educational Progress (NAEP).

(g) The school curriculum team may apply for a waiver for instructional resources approved and adopted pursuant to article two-a of this chapter if, in the judgment of the team, the instructional resources necessary for the implementation of the instructional strategies and programs best suited to teach the school’s curriculum are not available through the normal adoption process.

(h) The school curriculum team may apply for a grant from the state board to develop and/or implement remedial and accelerated programs to meet the needs of the students at the individual school.

(i) Process for teacher collaboration. --

(1) Notwithstanding the application and approval process established by article five-c of this chapter, at a school that has achieved adequate yearly progress or has achieved a school accreditation status of distinction or exemplary in accordance with section five, article two-e of this chapter, the faculty senate, with approval of the principal, may establish a process for teacher collaboration to improve instruction and learning.

(A) The collaborative process may be established in addition to, or as an alternative to, the school curriculum team provided for in subsection (a) of this section.

(B) The mission of the collaboration process is to review student academic performance based on multiple measures, to identify strategies to improve student performance and make recommendations for improvement to be implemented subject to approval of the principal.
(C) The teacher collaborative includes members the faculty senate determines are necessary to address the needed improvements in the academic performance of students at the school. If applicable, the collaborative may consist of multiple subject area subcommittees which may meet independently.

(2) If a collaborative process is established as an alternative to the school curriculum team, the teacher collaborative has all the powers and duties assigned to school curriculum teams.

(A) The collaborative process also may incorporate the functions of the Strategic Planning Committee, the Technology Team, and/or the School Support Team.

(B) When the functions of any or all of these committees are incorporated into the collaborative process, the school is not required to establish a separate committee for any one whose functions have been assumed by the collaborative.

CHAPTER 53

(Com. Sub. for S. B. 228 - By Senators Kessler (Acting President), and Hall) [By Request of the Executive]

[Passed March 12, 2011; in effect from passage.] [Approved by the Governor on April 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5B-11; and to amend and reenact §18-8-3 and §18-8-6 of said code, all relating to school attendance; creating the Local Solution Dropout Prevention and Recovery Act; providing legislative
findings and purpose; requiring the state board to propose legislative and emergency rules; defining terms; providing application process, contents, factors to be considered in evaluating the applications and standards for review for designation of schools or school districts; exempting certain persons from certification as attendance directors under specific circumstances; requiring the state board to implement a statewide electronic system through the uniform integrated regional computer information system with early warning indicators; creating special revenue fund in State Treasury entitled the Local Solution Dropout Prevention and Recovery Fund.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5B-11; and that §18-8-3 and §18-8-6 of said code be amended and reenacted, all to read as follows:

ARTICLE 5B. SCHOOL INNOVATION ZONES ACT.


(a) Legislative findings, intent and purpose.

The Legislature finds that:

(1) High school graduation is an essential milestone for all West Virginia students and impacts the future success of the individual, community and state;

(2) There are significant correlations between educational attainment and labor market outcomes, greater labor force participation rate, increased employment rates, improved health, and decreased levels of poverty and crime. The
negative impact on these linkages is most evident in the absence of high school completion;

(3) Dropping out of school is a process, not an event, with factors building and compounding over time;

(4) Students at risk of not completing high school can be identified as early as sixth grade using the indicators of attendance, behavior and course failures. Therefore, a comprehensive graduation plan must include a comprehensive systemic approach that emphasizes early interventions;

(5) Research identifies a number of effective strategies for engaging students that have the most positive impact on improving high school graduation rates. Some of these strategies are school-community collaboration, safe learning environments, family engagement, early literacy development, mentoring and tutoring services, service learning opportunities, alternative and nontraditional schooling, offering multiple pathways and settings for attaining high school diplomas, after-school opportunities, individualized instruction and career and technical education;

(6) Schools cannot solve the dropout problem alone. Research shows when educators, parents, elected officials, business leaders, faith-based leaders, human service personnel, judicial personnel and civic leaders collectively work together they are often able to find innovative solutions to address school and community problems; and

(7) Increasing high school graduation rates is an important factor in preparing a college and career-ready citizenry. Higher education institutions, including community and technical colleges, are essential partners in creating local and statewide solutions.
Therefore, the intent of the Legislature is to provide a separate category of innovation zones designated "Local Solution Dropout Prevention and Recovery Innovation Zones" intended to achieve the following purposes:

1. Provide for the establishment of Local Solution Dropout Prevention and Recovery Innovation Zones to increase graduation rates and reduce the number of dropouts from West Virginia schools;

2. Provide schools and communities with opportunities for greater collaboration to plan and implement systemic approaches that include evidence-based solutions for increasing graduation rates and reducing the number of dropouts;

3. Provide a testing ground for innovative graduation programs, incentives and approaches to reducing the number of dropouts;

4. Provide information regarding the effects of specific innovations, collaborations and policies on graduation rates and dropout prevention and recovery; and

5. Document educational strategies that increase graduation rates, prevent dropouts and enhance student success.

(c) Local Solution Dropout Prevention and Recovery Innovation Zones.

A school, a group of schools or a school district may be designated as a Local Solution Dropout Prevention and Recovery Innovation Zone in accordance with the provisions of this article, subject to the provisions of this section. The state board shall propose rules for legislative promulgation, including an emergency rule if necessary, in accordance with
article three-b chapter twenty-nine of this code to implement
the provisions of this section. All provisions of this article
apply to Local Solution Dropout Prevention and Recovery
Innovation Zones, including but not limited to, the
designation, application, approval, waiver of statutes,
policies, rule and interpretations, employee approval,
employee transfers, progress reviews, reports and
revocations, and job postings, subject to the following:

(1) For purposes of this section, a "school, a group of
schools or a school district" means a high school, a group of
schools comprised of a high school and any of the elementary
and middle schools whose students will attend the high
school, or a school district whose graduation rate in the year
in which an application is made is less than ninety percent
based on the latest available school year data published by
the Department of Education;

(2) The contents of the application for designation as a
Local Solution Dropout Prevention and Recovery Innovation
Zone must include a description of the dropout prevention
and recovery strategies and that the school, group of schools
or school district plans to implement if designated as a Local
Solution Dropout Prevention and Recovery Innovation Zone,
and any other information the state board requires. The
application also shall include a list of all county and state
board rules, policies and interpretations, and all statutes, if
any, identified as prohibiting or constraining the
implementation of the plan, including an explanation of the
specific exceptions to the rules, policies and interpretations
and statutes required for plan implementation. A school, a
group of schools, or school district may not request an
exception nor may an exception be granted from any of the
following:

(i) An assessment program administered by the West
Virginia Department of Education;
(ii) Any provision of law or policy required by the No
Child Left Behind Act of 2001, Public Law No. 107-110 or
other federal law; and

(iii) Section seven, article two and sections seven-a,
seven-b, eight and eight-b, article four, chapter eighteen-a of
this code, except as provided in section eight of this article;

(3) The factors to be considered by the state board when
evaluating an application shall include, but are not limited to,
the following:

(A) Evidence that other individuals or entities and
community organizations are involved as partners to
collectively work with the applicant to achieve the purposes
as outlined in the dropout prevention and recovery plan.
These individuals or entities and community organizations
may include, but are not limited to, individuals or entities and
community organizations such as parents, local elected
officials, business leaders, faith-based leaders, human service
personnel, judicial personnel, civic leaders community and
technical colleges Higher education institutions;

(B) The level of commitment and support of staff,
parents, students, the county board of education, the local
school improvement council and the school’s business
partners as determined in accordance with this article apply
to become a Local Solutions Dropout Prevention and
Recovery Innovation Zone;

(C) The potential for an applicant to be successful in
building community awareness of the high school dropout
problem and developing and implementing its dropout
prevention and recovery plan; and

(D) Implementation of the statewide system of easily
identifiable early warning indicators of students at risk of not
(4) The rule shall provide standards for the state board to review applications for designation as a Local Solutions Dropout Prevention and Recovery Innovation Zones;

(5) The application for designation as a Local Solutions Dropout Prevention and Recovery Innovation Zone under this section is subject to approval in accordance with sections five and six of this article. In addition to those approval stages, the application, if approved by the school employees, shall be presented to the local school improvement council for approval prior to submission to county superintendent and board. Approval by the local school improvement council is obtained when at least eighty percent of the local school improvement council members present and voting after a quorum is established vote in favor of the application; and

(6) Upon approval by the state board and state superintendent of the application, all exceptions to county and state board rules, policies and interpretations listed within the plan are granted. The applicant school, group of schools or school district shall proceed to implement the plan as set forth in the approved application and no further plan submissions or approval are required, except that if an innovation zone plan, or a part thereof, may not be implemented unless an exception to a statute is granted by Act of the Legislature, the state board and state superintendent may approve the plan, or the part thereof, only upon the condition that the Legislature acts to grant the exception as provided in this article.

(d) Local solutions dropout prevention and recovery fund.
There is hereby created in the State Treasury a special revenue fund to be known as the "Local Solutions Dropout Prevention and Recovery Fund." The fund shall consist of all moneys received from whatever source to further the purpose of this article. The fund shall be administered by the state board solely for the purposes of this section. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's consolidated investment fund and any and all interest earnings on these investments shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this section.

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.

§18-8-3. Employment of county director of school attendance and assistants; qualifications; salary and traveling expenses; removal.

(a) The county board of education of every county, not later than August 1, of each year, shall employ the equivalent of a full-time county director of school attendance if such county has a net enrollment of more than four thousand pupils, at least a half-time director of school attendance if such county has a net enrollment equal to or less than four thousand pupils and such assistant attendance directors as deemed necessary. All persons to be employed as attendance directors shall have the written recommendation of the county superintendent.

(b) The county board of education may establish special and professional qualifications for attendance directors and assistants as are deemed expedient and proper and are consistent with regulations of the state Board of Education relating thereto: Provided, That if the position of attendance director has been posted and no fully certified applicant applies, the county may employ a person who holds a
professional administrative certificate and meets the special
and professional qualifications established by the county
board as attendance director and that person shall not be
required to obtain attendance director certification.

(c) The attendance director or assistant director shall be
paid a monthly salary as fixed by the county board. The
attendance director or assistant director shall prepare
attendance reports, and such other reports as the county
superintendent may request.

(d) The county board of education shall reimburse the
attendance directors or assistant directors for their necessary
traveling expenses upon presentation of a monthly, itemized,
sworn statement approved by the county superintendent.

§18-8-6. The High School Graduation Improvement Act.

(a) This section is known and may be cited as “The High
School Graduation Improvement Act.”

(b) The Legislature makes the following findings:

(1) West Virginia has a dire need to implement a
comprehensive approach to addressing the high school drop-
out crisis, and to develop policies and strategies that
successfully assist at-risk students to stay in school, earn a
high school diploma, and ultimately become productively
contributing members of society;

(2) The current demands for a highly skilled workforce
require a high school diploma at the very minimum;

(3) The state has several dynamic programs that are
capable of actively engaging students in learning, providing
students with a sense of relevancy in academics, and
motivating students to succeed in school and ultimately earn
a high school diploma;
(4) Raising the compulsory school attendance age alone will neither increase the graduation rate nor decrease the drop-out rate. It is imperative that the state shift the focus from merely compelling students to attend school to instead providing vibrant and engaging programs that allow students to recognize the value of a high school diploma or workforce credential and inspire students to graduate from high school, especially those students who are at risk of dropping out of school;

(5) Investing financially in this focus shift will result in the need for fewer resources to be committed to enforcing compulsory attendance laws and fewer incidents of disruptive student behavior;

(6) Absenteeism is proven to be the highest predictor of course failure. Truant students face low self-confidence in their ability to succeed in school because their absences cause them to fall behind their classmates, and the students find dropping out easier than catching up;

(7) There is a strong relationship between truancy and dropping out of high school. Frequent absences are one of the most common indicators that a student is disengaging from the learning process and likely to drop out of school early. Intervention after fewer absences is likely to have a positive impact on a student’s persistence to graduation;

(8) Students cite many reasons for dropping out of school, some of which include engaging in drug culture, lack of positive influence, role model or parental involvement, absence of boundaries and direction, lack of a positive home environment, peer pressure, and poor community expectations;

(9) Dropping out of school has a profound negative impact on an individual’s future, resulting in limited job
choices, substantially lower wages and less earned over a life-time than high school graduates, and a greater likelihood of depending on public assistance and engaging in criminal activity;

(10) Career-technical education is a dynamic system in West Virginia which offers numerous concentrations that provide students with industry-recognized credentials, while also preparing them for post-secondary education;

(11) All career-technical education students in the state have an opportunity to earn free college credit through the Earn a Degree-Graduate Early (EDGE) program;

(12) The current high school graduation rate for secondary career-technical education completers is significantly higher than the state graduation rate;

(13) Students involved in career-technical education learn a marketable skill, are likely to find jobs, and become prepared for post-secondary education;

(14) A significant number of students who could benefit from participating in a career-technical program are denied access due to a number of factors, such as dropping out of high school prior to enrolling in career-technical education, requirements that students repeat academic courses that they have failed, and scheduling conflicts with the high schools;

(15) There has been a dramatic change over the years from vocational education, which was very basic and lacked high level skills, to the career-technical programs of today which are computer based, require national tests and certification, and often result in jobs with high salaries;

(16) West Virginia’s employers and technical education job placement rates show that the state needs graduates with
technical skills to compete in the current and future job markets;

(17) The job placement rate for students graduating from career-technical programs statewide is greater than ninety-five percent;

(18) Among the reasons students cite for dropping out of school are feelings of hopelessness when they have failed classes and can not recover credits in order to graduate;

(19) The state offers full-day programs consisting of credit recovery, hands on experiences in career-technical programs and basic education, which are valuable resources for re-engaging students who have dropped out of school, or have a potential for or are at risk of dropping out;

(20) A student is significantly more likely to graduate from high school if he or she completes four units of training in technical education;

(21) Learning is increased and retained at a higher level if the content is taught through a relevant and applied experience, and students who are able to experience academics through real life projects have a higher probability of mastering the appropriate concepts;

(22) Programs such as “GED Option” and “Techademics” are valuable resources for providing relevant and applied experience for students;

(23) The Techademics programs administered by the department of education has embedded math competencies in career-technical program curricula whereby students simultaneously earn credit for mastery of math competencies and career-technical courses;
(24) Students would greatly benefit if West Virginia were designated as a “GED Option” state. Currently a student is ineligible to take the General Educational Development (GED) exam if he or she is enrolled in school, which requires the student to drop out of high school in order to participate in a GED preparation program or take the exam, even if the student desires to remain enrolled;

(25) A GED Option state designation by the American Council on Education would allow students in this state to remain enrolled in school and continue acquiring academic and career-technical credits while pursuing a GED diploma. The GED Option would be blended with the West Virginia virtual schools or a career-technical education pathway. Upon completion, rather than being a dropout, the student would have a GED diploma and a certification in the chosen career-technical or virtual school pathway;

(26) The Mountaineer Challenge Academy is a positive option for students at risk of dropping out of school, as it provides students with structure, stability, and a focus on positive change, all in an environment where negative influences and distractions can be left behind;

(27) Students attending the Mountaineer Challenge Academy would greatly benefit if the GED Option were implemented at the Academy;

(28) The Health Sciences and Technology Academy (HSTA) program prepares rural, minority and economically disadvantaged students for college and careers in the health sciences, and demonstrates tremendous success in its high percentage of students who graduate from high school and participate in post-secondary education.

(29) The West Virginia GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs)
program is aimed at increasing the academic performance and rigorous preparation of students, increasing the number of high-poverty, at-risk students who are prepared to enter and succeed in post-secondary education, and increasing the high school graduation rate;

(30) The GEAR UP program successfully aids students in planning, applying and paying for education and training beyond high school;

(31) Each dropout involved in drugs or crime or dependent on public assistance creates a huge fiscal burden on society;

(32) The intense treatment and individual monitoring provided through the state’s juvenile drug courts have proven to be highly effective in treating drug addictions, and rehabilitating drug addicted youth and improving their educational outcomes;

(33) Services provided by juvenile drug courts include substance abuse treatment, intervention, assessment, juvenile and family counseling, heavy supervision by probation officers including school-based probation officers who provide early intervention and diversion services, and addressing some of the underlying reasons why students are not successful in school;

(34) School participation and attendance are required for students participating in juvenile drug courts, and along with academic progress are closely monitored by the courts;

(35) Juvenile drug courts are an important strategy to improve substance abuse treatment outcomes, and serve to save the state significant cost on incarceration of the juveniles, along with the future costs to society of individuals who remain substance abusers;
(36) Juvenile drug courts produce greater cost benefits than other strategies that address criminal activity related to substance abuse and addiction that bring individuals into the criminal justice system;

(37) Funding for the increased number of students enrolled in school during the 2010-2011 school year due to the compulsory school attendance age increase established by this act will not be reflected in the state aid formula allocation until the 2011-2012 school year, which will require additional funds to be provided to county boards for the 2010-2011 school year to accommodate the increased enrollment;

(38) The state will benefit both fiscally and through improved quality of life if scarce state resources are targeted toward programs that result in providing a competitive advantage as adults for those students who are at risk of dropping out of school;

(39) Funds invested toward education and ensuring that students complete high school pay tremendous dividends through the moneys saved on incarceration, unemployment and underemployment as those students reach adulthood;

(40) Increasing the compulsory school attendance age will have little effect in aiding students to complete high school if additional resources, both fiscal and programmatic, are not dedicated to supporting student achievement, providing real-life relevancy in curriculum, and engaging students in learning, particularly for those students who have become so disengaged from school and learning that they are at risk of dropping out of school; and

(41) Schools cannot solve the dropout problem alone. Research shows when educators, parents, elected officials, business leaders, faith-based leaders, human service
personnel, judicial personnel and civic leaders collectively work together they are often able to find innovative solutions to address school and community problems.

(c) The Legislature intends as follows:

(1) The state will continue to explore diverse instructional delivery strategies to accommodate various learning styles and will focus on a state-wide dropout intervention and prevention program to provide support for students having academic difficulty;

(2) A general credit recovery program shall be implemented statewide, including delivery through West Virginia virtual schools;

(3) The state board will continue to improve the way career-technical education is offered, including expansion of the Techademics program;

(4) Up to five additional juvenile drug courts shall be established by January 1, 2012;

(5) The state will invest additional state funds and other resources in strategies and programs that engage disconnected and discouraged students in a positive learning environment as a critical first step to ensuring that students persist and graduate;

(6) County boards will develop plans to demonstrate how they will use available funds to implement the intent of this section; and

(7) The state board shall develop a statewide system in electronic format that will provide schools with easily identifiable early warning indicators of students at risk of not graduating from high school. The system shall be delivered through the uniform integrated regional computer
information system (commonly known as the West Virginia Education Information System) and shall at a minimum incorporate data on the attendance, academic performance and disciplinary infractions of individual students. The state board shall require implementation of the system in Local Solution Dropout Prevention and Recovery Innovation Zones along with a plan of interventions to increase the number of students earning a high school diploma, and may utilize the zones as a pilot test of the system.

(d) Each county board shall include in its alternative education program plan required by section six, article two, of this chapter a plan to improve student retention and increase the graduation rate in the county. The plan is subject to approval of the state board, and shall include strategies the county board will implement to achieve the following goals:

1. Increasing the graduation rate for the county;

2. Identifying at the earliest age possible those students who are at risk of dropping out of school prior to graduation; and

3. Providing additional options for delivering to at-risk students academic credentials and career-technical training if appropriate or desired by the student. The options may include such programs as Techademics, Earn a Degree-Graduate Early (EDGE), Health Sciences and Technology Academy (HSTA), Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), truancy diversion, early intervention, dropout prevention, prevention resource officers, GED option, credit recovery, alternative learning environments, or any other program or strategy approved by the state board.

(e) As soon as is practicable the state superintendent or his or her designee shall pursue designation of West Virginia
as a “GED Option” state by the American Council on Education. If so designated, the state board shall:

(1) Develop and implement a program whereby a student may pursue a GED diploma while remaining enrolled in high school; and

(2) Ensure that the GED Option is offered to students attending the Mountaineer Challenge Academy.

(f) The state board shall continue to expand:

(1) The Techademics program to include each major academic subject and increase the academic credit available through the program to students; and

(2) The Health Sciences and Technology Academy to ensure that the program is available for any school containing any of the grade levels of eligible students.

(g) The state board shall ensure that the dropout information required by section twenty-four, article one-b, chapter fifteen of this code is provided annually to the Mountaineer Challenge Academy.

(h) Some career and technical education programs only accept students in certain upper high school grade levels due to lack of capacity to accept the students in the lower high school grade levels. This can be detrimental to efforts to keep students identified as at risk of dropping out of school prior to graduation in school. Therefore, those career and technical education programs that limit enrollment to students in certain upper high school grade levels may make exceptions for those at risk students and enroll any of those at risk students who are in grades nine and above.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9D-4c; to amend and reenact §18-9D-15 of said code; and to amend said code by adding thereto a new section, designated §18-9D-19a, all relating to funding and financing comprehensive middle schools and other School Building Authority projects and expenditures; providing the School Building Authority the ability to temporarily finance project costs and expenditures for public schools through loans, notes or other financing; limiting the amount of outstanding loans, notes or other financing; providing that principal, interest and premium on loans, notes or other financing must be paid from certain sources; allowing, upon application by a county board of education, the School Building Authority to allocate and expend certain moneys for school major improvement projects for vocational programs at comprehensive middle schools; providing legislative findings; providing for definition of “comprehensive middle high school” by state board rule; providing minimum contents of rule; requiring the authority, when planning the construction of a middle or junior high school, to provide funding for a comprehensive middle school that includes comprehensive career technical education facilities to be located, when feasible, on the same site as the middle or junior high school under certain conditions; requiring the authority, upon
application of a county board to construct comprehensive career technical education facilities that would allow an existing middle or junior high school to become a comprehensive middle school, to provide technical assistance to the county in developing a plan for construction of the comprehensive career technical education facility; and requiring, upon development of the plan, the authority to consider funding based on certain criteria.

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 §18-9D-4c; that §18-9D-15 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9D-19a, all to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-4c. School Building Authority authorized to temporarily finance projects through the issuance of loans, notes or other evidences of indebtedness.

The School Building Authority may by resolution, in accordance with the provisions of this article, temporarily finance the cost of projects and other expenditures permitted under this article for public schools, including, but not limited to, comprehensive high schools and comprehensive middle schools as defined in this article, in this state through the issuance of loans, notes or other evidences of indebtedness: Provided, That the principal amount of loans, notes or other evidences of indebtedness outstanding at any one time shall not exceed $16 million: Provided, however, That the principal of, interest and premium, if any, on and fees associated with any such temporary financing shall be payable solely from the sources from which the principal of,
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interest and premium, if any, on bonds is payable under this article or from the proceeds of bonds.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than three percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;
(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to section six of this article and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be allocated and may be expended by the authority for projects authorized in accordance with the provisions of section sixteen of this article that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to article two-b of this chapter, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with the provisions of section sixteen of this article proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project’s evaluation, subject to the following:

(A) The authority may not expend any moneys for a school major improvement project proposed by the state
board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a ten-year facilities plan; and

(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

1. Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

2. The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

3. Moneys paid into the School Construction Fund pursuant to section six of this article; and

4. Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:
(1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

(2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

(4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with the provisions of section sixteen of this article. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: Provided, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from:
121. (1) Moneys paid into the School Building Capital Improvements Fund pursuant to section ten, article nine-a of this chapter;

124. (2) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

127. (3) Moneys paid into the School Construction Fund pursuant to section six of this article; and

129. (4) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to section five, article nine-f of this chapter, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with the provisions of section sixteen of this article.

136. (f) If a county board proposes to finance a project that is authorized in accordance with section sixteen of this article through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: Provided, That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

148. (1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which
shall be set forth in a loan agreement among the authority, the
state board and the county board;

(2) The loan agreement shall provide for the state board
and the authority to defer the payment of principal and
interest upon any loan made to the county board during the
term of the investment contract, and annual renewals of the
investment contract, among the state board, the authority, the
county board and a lessor, subject to the following:

(A) In the event a county board which has received a loan
from the authority for a one-time payment at the beginning of
the lease term does not renew the lease annually until
performance of the investment contract in its entirety is
completed, the county board is in default and the principal of
the loan, together with all unpaid interest accrued to the date
of the default, shall, at the option of the authority, in
consultation with the state board, become due and payable
immediately or subject to renegotiation among the state
board, the authority and the county board;

(B) If a county board renews the lease annually through
the performance of the investment contract in its entirety, the
county board shall exercise its option to purchase the leased
premises;

(C) The failure of the county board to make a scheduled
payment pursuant to the investment contract constitutes an
event of default under the loan agreement;

(D) Upon a default by a county board, the principal of the
loan, together with all unpaid interest accrued to the date of
the default, shall, at the option of the authority, in
consultation with the state board, become due and payable
immediately or subject to renegotiation among the state
board, the authority and the county board; and
(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: Provided, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the School Construction Fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to section six of this article shall
be allocated and distributed on the basis of need and efficient
use of resources for projects authorized in accordance with
the provisions of section sixteen of this article, subject to the
following:

(1) The moneys may not be distributed for any project
under this section unless the responsible entity has a facilities
plan approved by the state board and the authority and is to
commence expenditures of the funds during the fiscal year in
which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed
for that project shall be deposited in an account to the credit
of the project, the principal amount to remain to the credit of
and available to the project for a period of two years; and

(3) Any moneys which are unexpended after a two-year
period shall be redistributed on the basis of need from the
School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the
provisions of this section. However, this article does not
negate the responsibilities of the county boards to maintain
school facilities. To be eligible to receive an allocation of
school major improvement funds from the authority, a county
board must have expended in the previous fiscal year an
amount of county moneys equal to or exceeding the lowest
average amount of money included in the county board's
maintenance budget over any three of the previous five years
and must have budgeted an amount equal to or greater than
the average in the current fiscal year: Provided, That the state
board shall promulgate rules relating to county boards' maintenance budgets, including items which shall be
included in the budgets.

(j) Any county board may use moneys provided by the
authority under this article in conjunction with local funds
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250 derived from bonding, special levy or other sources.  
251 Distribution to a county board, or to the state board or the  
252 administrative council of an area vocational educational  
253 center pursuant to subsection (b) of this section, may be in a  
254 lump sum or in accordance with a schedule of payments  
255 adopted by the authority pursuant to guidelines adopted by  
256 the authority.

257 (k) Funds in the School Construction Fund shall first be  
258 transferred and expended as follows:

259 (1) Any funds deposited in the School Construction Fund  
260 shall be expended first in accordance with an appropriation  
261 by the Legislature.

262 (2) To the extent that funds are available in the School  
263 Construction Fund in excess of that amount appropriated in  
264 any fiscal year, the excess funds may be expended for  
265 projects authorized in accordance with the provisions of  
266 section sixteen of this article.

267 (l) It is the intent of the Legislature to encourage county  
268 boards to explore and consider arrangements with other  
269 counties that may facilitate the highest and best use of all  
270 available funds, which may result in improved transportation  
271 arrangements for students or which otherwise may create  
272 efficiencies for county boards and the students. In order to  
273 address the intent of the Legislature contained in this  
274 subsection, the authority shall grant preference to those  
275 projects which involve multicounty arrangements as the  
276 authority shall determine reasonable and proper.

277 (m) County boards shall submit all designs for  
278 construction of new school buildings to the School Building  
279 Authority for review and approval prior to preparation of  
280 final bid documents. A vendor who has been debarred  
281 pursuant to the provisions of sections thirty-three-a through
thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than fifty percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed $500,000, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within eighteen months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.


(a) The Legislature finds the following:

(1) Students learn more through hands on, applied learning activities;
(2) Career technical education students have a much higher graduation rate than other students;

(3) Although thirty-seven percent of West Virginia middle and junior high school students are enrolled in a form of career technical education, the number has been dropping by approximately three thousand students per year; and

(4) As the benefits of career technical education have increased as academics have become more embedded in career technical education, it is important that career technical education opportunities be increased at the middle and junior high school level.

(b) "Comprehensive middle school" means a middle or junior high school that meets the definition of a comprehensive middle school established by the state board. The definition of a comprehensive middle school shall be established by the state board in a legislative rule promulgated in accordance with article three-b, chapter twenty-nine-a of this code. The definition shall include at least the following:

(1) A comprehensive curriculum that:

(A) Includes the core subjects in English/language arts, mathematics, science, social studies;

(B) Provides students with engaging learning opportunities where students are provided connections between what they are learning and what they will learn in high school and beyond;

(C) Establishes the foundation for college and career readiness;
(D) Embeds career exploration and project based career activities where possible to provide all student with comprehensive career development and counseling;

(E) Provides career technical options for students that are integrated with academic course requirements where possible; and

(F) Provides authentic opportunities in the visual and performing arts, health and wellness, physical education, world languages and career technical activities;

(2) Harnessing the power of technology to provide personalized learning twenty-four hours per day and seven days per week and produce a digital individualized student portfolio of student mastery and progression; and

(3) A seamless integration with the secondary school curriculum that enables students to further explore their options and further pursue their career interests at the secondary and post-secondary levels.

c) When planning the construction of a middle or junior high school which has been approved by the authority and which meets the required authority efficiencies, the authority shall provide funding for a comprehensive middle school that includes comprehensive career technical education facilities to be located, when feasible, on the same site as the middle or junior high school.

d) Upon application of a county board to construct comprehensive career technical education facilities that would allow an existing middle or junior high school to become a comprehensive middle school, the authority will provide technical assistance to the county in developing a plan for construction of the comprehensive career technical education facility. Upon development of the plan, the authority shall consider funding based on the following criteria:
(1) The ability of the county board to provide local funds for the construction of the comprehensive career technical education facilities;

(2) The size of the existing middle and junior high schools;

(3) The age and physical condition of the existing career technical education facilities;

(4) The potential for improving in the graduation rate; and

(5) Such other criteria as the authority shall consider appropriate.

CHAPTER 55

(Com. Sub. for S. B. 592 - By Senators Palumbo, Stollings, Plymale, Unger, Browning, Minard, Foster, Wells, Fanning, Jenkins, Tucker, and Kessler (Acting President))

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18-9F-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9F-9; and to amend and reenact §18-28-2 of said code, all relating to requiring crisis response plans for all schools; updating legislative findings and intent; requiring the state board in conjunction with the Division of Homeland Security and Emergency Management promulgate legislative rule by certain date for school specific
crisis response plan establishment, minimum content, safeguards, updating, filing, informing and training school personnel, release of information to public; procedures for non public schools; authorizing emergency rule; considerations in developing rule; minimum contents of rule; requiring plan filing with county boards and certain disposition including public inspection of redacted copies and notice to parents; and requiring private, parochial and religious schools to establish, file and update school specific crisis response plan that complies with certain rule requirements.

Be it enacted by the Legislature of West Virginia:

That § 18-9F-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-9F-9; and that §18-28-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 9F. SCHOOL ACCESS SAFETY AND CRISIS RESPONSE ACT.

§18-9F-1. Legislative findings and intent.

(a) The Legislature finds that:

1. Establishing and maintaining safe and secure schools is critical to fostering a healthy learning environment and maximizing student achievement;

2. All school facilities in the state should be designed, constructed, furnished and maintained in a manner that enhances a healthy learning environment and provides necessary safeguards for the health, safety and security of persons who enter and use the facilities;

3. Adequate safeguards for the ingress to and egress from school facilities of pupils, school employees, parents,
visitors and emergency personnel are critical to the overall safety of the public schools in this state;

(4) Safety upgrades to the means of ingress to and egress from school facilities for pupils, school employees, parents, visitors and emergency personnel must be part of a comprehensive analysis of overall school safety issues that takes into consideration the input of local law-enforcement agencies, local emergency services agencies, community leaders, parents, pupils, teachers, administrators and other school employees interested in the prevention of school crime and violence;

(5) In order to help ensure safety in all schools within the state and to be prepared to adequately respond to potential crises, including any traumatic event or emergency condition that creates distress, hardship, fear or grief, each school must have an up-to-date comprehensive crisis response plan as detailed in section nine of this article.

(b) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds for the design, construction, renovation, repair and upgrading of facilities so as to enhance school access safety and provide secure ingress to and egress from school facilities to pupils, school employees, parents, visitors and emergency personnel.


(a) The state board in conjunction with the Division of Homeland Security and Emergency Management shall promulgate by December 31, 2011, a legislative rule in accordance with article three-b, chapter twenty-nine-a of this code, and if necessary may promulgate an emergency rule in accordance with said article, for the establishment of an up-to-date, school specific crisis response plan at every school
in the state. In developing the rule, the state board shall consider plans currently being developed as part of the safe schools initiative currently underway by the School Building Authority and the Division of Homeland Security and Emergency Management. In addition, those portions of a school’s access safety plan created pursuant to section three of this article may be used as a portion of the school’s school specific crisis response plan if there are any overlapping requirements. The rule shall provide for at least the following:

(1) A model school crisis response plan for use by each school in the state, including a uniform template which shall be used by each school to file the plan, including at least the following information, in a secure electronic system identified by the Division of Homeland Security and Emergency Management:

(A) The school employee in charge during a crisis and a designated substitute;

(B) A communication plan to be used during a crisis;

(C) Protocols for responding to immediate physical harm of students, faculty or staff and to traumatic events, including the period after the events have concluded;

(D) Disaster and emergency procedures to respond to earthquakes, fire, flood, other natural disasters, explosions or other events or conditions in which death or serious injury is likely;

(E) Crisis procedures for safe entrance to and exit from the school by students, parents, and employees, including an evacuation and lock down plan; and

(F) Policies and procedures for enforcing school discipline and maintaining a safe and orderly environment during the crisis.
(2) A requirement that each school’s school specific crisis response plan shall be in place and filed with that school’s county board, and included in a secure electronic system identified by the Division of Homeland Security and Emergency Management, no later than August 1, 2013, or soon after completion by the school, whichever occurs first;

(3) The necessary safeguards to protect information contained in each school specific crisis response plan that may be considered protected critical infrastructure information, law enforcement sensitive information or for official use only. These safeguards must have the approval of the Division of Homeland Security and Emergency Management. County boards shall provide the same necessary safeguards for the information in the plan;

(4) The annual review and necessary update of the model plan and uniform template by state board in conjunction with the Division of Homeland Security and Emergency Management by December 31 of each year after 2011;

(5) The development by each school of a school specific crisis response plan by using the state board’s model plan as an example and with consultation from local social services agencies, local first response agencies including police, fire, emergency medical services (EMS), emergency management and any other local entities that the school’s crisis response planning team determines should be consulted;

(6) Procedures for the annual review and update if necessary by each school of its school specific crisis response planning plan. Each school shall file either an updated crisis response plan or a memorandum stating that no update to the crisis response plan was necessary with its county board and the Division of Homeland Security and Emergency Management no later than August 1 of each year after 2013.
(7) Procedures for each school within the state to form a crisis response planning team, which team may consist of the school’s Local School Improvement Council or a separate team consisting of the principal, two teachers, one service person and two parents of children attending the school. In addition the school may include on the team one member of the county board, a school counselor, a member from local law-enforcement authorities, the local county emergency services director and one student in grade ten or higher if the school has those grades;

(8) Procedures for informing and training school personnel on any actions required of them to effectuate the school’s school specific crisis response plan;

(9) A model template for redacted copies of the school crisis response plan for the public inspection and for the release and notice to parents of information related to the plan; and

(10) Procedures for non public schools to establish, file and update school crisis response plans consistent with subdivision (1) subsection (a) of this section.

(b) The county board shall keep the current crisis response plan of each school in the county on file and, unless otherwise provided for, provide a copy of each school’s crisis response plan to each local emergency response agency that has a role in the plan. Local emergency response agencies that maintain a copy of the plan shall provide the necessary safeguards for the information in the plan established pursuant to the state board rule promulgated pursuant to subsection (a) of this section. Upon request, a redacted copy of a school crisis response plan shall be made available for inspection by the public with any information removed that is necessary for compliance with the necessary safeguards. Starting with the 2012-2013 school year, each school shall
annually send notice home to all parents and guardians of
students at the school alerting the parents and guardians to
the existence of the crisis response plan and the ability to
review a redacted copy at the offices of the county board.

ARTICLE 28. PRIVATE, PAROCHIAL OR CHURCH
SCHOOLS OR SCHOOLS OF A
RELIGIOUS ORDER.

§18-28-2. Attendance; health and safety regulations.

The following is applicable to private, parochial or
church schools or schools of a religious order:

(a) Each school shall observe a minimum instructional
term of one hundred eighty days with an average of five
hours of instruction per day;

(b) Each school shall make and maintain annual
attendance and disease immunization records for each pupil
enrolled and regularly attending classes. The attendance
records shall be made available to the parents or legal
guardians;

(c) Upon the request of the county superintendent, a
school (or a parents organization composed of the parents or
guardians of children enrolled in the school) shall furnish to
the county board a list of the names and addresses of all
children enrolled in the school between the ages of seven and
sixteen years;

(d) Attendance by a child at any school which complies
with this article satisfies the requirements of compulsory
school attendance;

(e) Each school is subject to reasonable fire, health and
safety inspections by state, county and municipal authorities
as required by law, and is required to comply with the West Virginia school bus safety regulations; and

(f) Each school shall establish, file and update a school specific crisis response plan which complies with the requirements established for it by the state board and the Division of Homeland Security and Emergency Management pursuant to section nine, article nine-f of this chapter.

CHAPTER 56

(Com. Sub. for H. B. 2550 - By Delegates Iaquinta, Fleischauer, Longstreth, Stephens, Walker and Azinger)

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated § 18-10F-1 and § 18-10F-2, all relating to the enactment of the Interstate Compact on Educational Opportunity for Military Children; establishing the West Virginia Council for Educational Opportunity for Military Children; designating membership; and establishing powers and duties.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated § 18-10F-1 and § 18-10F-2, all to read as follows:
ARTICLE 10F. INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN.

§18-10F-1. Interstate Compact on Educational Opportunity for Military Children.

This article is known and may be cited as the "Interstate Compact on Educational Opportunity for Military Children".

§18-10F-2. Enactment of Interstate Compact.

The Interstate Compact on Educational Opportunity for Military Children is hereby enacted into law and entered into by the State of West Virginia with any and all states legally joining therein in accordance with its terms, in the form substantially as follows:

INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

ARTICLE I. PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(a) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from a previous school district or variations in entrance or age requirements;

(b) Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content or assessment;
(c) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic and social activities;

(d) Facilitating the on-time graduation of children of military families;

(e) Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

(f) Providing for the uniform collection and sharing of information between and among member states, schools and military families under this compact;

(g) Promoting coordination between this compact and other compacts affecting military children; and

(h) Promoting flexibility and cooperation between the educational system, parents and students in order to achieve educational success for students.

ARTICLE II. DEFINITIONS

As used in this article and compact, unless the context clearly requires a different meaning:

(a) “Active duty” means full-time duty status in any of the active uniformed services of the United States, including service in the National Guard and Reserve pursuant to active duty orders in accordance with 10 U.S.C. Sections 1209 and 1211;

(b) “Child of a military family” means any school-aged child enrolled in any of grades kindergarten through twelfth who is in the household of an active duty uniformed services member;
(c) "Compact commissioner" means the voting representative of a compacting state appointed pursuant to Article VIII of this compact;

(d) "Deployment" means the time period beginning one month prior to a uniformed services member's departure from his or her home station on military orders and ending six months after return to his or her home station;

(e) "Education records" means all documents, files, data and official records directly related to a student and maintained by a school or county board. This includes all material kept in the student's cumulative file, such as but not limited to generally-identifying data, attendance records, academic work completion records, achievement records, evaluative test results, health data, disciplinary records, test protocols, and individualized education program or service records;

(f) "Extracurricular activities" means voluntary activities sponsored by a school, a county board or an organization sanctioned by a county board or the state board of education. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, organizations and clubs;

(g) "Interstate Commission on Educational Opportunity for Military Children" or "Interstate Commission" means the Commission that is created by Article IX of this compact;

(h) "County board" means a county board of education, which is the public entity legally constituted by this state as an administrative agency to provide control of and direction for grades kindergarten through twelfth in the public schools in the county in which it operates;
(i) "Member state" means a state that has enacted this compact;

(j) "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands or any other United States Territory. "Military installation" does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects;

(k) "Non-member state" means a state that has not enacted this compact;

(l) "Receiving state" means a state to which a child of a military family is sent, brought, or caused to be sent or brought;

(m) "Rule" means a written statement by the Interstate Commission which:

(1) Is promulgated pursuant to Article XII of this compact;

(2) Is of general applicability;

(3) Implements, interprets or prescribes a policy or provision of this compact, or an organizational, procedural, or practice requirement of the Interstate Commission;

(4) Has the force and effect of statutory law in a member state; and

(5) May be amended, repealed, or suspended by act of the Interstate Commission;
(n) "Sending state" means a state from which a child of a military family is sent, brought, or caused to be sent or brought;

(o) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands and any other United States Territory;

(p) "Student" means a child of a military family who is formally enrolled in any of grades kindergarten through twelfth and for whom a county board receives public funding;

(q) "Transition" means:

(1) The formal and physical process of transferring from one school to another; or

(2) The period of time during which a student moves from one school in a sending state to another school in the receiving state;

(r) "Uniformed services" means the Army, Navy, Air Force, Marine Corps, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration, and Public Health Services;

(s) "Veteran" means a person who performed active duty service and was discharged or released therefrom under conditions other than dishonorable; and

(t) "The West Virginia Council for Educational Opportunity for Military Children" or "West Virginia Council" means the state coordinating council established in Article VIII of this compact.
ARTICLE III. APPLICABILITY

(a) This compact applies to:

(1) Each county board of education; and

(2) The children of:

(A) Active duty members of the uniformed services as defined in this compact, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211;

(B) Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement;

and

(C) Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one (1) year after death.

(b) Except as provided in subsection (a) of this Article III, this compact does not apply to the children of:

(1) Inactive members of the National Guard or military reserves;

(2) Retired members of the uniformed services;

(3) Veterans of the uniformed services;

(4) Other United States Department of Defense personnel; nor

(5) Any other federal agency civilian or contract employees not defined as active duty members of the uniformed services.
ARTICLE IV. EDUCATIONAL RECORDS & ENROLLMENT

(a) Unofficial or "hand-carried" education records --

In the event that official education records cannot be released to a student's parents or legal guardians for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parents a complete set of unofficial educational records containing uniform information as determined by the Interstate Commission. As quickly as possible upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records.

(b) Official education records/transcripts --

Simultaneous with the enrollment and conditional placement of a student, the school in the receiving state shall request the student's official education records from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official education records to the school in the receiving state within ten days or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(c) Immunizations --

(1) A county board shall allow a student thirty days from the date of enrollment to obtain any required immunizations, or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(2) In any case where a series of immunizations is required, the student shall obtain the initial vaccination
within thirty days of enrollment, or such other time period as is determined reasonable under the rules promulgated by the Interstate Commission.

(d) Enrollment at current grade level --

(1) A student shall be permitted to enroll in the grade level in this state, including kindergarten, which is commensurate with the grade level in which he or she was enrolled in the sending state at the time of transition, regardless of his or her age.

(2) A student that has satisfactorily completed the prerequisite grade level in the sending state is eligible for enrollment in the next highest grade level in this state, regardless of his or her age.

ARTICLE V. PLACEMENT & ATTENDANCE

(a) Course placement --

(1) When a student transfers to this state before or during the school year, the school in this state shall initially place the student in educational courses based on the courses in which he or she was enrolled in the sending state, educational assessments conducted at the school in the sending state, or both, if the courses are offered at the school to which the student is transferring. This course placement provision includes, but is not limited to Honors, International Baccalaureate, Advanced Placement, vocational, technical and career pathways courses.

(2) A school shall give paramount consideration to continuing a student’s academic program from the previous school, and promoting placement in academically and career-challenging courses, when considering course placement.
(3) A school is not precluded from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in any course.

(b) Educational program placement --

When a student transfers to this state, the school shall initially place the student in educational programs based on current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include, but are not limited to gifted and talented programs and English as a second language (ESL). A school is not precluded from performing subsequent evaluations to ensure appropriate placement of the student.

(c) Special education services --

(1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. Section 1400 et seq, a school in this state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and

(2) In compliance with the requirements of Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794 (Section 504), and with Title II of the Americans with Disabilities Act, 42 U.S.C.A. Sections 12131-12165 (Title II), any school in this state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing Section 504 or Title II plan, to provide the student with equal access to education. The school is not precluded from performing subsequent evaluations to ensure appropriate placement of the student.

(d) Placement flexibility --
County board administrative officials have flexibility in waiving course and program prerequisites, or other preconditions for placement in courses or programs offered under the authority of the county board.

(e) Absence as related to deployment activities --

A student whose parent or legal guardian is an active duty member of the uniformed services and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the county superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

ARTICLE VI. ELIGIBILITY

(a) Eligibility for enrollment --

(1) Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law is sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A county board may not charge local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a school district other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.
(b) Eligibility for extracurricular participation --

The State Board of Education and county boards shall facilitate the opportunity for transitioning military children to be included in extracurricular activities, regardless of application deadlines, to the extent the children are otherwise qualified.

ARTICLE VII. GRADUATION

In order to facilitate the on-time graduation of children of military families the State Board of Education and each county board shall incorporate the following procedures:

(a) Waiver requirements --

County board administrative officials shall either waive specific courses required for graduation if a student has satisfactorily completed similar course work in another local education agency, or provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending school, the county board shall provide an alternative means of acquiring required coursework so that the student may graduate on time.

(b) Exit exams --

Any school in this state shall accept:

(1) Exit or end-of-course exams required for graduation from the sending state;

(2) National norm-referenced achievement tests; or

(3) Alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event that the alternatives in this subsection cannot be accommodated by a
school for a student transferring in his or her senior year, then
the provisions of subsection (c) of Article VII of this compact
apply.

(c) Transfers during senior year --

If a student transferring at the beginning of or during his
or her senior year is ineligible to graduate from a school in
this state after all alternatives have been considered, the
county board and the local education agency in the sending
state shall ensure that the student receives a diploma from the
sending state, if the student meets the graduation
requirements of the local education agency in the sending
state. In the event that one of the states in question is not a
member of this compact, the member state shall use best
efforts to facilitate the on-time graduation of the student in
accordance with subsections (a) and (b) of this Article VII.

ARTICLE VIII. STATE COORDINATION

(a) The West Virginia Council for Educational
Opportunity for Military Children is hereby established for
the purpose of coordinating entities in this state regarding
participation in the Interstate Compact on Educational
Opportunity for Military Children.

(b) Membership of the Council consists of at least six
members as follows:

(1) The State Superintendent of Schools;

(2) The superintendent of a county board in the state
which has a high concentration of military children,
appointed by the Governor. If the Governor determines there
is not a county school district that contains a high
concentration of military children, he or she may appoint a
superintendent from any county school district to represent
county boards on the State Council;
(3) An individual representing a military installation in this state appointed by the Governor by and with the advice and consent of the Senate. This member serves a term of four years, except that the term of the individual initially appointed expires June 30, 2015. Each subsequent term begins on July 1 in the year of appointment.

(4) An individual representing the executive branch of government, appointed by the Governor;

(5) One member of the West Virginia Senate, appointed by the President of the West Virginia Senate; and

(6) One member of the West Virginia House of Delegates, appointed by the Speaker of the West Virginia House of Delegates.

(c) The Governor shall appoint a Compact Commissioner who is responsible for administering and managing the state’s participation in the compact. The Governor may select the Commissioner from members appointed to the Council as provided in subsection (b) of this Article VIII, or may appoint another individual to serve in this capacity. An individual who is not already a full voting member of the Council becomes an ex-officio member of the Council if appointed as Commissioner.

(d) The West Virginia Council has and may exercise all powers necessary or appropriate to carry out and effectuate the purpose and intent of this compact, including, but not limited to the following:

(1) Facilitate coordination among state agencies and governmental entities of West Virginia, including county boards and military installations, concerning the state’s participation in, and compliance with, this compact and Interstate Commission activities; and
(2) Appoint or designate a military family education liaison to assist military families and the state in facilitating implementation of the compact. This individual becomes an ex-officio member of the West Virginia Council if he or she is not already a full voting member of the Council when so appointed or designated.

ARTICLE IX. INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

(a) The member states hereby create the “Interstate Commission on Educational Opportunity for Military Children.” The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(b) The Interstate Commission:

(1) Is a body corporate and joint agency of the member states and has all the responsibilities, powers and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective Legislatures of the member states in accordance with the terms of this compact;

(2) Consists of one Interstate Commission voting representative from each member state who is that state’s Compact Commissioner.

(A) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(B) A majority of the total member states constitutes a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.
(C) A representative may not delegate a vote to another member state. In the event a Compact Commissioner is unable to attend a meeting of the Interstate Commission, the Governor or State Council of the Compact Commissioner's state may delegate voting authority to another person from that state for a specified meeting.

(D) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication;

(3) Consists of ex-officio, nonvoting representatives who are members of interested organizations. Such ex-officio members, as defined in the bylaws, may include, but are not limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the United States Department of Defense, the Education Commission of the States, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members;

(4) Meets at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;

(5) Establishes an executive committee, whose members shall include the officers of the Interstate Commission and such other members of the Interstate Commission as established in the bylaws. Each member of the executive committee serves a one year term. Each member of the executive committee is entitled to one vote. The executive committee has the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the daily activities of the administration of the compact, including enforcement and
compliance with the provisions of the compact, its bylaws and rules, and such other duties as it determines are necessary. A representative of the United States Department of Defense serves as an ex-officio, nonvoting member of the executive committee;

(6) Establishes bylaws and rules that provide for conditions and procedures under which the Interstate Commission makes its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;

(7) Gives public notice of all meetings. All meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

(A) Relate solely to the Interstate Commission’s internal personnel practices and procedures;

(B) Disclose matters specifically exempted from disclosure by federal and state statute;

(C) Disclose trade secrets or commercial or financial information which is privileged or confidential;

(D) Involve accusing a person of a crime, or formally censuring a person;

(E) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
(F) Disclose investigative records compiled for law enforcement purposes; or

(G) Specifically relate to the Interstate Commission’s participation in a civil action or other legal proceeding;

(8) Causes its legal counsel or designee to certify that a meeting may be closed, and reference each relevant exemptable provision for any meeting or portion of a meeting which is closed pursuant to this provision. The Interstate Commission shall maintain a minute record of each meeting which shall fully and clearly describe all matters discussed in the meeting. The minute record shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minute record. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) Collects standardized data concerning the educational transition of the children of military families under this compact as directed through its rules. The rules shall specify the data to be collected, the means of collection and data exchange and reporting requirements. Such methods of data collection, exchange and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules; and

(10) Creates a process that permits military officials, education officials and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This subdivision does not create a
private right of action against the Interstate Commission or any member state.

ARTICLE X. POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission has the following powers:

(a) To provide for dispute resolution among member states;

(b) To promulgate rules and take all necessary actions to effect the goals, purposes and obligations as enumerated in this compact. The rules have the force and effect of statutory law and are binding in the compact states to the extent and in the manner provided in this compact;

(c) To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the compact, its bylaws, rules and actions;

(d) To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

(e) To establish and maintain offices which shall be located within one or more of the member states;

(f) To purchase and maintain insurance and bonds;

(g) To borrow, accept, hire or contract for services of personnel;

(h) To establish and appoint committees including, but not limited to, an executive committee as required by Article IX of this compact, which have the power to act on behalf of
the Interstate Commission in carrying out its powers and duties hereunder;

(i) To elect or appoint such officers, attorneys, employees, agents or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

(j) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of such;

(k) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

(l) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

(m) To establish a budget and make expenditures;

(n) To adopt a seal and bylaws governing the management and operation of the Interstate Commission;

(o) To report annually to the Legislatures, Governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. Such reports also shall include any recommendations that may have been adopted by the Interstate Commission;

(p) To coordinate education, training and public awareness regarding the compact, its implementation and operation for officials and parents involved in such activity;
(q) To establish uniform standards for reporting, collecting and exchanging data;

(r) To maintain corporate books and records in accordance with the bylaws;

(s) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and

(t) To provide for the uniform collection and sharing of information between and among member states, schools and military families under this compact.

ARTICLE XI. ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall, by a majority of the members present and voting, within twelve months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the Interstate Commission;

(2) Establishing an executive committee, and such other committees as may be necessary;

(3) Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;

(4) Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each meeting;

(5) Establishing the titles and responsibilities of the officers and staff of the Interstate Commission;
(6) Providing a mechanism for concluding the operations of the Interstate Commission and the returning surplus funds that may exist upon termination of the compact after the payment and reserving of all of its debts and obligations; and

(7) Providing start-up rules for initial administration of the compact.

(b) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson’s absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The officers so elected serve without compensation or remuneration from the Interstate Commission. Subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(c) Executive Committee, Officers and Personnel --

(1) The executive committee has such authority and duties as may be set forth in the bylaws, including but not limited to:

(A) Managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(B) Overseeing an organizational structure within, and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and
(C) Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Interstate Commission.

(2) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the Interstate Commission may deem appropriate. The executive director serves as secretary to the Interstate Commission, but is not a Member of the Interstate Commission. The executive director shall hire and supervise such other persons as may be authorized by the Interstate Commission.

(d) The Interstate Commission's executive director and its employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of Interstate Commission employment, duties, or responsibilities. The executive director and employees are not protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

(1) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of employment or duties for acts, errors, or omissions occurring within his or her state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. This subsection does not protect
the executive director or employees from suit or liability for damage, loss, injury, or liability caused by his or her intentional or willful and wanton misconduct.

(2) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the Attorney General or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend such Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against the individual arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that the individual had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the individual.

ARTICLE XII. RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) Rulemaking Authority --
The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Interstate Commission is invalid and has no force nor effect.

(b) Rulemaking Procedure --

Rules shall be made pursuant to a rulemaking process that substantially conforms to the "Model State Administrative Procedure Act," of 1981 Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

(c) Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule. Filing such a petition does not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission’s authority.

(d) If a majority of the Legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then that rule has no further force nor effect in any compacting state.
(1) The executive, legislative and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

(2) All courts shall take judicial notice of this compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities or actions of the Interstate Commission.

(3) The Interstate Commission is entitled to receive all service of process in any such proceeding, and has standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission renders a judgment or order void as to the Interstate Commission, this compact or promulgated rules.

(b) Default, Technical Assistance, Suspension and Termination --

If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the Interstate Commission shall:

(1) Provide written notice to the defaulting state and other member states, of the nature of the default, the means of curing the default and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state must cure its default; and

(2) Provide remedial training and specific technical assistance regarding the default.
(3) If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default.

(4) Suspension or termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Interstate Commission to the Governor, the majority and minority leaders of the defaulting state’s Legislature, and each of the member states.

(5) The state which has been suspended or terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of suspension or termination including obligations, the performance of which extends beyond the effective date of suspension or termination.

(6) The Interstate Commission does not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(7) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorney’s fees.
(c) *Dispute Resolution* --

1. The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) *Enforcement* --

1. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The Interstate Commission may by majority vote of the members initiate legal action in the United State District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its principal offices, to enforce compliance with the provisions of the compact, its promulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorney’s fees.

3. The remedies herein are not the exclusive remedies of the Interstate Commission. The Interstate Commission may avail itself of any other remedies available under state law or the regulation of a profession.
ARTICLE XIV. FINANCING OF THE INTERSTATE COMMISSION

(a) The Interstate Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

(b) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission’s annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states.

(c) The Interstate Commission may not incur obligations of any kind prior to securing the funds adequate to meet the same; nor may the Interstate Commission pledge the credit of any of the member states, except by and with the authority of the member state.

(d) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited annually by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XV. MEMBER STATES, EFFECTIVE DATE AND AMENDMENT

(a) Any state is eligible to become a member state.
(b) This compact became effective and binding upon legislative enactment of the compact into law by ten states in July 2008. It becomes effective and binding as to any other member state upon enactment of the compact into law by that state. The Governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states.

(c) The Interstate Commission may propose amendments to the compact for enactment by the member states. An amendment does not become effective and binding upon the Interstate Commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI. WITHDRAWAL AND DISSOLUTION

(a) Withdrawal --

(1) Once effective, the compact continues in force and remains binding upon each member state. A member state may withdraw from the compact upon repealing the specific statute that enacted the compact into law.

(2) Withdrawal from the compact occurs by repeal of the enacting statute, but withdrawal does not take effect until one year after the effective date of the repealing legislation and until written notice of the withdrawal has been given by the withdrawing state to the Governor of each other member state.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of any legislation to repeal this compact in the withdrawing state. The Interstate Commission shall notify
the other member states of the withdrawing state’s potential
to withdraw within sixty days of receiving notice.

(4) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

(5) Reinstatement following withdrawal of a member state shall occur if the withdrawing state reenacts the compact or upon such later date as may be determined by the Interstate Commission.

(b) Dissolution of Compact --

(1) This compact shall dissolve effective upon the date of the withdrawal or default of any member state which reduces the membership in the compact to one member state.

(2) Upon the dissolution of this compact, the compact becomes null and void and is of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII. SEVERABILITY AND CONSTRUCTION

(a) The provisions of this compact are severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.
(c) Nothing in this compact prohibits the applicability of any other interstate compact to which the states are members.

ARTICLE XVIII. BINDING EFFECT OF COMPACT AND OTHER LAWS

(a) Other Laws --

(1) Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

(2) All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(b) Binding Effect of the Compact --

(1) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(2) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(3) In the event any provision of this compact exceeds the constitutional limits imposed on the Legislature of any member state, that provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.
AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to resetting the expiration date of provisions that allow the employment of retired teachers as substitutes beyond the post-retirement employment limit in certain circumstances; requiring certain additional information be included in the affidavit submitted to the Consolidated Public Retirement Board; requiring the affidavit be submitted to the State Board of Education; and requiring certain additional information be included in the report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

That §18A-2-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers and retired teachers as substitutes in areas of critical need and shortage; employment of prospective employable professional personnel.
(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties: (1) To fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension or dismissal; (2) to fill a teaching position of a regular teacher on leave of absence; and (3) to perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay, providing the absence is approved by the board of education in accordance with the law. The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in section one, article one of this chapter.

(c) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes. For the purposes of this subsection, "area of critical need and shortage" means an area of certification and training in which the number of available substitute teachers in the county who hold certification and
training in that area and who are not retired is insufficient to meet the projected need for substitute teachers.

(2) A person receiving retirement benefits under the provisions of article seven-a, chapter eighteen of this code or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage;

(B) The policy sets forth the areas of critical need and shortage in the county in accordance with the definition of area of critical need and shortage set forth in subdivision (1) of this subsection;

(C) The policy provides for the employment of retired teachers as substitute teachers during the school year on an expanded basis in areas of critical need and shortage as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;
(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage as provided in this subsection; and

(G) Prior to employment of a substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the Consolidated Public Retirement Board and the state board, in a form approved by the retirement board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed pursuant to the policy, the critical need and shortage area position filled by each person, the date that the person gave notice to the county board of the person’s intent to retire, and the effective date of the person’s retirement.

(3) Any person who retires and begins work as a substitute teacher within the same employment term shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree substitute in that employment term and ending with the month following the date the retiree ceases to perform service as a substitute.

(4) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and shall not accrue seniority.

(5) When a retired teacher is employed as a substitute to fill a vacant position, the county board shall continue to post
the vacant position until it is filled with a regularly employed teacher.

(6) Until this subsection is expired pursuant to subdivision (7) of this subsection, the state board, annually, shall report to the Joint Committee on Government and Finance prior to February 1 of each year. Additionally, a copy shall be provided to the Legislative Oversight Commission on Education Accountability. The report shall contain information indicating the effectiveness of the provisions of this subsection on expanding the use of retired substitute teachers to address areas of critical need and shortage including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person’s intent to retire, and the effective date of the person’s retirement.

(7) The provisions of this subsection shall expire on June 30, 2014.

(d) (1) Notwithstanding any other provision of this code to the contrary, each year a county superintendent may employ prospective employable professional personnel on a reserve list at the county level subject to the following conditions:

(A) The county board adopts a policy to address areas of critical need and shortage as identified by the state board. The policy shall include authorization to employ prospective employable professional personnel;

(B) The county board posts a notice of the areas of critical need and shortage in the county in a conspicuous place in each school for at least ten working days; and
(C) There are not any potentially qualified applicants available and willing to fill the position.

(2) Prospective employable professional personnel may only be employed from candidates at a job fair who have or will graduate from college in the current school year or whose employment contract with a county board has or will be terminated due to a reduction in force in the current fiscal year.

(3) Prospective employable professional personnel employed are limited to three full-time prospective employable professional personnel per one hundred professional personnel employed in a county or twenty-five full-time prospective employable professional personnel in a county, whichever is less.

(4) Prospective employable professional personnel shall be granted benefits at a cost to the county board and as a condition of the employment contract as approved by the county board.

(5) Regular employment status for prospective employable professional personnel may be obtained only in accordance with the provisions of section seven-a, article four of this chapter.

(e) The state board annually shall review the status of employing personnel under the provisions of subsection (d) of this section and annually shall report to the Legislative Oversight Commission on Education Accountability on or before November 1 of each year. The report shall include, but not be limited to, the following:

(A) The counties that participated in the program;

(B) The number of personnel hired;
AN ACT to amend and reenact §3-3-2a of the Code of West Virginia, 1931, as amended, relating to authorizing community voting locations; removing the requirement that chairpersons of executive committees approve community voting locations; requiring community voting locations to be open a minimum of five days; providing for locations on a rotating basis; establishing criteria for community voting locations; permitting chairpersons of executive committees to nominate locations; requiring publication of notices prior to the designation of locations; requiring publication of notices of the dates, times and places of community voting locations; and requiring community voting locations to be utilized an equal number of days and for the same number of hours.

Be it enacted by the Legislature of West Virginia:

(C) The teaching fields in which personnel were hired;
(D) The venue from which personnel were employed;
(E) The place of residency of the individual hired; and
(F) The state board’s recommendations on the prospective employable professional personnel program.

CHAPTER 58

(Com. Sub. for S. B. 391 - By Senators Palumbo, Snyder, Foster, McCabe, Beach, Minard and Wells)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 4, 2011.]
That §3-3-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Early voting areas; prohibition against display of campaign material.

(a) The county commission shall designate the courthouse or annex to the courthouse as the primary location for early voting and in addition, the commission may designate other locations as provided in subsection (b).

(b) The county commission may, with the approval of the county clerk or other official charged with the administration of elections, designate community voting locations for early voting, other than the county courthouse or courthouse annex by a majority of the members of the county commission voting to adopt the same at a public meeting called for that purpose.

(1) The county commission shall publish a notice of its intent to designate community voting location at least thirty days prior to the designation. Notice shall be by publication as a Class II-0 legal advertisement in compliance with provisions of article three, chapter fifty-nine of this code. The publication area is the county in which the community voting locations are designated;

(2) Community voting locations shall comply with requirements of this article for early in-person voting, criteria prescribed by the Secretary of State and the following criteria:

(A) Can be scheduled for use during the early voting period;
(B) Has the physical facilities necessary to accommodate early voting requirements;

(C) Has adequate space for voting equipment, poll workers, and voters; and

(D) Has adequate security, public accessibility, and parking.

(3) The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period;

(4) Upon the designation of a community voting location, the county clerk shall, not less than thirty days prior to an election, give notice of the dates, times, and place of community voting locations by publication as a Class II-0 legal advertisement in compliance with provisions of article three, chapter fifty-nine of this code;

(5) Voting shall be conducted at each designated community voting site for a period of not less than five consecutive days during early in-person voting authorized by section three of this article, but need not be conducted at each location for the entire period of early in-person voting;

(6) The county commission, with the approval of the county clerk, may authorize community voting locations on a rotating basis, wherein a community voting location may be utilized for less than the full period of early in-person voting; and

(7) If more than one community voting location is designated, each location shall be utilized for an equal number of voting days and permit voting for the same number of hours per day.
(c) The Secretary of State shall propose legislative and
emergency rules in accordance with the provisions of article
three, chapter twenty-nine-a of this code as may be necessary
to implement the provisions of this section. The rules shall
include establishment of criteria to assure neutrality and
security in the selection of community voting locations.

(d) Throughout the period of early in-person voting, the
official designated to supervise and conduct absentee voting
shall make the following provisions for voting:

(1) The official shall provide a sufficient number of
voting booths or devices appropriate to the voting system at
which voters may prepare their ballots. The booths or
devices are to be in an area separate from but within clear
view of the public entrance area of the official’s office or
other area designated by the county commission for absentee
voting and are to be arranged to ensure the voter complete
privacy in casting the ballot.

(2) The official shall make the voting area secure from
interference with the voter and shall ensure that voted and
unvoted ballots are at all times secure from tampering. No
person, other than a person lawfully assisting the voter
according to the provisions of this chapter, may be permitted
to come within five feet of the voting booth while the voter
is voting. No person, other than the officials or employees of
the official designated to supervise and conduct absentee
voting or members of the board of ballot commissioners
assigned to conduct absentee voting, may enter the area or
room set aside for voting.

(3) The official designated to supervise and conduct
absentee voting shall request the county commission
designate another area within the county courthouse, any
annex of the courthouse or any other designated as early in-
person voting locations within the county, as a portion of the
official’s office, for the purpose of absentee in-person voting in the following circumstances:

(A) If the voting area is not accessible to voters with physical disabilities;

(B) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct absentee voting; or

(C) If there is no suitable area for absentee in-person voting within the office.

Any designated area is subject to the same requirements as the regular absentee voting area.

(4) The official designated to supervise and conduct absentee voting shall have at least two representatives to assist with absentee voting: Provided, That the two representatives may not be registered with the same political party affiliation or two persons registered with no political party affiliation. The representatives may be full-time employees, temporary employees hired for the period of absentee voting in person or volunteers.

(5) No person may do any electioneering nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters or material of any kind which tends to influence the voting for or against any candidate or any public question on the property of the county courthouse, any annex facilities, or any other designated early voting locations within the county, during the entire period of regular in-person absentee voting. The official designated to supervise and conduct absentee voting is authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.
chapter 59

(s. b. 581 - by senators unger and k. facemyer)

[passed march 12, 2011; in effect from passage.]
[approved by the governor on april 4, 2011.]

an act to amend and reenact §3-3-3 of the code of west virginia, 1931, as amended, relating to reducing the days for early voting in person; and allowing saturday early voting in all elections.

be it enacted by the legislature of west virginia:

that §3-3-3 of the code of west virginia, 1931, as amended, be amended and reenacted to read as follows:

article 3. voting by absentees.

§3-3-3. Early voting in person.

(a) The voting period for early in-person voting is to be conducted during regular business hours beginning on the thirteenth day before the election and continuing through the third day before the election. Additionally, early in-person voting is to be available from 9:00 a.m. to 5:00 p.m. on saturdays during the early voting period.

(b) Any person desiring to vote during the period of early in-person voting shall, upon entering the election room, clearly state his or her name and residence to the official or
representative designated to supervise and conduct absentee voting. If that person is found to be duly registered as a voter in the precinct of his or her residence, he or she is required to sign his or her name in the space marked “signature of voter” on the pollbook. If the voter is unable to sign his or her name due to illiteracy or physical disability, the person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided. No ballot may be given to the person until he or she signs his or her name on the pollbook.

(c) When the voter’s signature or mark is properly on the pollbook, two qualified representatives of the official designated to supervise and conduct absentee voting shall sign their names in the places indicated on the back of the official ballot.

(d) If the official designated to supervise and conduct absentee voting determines that the voter is not properly registered in the precinct where he or she resides, the clerk or his or her representative shall challenge the voter's absentee ballot as provided in this article.

(e) The official designated to supervise and conduct absentee voting shall provide each person voting an absentee ballot in person the following items to be printed as prescribed by the Secretary of State:

(1) In counties using paper ballots, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(2) In counties using punch card systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a gray secrecy envelope;
(3) In counties using optical scan systems, one of each type of official absentee ballot the voter is eligible to vote, prepared according to law, and a secrecy sleeve; or

(4) For direct recording election systems, access to the voting equipment in the voting booth.

(f) The voter shall enter the voting booth alone and there mark the ballot: Provided, That the voter may have assistance in voting according to the provisions of section four of this article. After the voter has voted the ballot or ballots, the absentee voter shall: Place the ballot or ballots in the gray secrecy envelope and return the ballot or ballots to the official designated to supervise and conduct the absentee voting: Provided, however, That in direct recording election systems, once the voter has cast his or her ballot, the voter shall exit the polling place.

(g) Upon receipt of the voted ballot, representatives of the official designated to supervise and conduct the absentee voting shall:

(1) Remove the ballot stub;

(2) Place punch card ballots and paper ballots into one envelope which shall not have any marks except the precinct number and seal the envelope; and

(3) Place ballots for all voting systems into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.
AN ACT to repeal §3-4A-13a of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27, all relating generally to the use of electronic voting systems; defining terms; setting forth the requirements of electronic voting systems; requiring public meetings held on adopting electronic voting be held at least six months prior to the next election; providing that if an electronic voting system is terminated, it must be replaced by an electronic voting system that complies with federal law; deleting the requirement that the purchase or lease of vote-recording devices must be paid in cash; deleting outmoded terms and voting systems no longer being used; updating technical terminology; requiring at least two vote-recording devices be provided at each precinct in a primary election; and providing that independent voters may vote in primaries as otherwise provided in code.

Be it enacted by the Legislature of West Virginia:

That §3-4A-13a of the Code of West Virginia, 1931, as amended, be repealed; and that §3-4A-2, §3-4A-3, §3-4A-4, §3-4A-6, §3-4A-9, §3-4A-9a, §3-4A-9b, §3-4A-10, §3-4A-10a, §3-4A-13, §3-4A-17, §3-4A-19, §3-4A-20 and §3-4A-27 of said code be amended and reenacted, all to read as follows:
ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-2. Definitions.

As used in this article, unless otherwise specified:

1. “Automatic tabulating equipment” means all apparatus necessary to electronically count votes recorded on ballots and tabulate the results;

2. “Ballot” means an electronic image or paper on which votes may be recorded by means of perforating or marking with electronically sensible ink or pencil or a screen upon which votes may be recorded by means of a stylus or by means of touch;

3. “Central counting center” means a facility equipped with suitable and necessary automatic tabulating equipment, selected by the county commission, for the electronic counting of votes recorded on ballots;

4. “Electronic poll book” means an electronic device containing the same voter registration information maintained by the county clerk in a printed poll book.

5. “Electronic voting system” is a means of conducting an election whereby votes are recorded on ballots by means of an electronically sensible marking ink, by perforating or are recorded on equipment that registers votes on a computer disk, or by touching a screen with a stylus or by means of touch, and votes are subsequently counted by automatic tabulating equipment at the central counting center;

6. “Standard validation test deck” means a group of ballots wherein all voting possibilities which can occur in an election are represented; and
(7) "Vote-recording device" means equipment in which ballots are placed to allow a voter to record his or her vote by electronically sensible ink, or pencil, or a screen upon which votes may be recorded by means of a stylus or by means of touch.

§3-4A-3. Procedure for adopting electronic voting systems.

An electronic voting system that has been approved in accordance with section eight of this article may be adopted for use in general, primary and special elections in any county by the following procedure and not otherwise:

By a majority of the members of the county commission voting to adopt the same at a public meeting regularly called for that purpose: Provided, That the meeting be held not less than six months prior to the next scheduled primary or general election, with notice published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for such publication shall be the county involved.

§3-4A-4. Procedure for terminating use of electronic voting systems.

The use of an electronic voting system may be terminated:

(1) By a majority of the members of the county commission voting to terminate use of the system and replace it with a different voting system meeting the requirements of the Help America Vote Act of 2002, 42 U.S.C. §15301, et seq. at a special public meeting called for the purpose of said termination, with due notice thereof published 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 county involved.
involved: *Provided*, That such meeting shall be held not less than six months prior to a general election or six months prior to a primary election. If at such meeting, such county commission shall enter an order of its intention to terminate use of an electronic voting system, it shall thereafter forthwith cause to be published a certified copy of such order 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 county involved. The first publication of such order shall not be less than twenty days after the entry of such order. Such county commission shall not terminate the use of an electronic voting system until ninety days after the entry of such order of its intention to terminate the same. Promptly after the expiration of ninety days after the entry of such order of intention to terminate the use of an electronic voting system, if no petition has theretofore been filed with such county commission requesting a referendum on the question of termination of the electronic voting system as hereinafter provided, such county commission shall enter a final order terminating the use of the electronic voting system, and the use of electronic voting system shall thereby be terminated. If a petition has been submitted as provided in this subdivision, the county commission shall not terminate the use of the system but shall proceed as provided in this subdivision.

If five percent or more of the registered voters of such county shall sign a petition requesting that the use of an electronic voting system be terminated in such county and such petition be filed with the county commission of such county within ninety days after the entry of such order of intention to terminate the use of an electronic voting system, such county commission shall submit to the voters of such county at the next general or primary election, whichever shall first occur, the question: “Shall the use of an electronic voting system be terminated in ................ County?” If this
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question be answered in the affirmative by a majority of the voters in such election upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by such majority, the use of an electronic voting system shall continue.

(2) By the affirmative vote of a majority of the voters of such county voting upon the question of termination of the use of an electronic voting system in such county. If five percent or more of the registered voters of such county shall sign a petition requesting the termination of the use of an electronic voting system in such county, and such petition be filed with the county commission of such county, such county commission shall submit to the voters of such county at the next general or primary election, following by not less than ninety days the date of the filing of such petition, the question: "Shall the use of an electronic voting system be terminated in ............... County?" If this question be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system shall thereby be terminated. If such question shall not be answered in the affirmative by a majority of the voters of such county voting upon the question, the use of an electronic voting system shall thereby continue.

§3-4A-6. Acquisition of vote recording devices by purchase or lease; acquisition of use of automatic tabulating equipment; counting centers.

(a) A county commission may acquire vote recording devices by any one or any combination of the following methods:

(1) By purchasing the same and paying the purchase price from funds available from the maximum general levy or from any other lawful source; and
(2) By leasing the same under written contract of lease and paying the rentals from funds available from the maximum general levy or any other lawful source.

(b) A county commission may acquire the use of automatic tabulating equipment by leasing or renting the same under written contract of lease or rental and paying the rentals therefor from funds available from the maximum general levy or other lawful source.

(c) A county commission may enter into an agreement with another county commission to share automatic tabulating equipment if the automatic tabulating equipment may be transported to the appropriate central counting centers. No ballots may be transported for counting in any county other than the county in which the votes were cast.

(d) A county commission is authorized to accept as a gift the use of suitable automatic tabulating equipment.

(e) The county commission may also secure a counting center.

§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

(1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter’s election, provides for open voting;

(2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who has voted or is voting;
(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to write in the names of persons for whom he or she desires to vote whose names do not appear upon the ballots;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots;
(9) It permits each voter at any election, other than a primary election, to vote a straight party ticket, as provided in section five, article six of this chapter, by one mark or punch;

(10) It permits a voter in a primary election to: (A) vote only for the candidates of the party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter from voting for any candidate seeking nomination by any other political party unless that political party has determined that the voter may participate in its primary election;

(11) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering with the device, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(12) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(13) (A) Direct recording electronic voting machines must generate a paper copy of each voter’s vote that will be automatically kept within a storage container, that is locked, closely attached to the direct recording electronic voting machine, and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article.

(B) The paper copy of the voter’s vote shall be generated at the time the voter is at the voting station using the direct recording electronic voting machine.
(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy.

(D) The voter may not touch, handle or manipulate the printed copy manually in any way.

(E) Once the printed copy of the voter’s votes is accepted by the voter as correctly reflecting the voter’s intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct recording electronic voting machine.

(F) Direct recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

(14) Where vote recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Bear a number that will identify it or distinguish it from any other machine;

(C) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question;

(D) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of the ballot, party columns or rows, and questions;
(15) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch:

(A) Be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(B) Be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(C) Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(E) Be constructed to allow election commissioners, poll clerks, or both, to designate, mark or otherwise record provisional ballots;

(F) Consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device’s internal nonvolatile electronic memory and contain an internal security, the absence of which prevents substitution of any other device;
(G) Store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(H) Contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(I) Be constructed to record all preelection, election and post-election activities, including all ballot images and system anomalies, in each device’s internal electronic memory and are to be accessible in electronic or printed form;

(J) Be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in the device’s internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(K) Be constructed to prevent the loss of any votes, as well as all preelection, election and post-election activities, including all ballot images and system anomalies, stored in each device’s internal electronic memory even in case of an electrical and battery power failure.

§3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements.

(a) For purposes of this section, “ballot-marking accessible voting system” means a device which allows voters, including voters with disabilities, to mark an optical scanning or mark-sensing voting system ballot, privately and independently. The ballot-marking device is capable of
marking voter selections on an optically readable or mark-sensing ballot which shall be subsequently read and tallied on state certified optically readable or mark-sensing ballot tabulating and reporting systems. Counties are hereby permitted to obtain and employ ballot-marking accessible voting systems that are approved by the State Election Commission.

(b) The ballot-marking accessible voting device shall be a completely integrated ballot-marking device that is designed to allow voters to either view ballot choices through a high resolution visual display or listen to ballot choices with headphones and then enter ballot selections directly through specially designed, integrated accessibility devices.

(c) Ballot-marking accessible voting systems may be used for the purpose of marking or scanning optically readable or mark-sensing ballots cast in all general, special and primary elections and shall meet the following specific requirements:

(1) The ballot-marking accessible voting system, system firmware and programming software must be certified by an independent testing authority, according to current federal voting system standards and be approved by the State Election Commission prior to entering into any contract.

(2) The ballot-marking accessible voting system shall, additionally:

(A) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(B) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue;
37 (C) Allow the voter to independently review all ballot choices and make any corrections, before the ballot is marked;

40 (D) Provide the voter with the opportunity to make a write-in ballot choice, where allowed by state law;

42 (E) Allow voters with disabilities to mark their ballots, in complete independence, and in conformity with both federal and state law concerning mandatory accessibility for disabled persons;

46 (F) Allow blind or visually impaired voters to vote in complete privacy;

48 (G) Provide voters with an opportunity to change ballot selections, or correct errors, before the ballot is marked for voting, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error;

53 (H) Provide voters with the ability to view all ballot selections through a high resolution visual display or to have all ballot selections read to the voter through headphones;

56 (I) Ensure complete ballot privacy, while employing the ballot-marking audio system and providing the voter with the option to turn off the visual ballot display;

59 (J) Include a completely integrated voter input keypad, using commonly accepted voter accessibility keys with Braille markings;

62 (K) Include the ability for a voter to employ a sip/puff device to enter ballot choices;
(L) Allow the voter to magnify all ballot choices and to adjust both the volume of the audio feature and the speed of ballot presentation;

(M) Allow the voter to employ his or her own headset as well as the headset provided with the ballot-marking device while being equipped with multiple output connections to accommodate different headsets;

(N) Have multiple-language capability; and

(O) Allow the voter to verify that:

(i) An optical scan ballot inserted into the device at the start of voting is blank; and

(ii) The voted optical scan ballot that is produced by the device is voted as the voter intended.

(d) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to ensure that any system employed by a county under the provisions of this section is publicly tested prior to use in election.

§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.

(a) For purposes of this section, “precinct ballot-scanning device” means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter’s ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.
(b) The precinct ballot-scanning device may be used for the purpose of scanning optically readable ballots cast in all primary, general and special elections.

(c) The precinct ballot-scanning device, firmware and programming software must be certified by an independent testing authority, according to current federal standards and be approved by the State Election Commission. No election official may enter into any contract to purchase, rent, lease or otherwise acquire any precinct ballot-scanning device, firmware or software not approved by the State Election Commission.

(d) The precinct ballot-scanning device shall additionally:

(1) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(2) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue; and

(3) Allow voters an opportunity to change ballot selections, or correct errors, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error.

(e) The precinct ballot-scanning device may be used for tabulating election results only under the following conditions:

(1) The county has at least one precinct ballot-scanning device in each precinct;

(2) No tabulation of results is done at the precinct;
(3) The "tabulation memory device" may be removed from the ballot-scanning device only after the polls close and the votes may only be counted at the central counting center on the night of the election; and

(4) All voters at the precinct are required to use the ballot scanning device as a condition of completing their vote.

(f) If the optical scan ballots from each of the precincts are counted at the central counting center on election night in accordance with section twenty-seven of this article, and the results from that count are the results finally published on election night, then any county meeting each of the requirements in paragraphs (1) through (4) of subsection (e), may turn off the over vote switch on the central counting device since every ballot will have been evaluated for over votes by the precinct scanning device.

(g) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in accordance with the provisions of this section.

§3-4A-10. County clerk to be custodian of vote-recording devices, tabulating equipment and electronic poll books; duties.

(a) When an electronic voting system is acquired by any county commission, the vote-recording devices, where applicable, and the tabulating equipment shall be immediately placed in the custody of the county clerk and shall remain in his or her custody at all times except when in use at an election or when in custody of a court or court officers during contest proceedings. The clerk shall see that the vote-recording devices and the tabulating equipment are
properly protected and preserved from damage or unnecessary deterioration and shall not permit any unauthorized person to tamper with them. The clerk shall also keep the vote-recording devices and tabulating equipment in repair and prepare the same for voting.

(b) When a county commission elects to acquire and use electronic poll books in lieu of printed poll books, the clerk of the county commission shall immediately take custody of the electronic poll books, which shall remain in his or her custody at all times except when in use at an election or when in the custody of a court or court officers during contest proceedings. The clerk shall ensure that the electronic poll books are properly protected and preserved from damage or unnecessary deteriorations and the clerk shall not permit any unauthorized person to tamper with the electronic poll books. The clerk shall also keep the electronic poll books in good repair and the clerk shall prepare the electronic poll books for election day.

§3-4A-10a. Proportional distribution of vote-recording devices.

Where vote-recording devices are used, the county commission of each county shall, upon the close of registration, review the total number of active registered voters and the number of registered voters of each party in each precinct. Prior to each election, the commission shall determine the number of voting devices needed to accommodate voters without long delays and shall assign an appropriate number to each precinct. For the purposes of the primary election, the commission shall assign the number of vote recording devices in each precinct to be prepared for each party based as nearly as practicable on the proportion of registered voters of each party to the total: Provided, That a minimum of two vote-recording devices be provided.
§3-4A-13. Inspection of ballots, electronic poll books and vote-recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote-recording devices; receipt of election materials by ballot commissioners.

(a) When the clerk of the county commission has completed the preparation of the ballots and of any electronic poll books and vote-recording devices as provided in sections eleven-a and twelve-a of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and any electronic poll books and devices are ready for use.

(b) The members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place at which any vote-recording devices or electronic poll books and the ballots are stored, not later than five days before the day of the election, and shall inspect the devices, electronic poll books and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of the inspection shall be published, no less than three days in advance, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county involved.

(c) Any candidate and one representative of each political party on the ballot may be present during the examination. If the devices and electronic poll books and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts.
(d) The vote-recording devices, the electronic poll books and the ballots shall then be secured in double lock rooms. The clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the devices, electronic poll books and the ballots for transportation to the polls. Upon removal of the devices, the electronic poll books and the ballots, the clerk and president or president pro tempore of the county commission shall certify in writing signed by them that the devices, the electronic poll books and packages of ballots were found to be sealed when removed for transportation to the polls.

(e) Vote-recording devices used during the early voting period may be used on election day if retested in accordance with all the provisions of this section, including public notice between the close of early voting and prior to precinct placement for election day. Vote-recording devices must comply with the applicable requirements of section twenty-six of this article.

(f) Not later than one day before the election, the election commissioner of each precinct previously designated by the ballot commissioners shall attend at the office of the clerk of the county commission to receive the necessary election records, books and supplies required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a sequentially numbered written receipt, on a printed form, provided by the clerk of the county commission, for such records, books and supplies. The receipt shall be prepared in duplicate. One copy of the receipt shall remain with the clerk of the county commission and one copy shall be delivered to the president or president pro tempore of the county commission.
§3-4A-17. Check of vote-recording devices and electronic poll books before use; corrections; reserve vote-recording devices.

(a) Any reserve vote-recording device used is to be prepared for use by the clerk or his or her duly appointed deputy and the reserve vote-recording device is to be prepared, inspected and sealed and delivered to the polling place wherein the seal is to be broken and the device opened in the presence of the precinct election commissioners who shall certify in writing signed by them to the clerk of the county commission, that the reserve vote-recording device was found to be sealed upon delivery to the polling place, that the seal was broken and the device opened in their presence at the polling place.

(b) In counties using electronic poll books, the election commissioners shall examine the electronic poll books to ascertain whether the poll books are in working order before allowing any voters to enter the polling location. If the electronic poll books are not in working order, the election commissioners shall contact the county clerk who shall immediately authorize a printed poll book to serve in place of the electronic poll book for that election. A printed poll book may accompany the electronic poll book to each precinct.

§3-4A-19. Conducting electronic voting system elections generally; duties of election officers; penalties.

(a) The election officers shall constantly and diligently maintain a watch in order to see that no person votes more than once and to prevent any voter from occupying the voting booth for more than five minutes.

(b) In primary elections, before a voter is permitted to occupy the voting booth, the election commissioner representing the party to which the voter belongs shall direct
the voter to the vote-recording device or supply the voter
with a ballot, as may be appropriate, which will allow the
voter to vote only for the candidates who are seeking
nomination on the ticket of the party with which the voter is
affiliated or for unaffiliated voters in accordance with section
thirty-one, article two of this chapter.

(c) The poll clerk shall issue to each voter when he or she
signs the poll book a printed card or ticket numbered to
correspond to the number on the poll book of the voter and in
the case of a primary election, indicating the party affiliation
of the voter, which numbered card or ticket is to be presented
to the election commissioner in charge of the voting booth.

(d) One hour before the opening of the polls the precinct
election commissioners shall arrive at the polling place and
set up the voting booths in clear view of the election
commissioners. Where applicable, they shall open the
vote-recording devices, place them in the voting booths,
examine them to see that they have the correct ballots by
comparing them with the sample ballots, and determine
whether they are in proper working order. They shall open
and check the ballots, the electronic poll books, if applicable,
supplies, records and forms and post the sample ballots and
instructions to voters. Upon ascertaining that all ballots,
supplies, electronic poll books, if applicable, records and
forms arrived intact, the election commissioners shall certify
their findings in writing upon forms provided and collected
by the clerk of the county commission over their signatures
to the clerk of the county commission. Any discrepancies are
to be noted and reported immediately to the clerk of the
county commission. The election commissioners shall then
number in sequential order the ballot stub of each ballot in
their possession and report in writing to the clerk of the
county commission the number of ballots received. They
shall issue the ballots in sequential order to each voter.
(e) Upon entering a precinct which is using an electronic poll book, each voter shall be verified by use of the electronic poll book to be a registered voter. If the voter is not registered according to the electronic poll book within that precinct, the poll clerk is to inform the voter of the proper precinct in which the voter is registered.

(f) Where applicable, each voter shall be instructed how to operate the vote-recording device before he or she enters the voting booth.

(g) Where applicable, any voter who spoils, defaces or mutilates the ballot delivered to him or her, on returning the ballot to the poll clerks, shall receive another in its place. Every person who does not vote any ballot delivered to him or her shall, before leaving the election room, return the ballot to the poll clerks. When a spoiled or defaced ballot is returned, the poll clerks shall make a minute of the fact on the poll books, at the time, write the word "spoiled" across the face of the ballot and place it in an envelope for spoiled ballots.

Immediately on closing the polls, the election commissioners shall ascertain the number of spoiled ballots during the election and the number of ballots remaining not voted. The election commissioners shall also ascertain from the poll books the number of persons who voted and shall report, in writing signed by them to the clerk of the county commission, any irregularities in the ballot boxes, the number of ballots cast, the number of ballots spoiled during the election and the number of ballots unused. All unused ballots are to be returned at the same time to the clerk of the county commission who shall count them and record the number. All unused ballots shall be stored with the other election materials and destroyed at the expiration of twenty-two months.
(h) Each commissioner who is a member of an election board which fails to account for every ballot delivered to it is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both.

(i) The board of ballot commissioners of each county, or the chair of the board, shall preserve the ballots that are left over in their hands, after supplying the precincts as provided, until the close of the polls on the day of election and shall deliver them to the clerk of the county commission who shall store them with the other election materials and destroy them at the expiration of twenty-two months.

(j) Where ballots are used, the voter, after he or she has marked his or her ballot, shall, before leaving the voting booth, place the ballot inside the envelope or sleeve provided for this purpose, with the stub extending outside the envelope, and return it to an election commissioner who shall remove the stub and deposit the envelope, if applicable, with the ballot inside in the ballot box. No ballot from which the stub has been detached may be accepted by the officer in charge of the ballot box, but the ballot shall be marked “spoiled” and placed with the spoiled ballots. If an electronic voting system is used that utilizes a screen on which votes may be recorded by means of a stylus or by means of touch and the signal warning that a voter has attempted to cast his or her ballot has failed to do so properly has been activated and the voter has departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot while the voter remains physically present in the polling place, then two election commissioners of different registered party affiliations, two poll clerks of different registered party affiliations or an election commissioner and a poll clerk of different registered party affiliations shall spoil the ballot.

(k) The precinct election commissioners shall prepare a report in quadruplicate of the number of voters who have
voted and, where electronic voting systems are used that utilize a screen on which votes may be recorded by means of a stylus or by means of touch, the number of ballots that were spoiled, as indicated by the poll books, and shall place two copies of this report in the ballot box or where electronic voting systems are used that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, shall place two copies of this report and the electronic ballot devices in a container provided by the clerk of the county commission, which thereupon is to be sealed with a paper seal signed by the election commissioners to ensure that no additional ballots may be deposited or removed from the ballot box. Two election commissioners of different registered party affiliations or two special messengers of different registered party affiliations appointed by the clerk of the county commission, shall forthwith deliver the ballot box or container to the clerk of the county commission at the central counting center and receive a signed numbered receipt therefor. The receipt must carefully set forth in detail any and all irregularities pertaining to the ballot boxes or containers and noted by the precinct election officers.

The receipt is to be prepared in duplicate, a copy of which remains with the clerk of the county commission who shall have any and all irregularities noted. The time of their departure from the polling place is to be noted on the two remaining copies of the report, which are to be immediately mailed to the clerk of the county commission.

(l) The poll books, register of voters, unused ballots, spoiled ballots and other records and supplies are to be delivered to the clerk of the county commission, all in conformity with the provisions of this section.

§3-4A-20. Non-affiliated voters in primary elections.

Unless a voter, not affiliated with a party, is permitted to participate in the primary election of a political party, the
following provisions apply to voters, not affiliated with a
party, in primary elections that include non-partisan
candidates or public questions:

(1) Election officers shall provide a vote recording
device, where applicable, or the appropriate ballot to be
marked by an electronically sensible pen or ink, or by means
of a stylus or by means of touch or by other electronic means,
so that voters not affiliated with a party may vote only those
portions of the ballot relating to the nonpartisan candidates
and the public questions submitted, or shall provide a ballot
containing only provisions for voting for those candidates
and upon those issues submitted common to the ballots
provided to all voters regardless of political party affiliation,
or both.

(2) In counties utilizing electronic voting systems in
which votes are recorded by perforating, if vote recording
devices are not available for the voters not affiliated with a
party, provisions are to be made for sealing the partisan
section or sections of the ballot or ballot labels on a vote
recording device using temporary seals, thus permitting the
voter not affiliated with a party to vote for the nonpartisan
section or sections of the ballot or ballot labels.

(3) After a voter not affiliated with a party has voted,
temporary seals may be removed and the device may then be
used by partisan voters.

§3-4A-27. Proceedings at the central counting center.

(a) All proceedings at the central counting center are to
be under the supervision of the clerk of the county
commission and are to be conducted under circumstances
which allow observation from a designated area by all
persons entitled to be present. The proceedings shall take
place in a room of sufficient size and satisfactory
arrangement to permit observation. Those persons entitled to be present include all candidates whose names appear on the ballots being counted or if a candidate is absent, a representative of the candidate who presents a written authorization signed by the candidate for the purpose and two representatives of each political party on the ballot who are chosen by the county executive committee chairperson. A reasonable number of the general public is also freely admitted to the room. In the event all members of the general public desiring admission to the room cannot be admitted at one time, the county commission shall provide for a periodic and convenient rotation of admission to the room for observation, to the end that each member of the general public desiring admission, during the proceedings at the central counting center, is to be granted admission for reasonable periods of time for observation: Provided, That no person except those authorized for the purpose may touch any ballot or ballot card or other official records and papers utilized in the election during observation.

(b) All persons who are engaged in processing and counting the ballots are to work in teams consisting of two persons of opposite political parties, and are to be deputized in writing and take an oath that they will faithfully perform their assigned duties. These deputies are to be issued an official badge or identification card which is assigned an identity control number and the deputies are to prominently wear on his or her outer garments the issued badge or identification card. Upon completion of the deputies’ duties, the badges or identification cards are to be returned to the county clerk.

(c) Ballots are to be handled and tabulated and the write-in votes tallied according to procedures established by the Secretary of State, subject to the following requirements:

(1) In systems using ballots marked with electronically sensible ink, ballots are to be removed from the boxes and
stacked for the tabulator which separates ballots containing 
marks for a write-in position. Immediately after tabulation, 
the valid write-in votes are to be tallied. No write-in vote 
may be counted for an office unless the voter has entered the 
name of an official write-in candidate for that office on the 
line provided, either by writing, affixing a sticker or placing 
an ink-stamped impression thereon;

(2) In systems using ballots in which votes are recorded 
on screens with a stylus or by means of touch, the 
personalized electronic ballots are to be removed from the 
containers and stacked for the tabulator. Systems using 
balloons in which votes are recorded upon screens with a stylus 
or by means of touch are to tally write-in ballots 
simultaneously with the other ballots;

(3) When more than one person is to be elected to an 
office and the voter desires to cast write-in votes for more 
than one official write-in candidate for that office, a single 
punch or mark, as appropriate for the voting system, in the 
write-in location for that office is sufficient for all write-in 
choices. When there are multiple write-in votes for the same 
office and the combination of choices for candidates on the 
ballet and write-in choices for the same office exceed the 
number of candidates to be elected, the ballot is to be 
duplicated or hand counted, with all votes for that office 
rejected;

(4) Write-in votes for nomination for any office and 
write-in votes for any person other than an official write-in 
candidate are to be disregarded;

(5) When a voter casts a straight ticket vote and also 
marks the location for a write-in vote for an office, the 
straight ticket vote for that office is to be rejected, whether or 
not a vote can be counted for a write-in candidate; and
(6) Official write-in candidates are those who have filed a write-in candidate's certificate of announcement and have been certified according to the provisions of section four-a, article six of this chapter.

(d) If any ballot card is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy is to be made of the damaged ballot card in the presence of representatives of each political party on the ballot and substituted for the damaged ballot card. All duplicate ballot cards are to be clearly labeled "duplicate" and are to bear a serial number which is recorded on the damaged or defective ballot card and on the replacement ballot card.

(e) The returns printed by the automatic tabulating equipment at the central counting center, to which have been added write-in and other valid votes, are, when certified by the clerk of the county commission, to constitute the official preliminary returns of each precinct or election district. Further, all the returns are to be printed on a precinct basis. Periodically throughout and upon completion of the count, the returns are to be open to the public by posting the returns as have been tabulated precinct by precinct at the central counting center. Upon completion of the canvass, the returns are to be posted in the same manner.

(f) If for any reason it becomes impracticable to count all or a part of the ballots with tabulating equipment, the county commission may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.

(g) As soon as possible after the completion of the count, the clerk of the county commission shall have the vote recording devices properly boxed or securely covered and removed to a proper and secure place of storage.
AN ACT to amend and reenact §3-5-17 of the Code of West Virginia, 1931, as amended, relating to changing the date of the canvassing of votes in a primary election from the Friday following a primary election to the fifth day following a primary election that is not a Saturday, Sunday or legal holiday.

Be it enacted by the Legislature of West Virginia:

That §3-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-17. Canvassing and certifying returns; recount procedures.

The commissioners of the county commission, sitting as a board of canvassers, shall convene at the courthouse of the county on the fifth day following any primary election, which is not a Saturday, Sunday or legal holiday, and shall proceed to canvass the returns of the election. The procedures prescribed in section nine, article six, of this chapter relating to canvass of general election returns, shall, where adaptable,
be applied in the canvass of the primary election returns. The
board shall proceed to ascertain the result of the election in
the county and district and election precincts and cause to be
prepared and recorded in the primary election precinct record
book a table or tables which show, as to each candidate of
each political party for each office, the number of votes cast
for him or her at each precinct and the total number cast in
the entire county. The board shall then make up and enter in
said record book a certificate for each political party
showing, as to each candidate for each political party for each
office, the total number of votes, in words and figures, cast
for him or her in the entire county and the number of votes
received by all the candidates of such party in such district in
the following form:

The board of canvassers of the county of ............... of
West Virginia, having carefully and impartially examined the
returns of the primary election held in said county on the ......
day of .........., 20...., do hereby certify that in said county or
district, at said election, on the official ballot of the
 ............... party for the office of ............... , A. B. received
 .......... ( ...... ) votes; C. D. received ............... ( ...... ) votes.

And so on for each office for each political party
according to the truth. When the certificates are all entered,
the report shall be signed by the members of the board or by
a majority of the board. Such members shall also sign
separate certificates of the result of the election, within the
county, for each of the offices to be filled by each political
party as provided by the following section.

The provisions of article six of this chapter, relating to
the recount of votes in general elections, shall, to the extent
applicable, be operative in primary and other elections
conducted under provisions of this article.
AN ACT to amend and reenact §3-10-2 of the Code of West Virginia, 1931, as amended, relating to filling a vacancy in the office of Governor; revising contingencies creating a vacancy in the office of Governor to comport with the West Virginia Constitution; providing for election of Governor if vacancy occurs within first three years of term; providing one time new special elections to fill an existing vacancy in the office of Governor; providing requirements for special elections; providing that provisions relating to special general election do not affect political party creation; prescribing time frames for when new election must take place; providing for the person acting as Governor to issue proclamations relating to new elections; requiring the state to pay costs incurred in connection with any special elections; requiring the person acting as Governor to issue a proclamation setting a special primary election; requiring the proclamations issued by the person acting as Governor to be published; providing that the provisions of the law relating to elections shall apply to the special general election and special primary election unless inconsistent; modifying certain statutory time periods relating to declaration of candidacy; modifying procedures relating to payment of filing fees and drawing of ballot positions; clarifying the eligibility of certain minors to vote in special
primary election; modifying statutory provisions relating to minimum number of ballots to be printed; providing that polling places shall not be changed except for certain situations; providing that constitutionally required redistricting to have no effect until after new special election in 2011 is complete; modifying procedures for persons without party affiliations to nominate candidates; authorizing the Secretary of State to issue administrative orders and to establish procedures and deadlines; providing the provisions applying to the new special elections expire; authorizing Saturday early voting in the special primary election; and requiring Secretary of State to report to Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

That §3-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FILLING VACANCIES.

§3-10-2. Vacancy in office of Governor.

(a) In case of the death, conviction on impeachment, failure to qualify, resignation or other disability of the Governor, the President of the Senate shall act as Governor until the vacancy is filled or the disability removed; and if the President of the Senate, for any of the above-named causes, shall be or become incapable of performing the duties of Governor, the same shall devolve upon the Speaker of the House of Delegates; and in all other cases where there is no one to act as Governor, one shall be chosen by the joint vote of the Legislature. Whenever a vacancy shall occur in the office of Governor before the first three years of the term shall have expired, a new election for Governor shall take place to fill the vacancy. The new election shall consist of a
special primary election and a special general election, and shall occur at such time as will permit the person elected as Governor in the new election to assume office within one year of the date the vacancy occurred: Provided, That the special general election provided in this section may not apply to section eight, article one of this chapter. Within thirty days from the date the vacancy occurs, the person acting as Governor pursuant to the state constitution shall issue a proclamation fixing the time for a new statewide election to fill the vacancy in the office of Governor, which shall be published prior to such election 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 each county of the state. The proclamation issued by the person acting as Governor pursuant to the state constitution shall provide for a special primary election to nominate candidates for the special general election. The special primary election shall take place no less than ninety days after the proclamation and no later than one hundred forty days from the date that the vacancy in the office occurs. The proclamation issued by the person acting as Governor pursuant to the state constitution shall also provide for a special general election to take place no sooner than ninety days after the special primary election and no later than two hundred eighty days from the date that the vacancy in the office occurs.

(b) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the new election provided in this section to fill a vacancy in the office of Governor are obligations of the state incurred by the ballot commissioners, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the new 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 the new election provided in this
section 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 new election services,
supplies and facilities.

(c) Notwithstanding the provisions of subsection (a) of
this section to the contrary, for purposes of filling the
vacancy that occurred in the office of Governor on November
15, 2010, a new election shall occur as follows:

(1) Upon the effective date of this subsection, the person
acting as Governor pursuant to the state constitution shall
immediately issue a proclamation calling for a special
primary and general election as provided for in this
subsection. For purposes of this subsection, the new elections
so provided in the proclamation mean the special primary and
general elections as set forth in this subsection.

(2) The special primary election shall be held on May 14,
2011 and the special general election shall be held on
October 4, 2011.

(3) The proclamation for the special primary election and
special general election shall be published prior to the special
primary election and special general election, respectively, as
a Class II-0 legal advertisement in accordance with article
three, chapter fifty-nine of this code and the publication area
for the publication is each county of the state. The notice
shall be filed with the Secretary of State who shall cause the
document to be published within each county in accordance
with this section.
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81 (4) The provisions of this chapter apply to the special
82 primary election and special general election to the extent
83 that those provisions are consistent with the provisions of this
84 section. Statutory time deadlines for the purpose of the new
85 election provided in this subsection are modified as follows:

86 (A) A notarized declaration of candidacy and filing fee
87 shall be filed and received in hand by the Secretary of State
88 by 5:00 p.m. on the fifth calendar day following the
89 proclamation of the special primary election. The declaration
90 of candidacy may be filed in person, by United States mail,
91 electronic means or any other means authorized by the
92 Secretary of State;

93 (B) The Secretary of State may issue emergency
94 administrative orders to undertake other ministerial actions
95 that are otherwise authorized pursuant to this code when
96 necessary to assure the preservation of the voting rights of
97 the citizens of this state and avoid fraudulent voting and
98 election activities and otherwise assure the orderly and
99 efficient conduct of the new election provided in this
100 subsection: Provided, That emergency administrative orders
101 may not contravene the provisions of this section;

102 (C) For petition in lieu of payment of filing fees, a
103 candidate seeking nomination for the vacancy in the office of
104 Governor may utilize the process set forth in section eight-a,
105 article five of this chapter: Provided, That the minimum
106 number of signatures required is one thousand five hundred;

107 (D) Drawing for special primary election ballot position
108 will take place at the Secretary of State’s office twenty-four
109 hours after the end of the filing period. For each major
110 political party on the ballot, a single drawing by lot shall
111 determine the candidate ballot position for ballots statewide.
112 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. Ballot position for the special general election shall be determined pursuant to subdivision (3), subsection (c), section two, article six of this chapter;

(E) A registered voter who has not reached eighteen years of age may vote in the May 14, 2011 special primary election: Provided, That the voter will attain eighteen years of age at the time of the special general election provided in this subsection;

(F) When paper or optical scan ballots are the primary voting method used at any county, the total number of regular official ballots printed shall equal at a minimum fifty percent of the number of registered voters eligible to vote that ballot;

(G) When paper ballots are used in conjunction with a direct recording electronic voting system, the total number of regular official ballots printed shall equal at a minimum thirty percent of the registered voters eligible to vote that ballot;

(H) Regularly scheduled locations of polling places may not be changed, except for situations as provided in sections seven-e and seven-f, article one of this chapter: Provided, That if multiple precincts voted in one polling location for the November 2, 2010, regularly scheduled general election, these precincts may be consolidated into a single precinct. Locations for consolidated precincts shall provide Internet access, insofar as possible, for the sole purpose of utilizing the Statewide Voter Registration System (SVRS) as an electronic poll book. However, constitutionally mandated redistricting may not take effect until the special primary election and special general election provided in this subsection are complete; and
(I) Citizens having no party organization or affiliation may nominate candidates as provided by sections twenty-three and twenty-four of article five of this chapter: Provided, that the number of signatures required to be submitted shall be equal to not less than one-quarter of one percent of the entire vote cast at the last preceding general election for governor. Notwithstanding the provisions of sections twenty three and twenty four of article five of this chapter, the signatures, notarized declaration of candidacy, and filing fee must be submitted no later than seven calendar days following the special primary election provided in this subsection.

(J) For the special primary election to be held pursuant to this subsection, early voting will also be conducted from 9 a.m. to 5 p.m. on the Saturday immediately prior to the end of early voting.

(5) The provisions of this subsection shall expire upon the election and qualification of the Governor following the October 4, 2011 special general election.

(d) The Secretary of State shall by January 10, 2012 report to the Joint Committee on Government and Finance findings regarding the operation of the new election undertaken pursuant to subsection (c) of this section. This report shall provide analysis of the direct and indirect costs to the state associated with the conduct of the new election.
AN ACT to amend and reenact §61-3C-14a of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-8-16 of said code, all relating to crimes using computers, telephones and electronic communications devices; creating offenses for the unlawful transmission of obscene, anonymous, harassing and threatening communications and data by mobile phone, personal digital assistant or other electronic communications device; clarifying provisions pertaining to the unlawful obscene, anonymous, harassing and threatening communications by traditional voice communication by telephone; creating a felony offense for certain repeat offenses using a computer, mobile phone or other electronic communications device; definitions; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3C-14a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-8-16 of said code be amended and reenacted, all to read as follows:
§61-3C-14a. Obscene, anonymous, harassing and threatening communications by computer, cell phones and electronic communication devices; penalty.

(a) It is unlawful for any person, with the intent to harass or abuse another person, to use a computer, mobile phone, personal digital assistant or other electronic communication device to:

(1) Make contact with another without disclosing his or her identity with the intent to harass or abuse;

(2) Make contact with a person after being requested by the person to desist from contacting them;

(3) Threaten to commit a crime against any person or property; or

(4) Cause obscene material to be delivered or transmitted to a specific person after being requested to desist from sending such material.

(b) For purposes of this section:

(1) “Electronic communication device” means and includes a telephone, wireless phone, computer, pager or any other electronic or wireless device which is capable of transmitting a document, image, voice, e-mail or text message using such device in an electronic, digital or analog form from one person or location so it may be viewed or received by another person or persons at other locations.
(2) "Use of a computer, mobile phone, personal digital assistant or other electronic communication device" includes, but is not limited to, the transmission of text messages, electronic mail, photographs, videos, images or other nonvoice data by means of an electronic communication system, and includes the transmission of such data, documents, messages and images to another's computer, email account, mobile phone, personal digital assistant or other electronic communication device.

(3) "Obscene material" means material that:

(A) An average person, applying contemporary adult community standards, would find, taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or is pandered to a prurient interest;

(B) An average person, applying contemporary adult community standards, would find, depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd exhibition of the genitals, or sadomasochistic sexual abuse; and

(C) A reasonable person would find, taken as a whole, lacks literary, artistic, political or scientific value.

(c) It is unlawful for any person to knowingly permit a computer, mobile phone or personal digital assistant or other electronic communication device under his or her control to be used for any purpose prohibited by this section.

(d) Any offense committed under this section may be determined to have occurred at the place at which the contact originated or the place at which the contact was received or intended to be received.
Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in jail not more than six months, or both fined and confined. For a second or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-16. Obscene, anonymous, harassing, repeated and threatening telephone calls; penalty.

(a) It is unlawful for any person with intent to harass or abuse another by means of telephone to:

1. Make any comment, request, suggestion or proposal which is obscene; or

2. Make a telephone call, whether or not conversation ensues, without disclosing his or her identity and with intent to harass any person at the called number; or

3. Make or cause the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

4. Make repeated telephone calls, during which conversation ensues, with intent to harass any person at the called number; or

5. Threaten to commit a crime against any person or property.
It shall be unlawful for any person to knowingly permit any telephone under his or her control to be used for any purpose prohibited by this section.

Any offense committed under this section may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.

Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500, or confined in jail not more than six months, or both fined and confined.

AN ACT to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to requirements for enhanced emergency telephone systems and county emergency dispatch centers.

Be it enacted by the Legislature of West Virginia:

That §24-6-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-5. Enhanced emergency telephone system requirements.

(a) An enhanced emergency telephone system, at a minimum, shall provide that:

1. All the territory in the county, including every municipal corporation in the county, which is served by telephone company central office equipment that will permit such a system to be established shall be included in the system: Provided, That if a portion of the county or a portion of a municipal corporation within the county is already being served by an enhanced emergency telephone system, that portion of the county or municipality may be excluded from the county enhanced emergency telephone system;

2. Every emergency service provider that provides emergency service within the territory of a county participate in the system;

3. Each county answering point be operated constantly;

4. Each emergency service provider participating in the system maintain a telephone number in addition to the one provided in the system; and

5. If the county answering point personnel reasonably determine that a call is not an emergency, the personnel provide the caller with the number of the appropriate emergency service provider.

(b) To the extent possible, enhanced emergency telephone systems shall be centralized.

(c) In developing an enhanced emergency telephone system, a county commission or the West Virginia State
Police shall seek the advice of both the telephone companies providing local exchange service within the county and the local emergency providers.

(d) As a condition of employment, a person employed as the director of an emergency dispatch center who dispatches emergency calls or supervises the dispatching of emergency call takers is subject to an investigation of their character and background. This investigation shall include, at a minimum, a criminal background check conducted by the State Police at its expense. A felony conviction shall preclude a person from holding any of these positions.

(e) As a condition of continued employment, persons employed to dispatch emergency calls in county emergency dispatch centers shall successfully complete:

(1) A forty-hour nationally recognized training course for dispatchers within one year of the date of their employment; and,

(2) An additional nationally recognized emergency medical dispatch course or an emergency medical dispatch course approved by the Office of Emergency Medical Services not later than July 1, 2013, or if employed subsequent to July 1, 2013, within one year of the date of employment.

(f) On or before July 1, 2013, the director of each county emergency dispatch center shall develop policies and procedures to establish a protocol for dispatching emergency medical calls implementing a nationally recognized emergency medical dispatch program or an emergency medical dispatch program approved by the Office of Emergency Medical Services: Provided, That a county's emergency dispatch center, which utilizes a "one-button transfer" system, may continue to use this system, if the county's emergency dispatch
center establishes policies and procedures which require the agency to whom the call is transferred to remain on the call until a first responder arrives.

(g) Each county or municipality shall appoint for each answering point an enhanced emergency telephone system advisory board consisting of at least six members to monitor the operation of the system. The board shall be appointed by the county or municipality and shall include at least one member from affected:

(1) Fire service providers;

(2) Law-enforcement providers;

(3) Emergency medical providers;

(4) Emergency services providers participating in the system; and,

(5) Counties or municipalities.

The director of the county or municipal enhanced telephone system shall serve as an ex officio member of the advisory board.

(h) The initial advisory board shall serve staggered terms of one, two and three years. The initial terms of these appointees shall commence on July 1, 1994. All future appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term. All members shall serve without compensation. The board shall adopt such policies, rules and regulations as are necessary for its own guidance. The board shall meet monthly, or quarterly. The board may make recommendations to the county or municipality concerning the operation of the system.
(i) Nothing herein contained shall be construed to prohibit or discourage in any way the establishment of multijurisdictional or regional systems, or multijurisdictional or regional agreements for the establishment of enhanced emergency telephone systems, and any system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency.

CHAPTER 65

(Com. Sub. for H. B. 3204 - By Delegates Boggs, Caputo, Varner, Morgan and Fragale)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-6D-1, §12-6D-2, §12-6D-3, §12-6D-4, §12-6D-5 and §12-6D-6, all relating to the West Virginia Enterprise Resource Planning System; creating the Enterprise Resource Planning Board; providing for composition, purpose, powers and duties of the board; creating a steering committee; providing for composition, purpose, powers and duties of the steering committee; providing for expense reimbursement for members of the steering committee; creating the Enterprise Resource Planning System Fund in the state treasury; and transferring funds allocated to the system to the Enterprise Resource Planning System Fund.

Be it enacted by the Legislature of West Virginia:
That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §12-6D-1, §12-6D-2, §12-6D-3, §12-6D-4, §12-6D-5 and §12-6D-6, all to read as follows:

ARTICLE 6D. WEST VIRGINIA ENTERPRISE RESOURCE PLANNING BOARD.

§12-6D-1. West Virginia Enterprise Resource Planning Board created; board composition and purpose; Enterprise Resource planning defined.

(a) As used in this article "enterprise resource planning" means the implementation of software applications to achieve the comprehensive integration of data sources and processes of state agencies into a unified system that includes the state's financial management, procurement, personnel, payroll, budget development and other administrative business processes.

(b) There is created the West Virginia Enterprise Resource Planning Board, whose purpose is to develop, implement and manage the Enterprise Resource Planning System.

(c) The board consists of the Governor, Auditor and the Treasurer, who serve by virtue of their offices and are not entitled to compensation under the provisions of this article.

§12-6D-2. Powers of the board.

The board may:

(1) Adopt and use a common seal and alter it at pleasure;

(2) Sue and be sued;
(3) Enter into contracts and execute and deliver instruments;

(4) Acquire by purchase, gift or otherwise, hold, use and dispose of real and personal property, deeds, mortgages and other instruments;

(5) Accept and receive gifts, grants and other moneys from any source;

(6) Promulgate and enforce by-laws and rules for the management and conduct of its affairs;

(7) Propose legislative rules, including emergency rules, in accordance with article three, chapter twenty-nine-a of this code to establish a user fee for the maintenance of the Enterprise Resource System;

(8) Contract with and retain legal, accounting, financial and information technology managers, advisors and consultants;

(9) Delegate to the committee any and all duties of the board deemed necessary and convenient to effectuate the intent of this article;

(10) Review and ratify or overrule any decision of the steering committee;

(11) Review written appeals submitted by the steering committee chairman at the request of a committee member; and

(12) Do all things necessary or convenient to implement and operate the board and carry out the purposes of this article.

(a) The board shall manage and control the Enterprise Resource Planning System in accordance with the provisions of this article.

(b) The Governor shall be the chairperson of the board unless the board votes to elect another member as chairperson.

(c) Decisions of the board require unanimous consent of the members.

(d) The board may use the staff, policies and procedures of the State Auditor, employ personnel and contract with any person or entity needed to perform the tasks related to the development, management and operation of the Enterprise Resource Planning System.

(e) The board shall hold meetings at least quarterly. Board by-laws may provide for additional meetings.

(f) All three voting members must be present to constitute a quorum of any meeting.

(g) Meetings of the board are subject to the provisions of article nine-a, chapter six of this code.

(h) The board may convene in executive session, upon adoption of a proper motion by a board member, when necessary to preserve the attorney-client privilege, to protect the privacy interests of individuals, to review personnel matters, to maintain confidentiality when confidentiality is in the best interest of the participants, or as otherwise provided by law.
§12-6D-4. Steering Committee created; powers and authority.

(a) There is created a sixteen member steering committee of the board whose purpose is to provide routine oversight of the implementation and management of the enterprise resource planning system and perform duties delegated to them by the board.

(b) The steering committee shall annually elect a chairperson to chair the committee.

(c) A steering committee member may appeal any action of the committee to the board by submitting a written request for board review to the steering committee chairperson within ten days of the disputed committee action. The committee chairperson shall forward the appeal to the board. The board shall review appeals at the next regularly scheduled board meeting and shall ratify or overturn the decision of the board in writing. No disputed action of the committee may proceed, if appealed to the board, until ratified or overturned by the board.

(d) The steering committee shall consist of sixteen members, as follows:

(1) The Secretary of the Department of Administration, the Secretary of Revenue, the Secretary of Transportation, and the Secretary of Health and Human Resources. They shall serve by virtue of their offices, are not entitled to compensation under the provisions of this article, and are subject to all duties, responsibilities and requirements of the provisions of this article;

(2) Five persons appointed by the Governor, three of whom will be representatives of institutions of Higher Education;
(3) Two persons appointed by the State Auditor;

(4) Two persons appointed by the State Treasurer;

(5) A member of the Senate appointed by the President of the Senate, who shall be a non-voting member; and

(6) A member of the House of Delegates appointed by the Speaker of the House, who shall be a non-voting member;

(7) A member who represents public employees, who shall be a non-voting member.

(e) A member may appoint a designee to serve on his or her behalf.

(f) A member may serve until his or her appointment is revoked or until his or her successor is appointed and qualified.

(g) Members are entitled to reasonable and necessary expenses actually incurred in discharging committee duties pursuant to this article.


There is hereby created a fund in the State Treasury entitled the Enterprise Resource Planning System Fund to be administered by the board. The fund shall consist of any appropriations or transfers made for the purpose of studying, evaluating, creating, developing, implementing and managing a new Enterprise Resource Planning System and any fees collected in accordance with legislative rules approved by the board and proposed pursuant to this article. Expenditures from the fund are to be made for the purposes set forth in this article in accordance with appropriations by the Legislature and are not authorized from collections.
§12-6D-6. Transfer of Enterprise Resource Planning Funds.

The unencumbered balances of all funds allocated to the enterprise resource planning system for fiscal year ending June 30, 2011, and the fiscal year ending June 30, 2012, are hereby transferred to the Enterprise Resource Planning System Fund on the effective date of this section in the year 2011.

CHAPTER 66

(H. B. 2551 - By Delegates Doyle, Guthrie, Ferro, Frazier, Reynolds and Walters)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]
code by adding thereto a new section, designated §44-7-4; and to amend said code by adding thereto a new chapter, designated §44D-1-101, §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106, §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403, §44D-4-404, §44D-4-405, §44D-4-406, §44D-4-407, §44D-4-408, §44D-4-409, §44D-4-410, §44D-4-411, §44D-4-412, §44D-4-413, §44D-4-414, §44D-4-415, §44D-4-416, §44D-4-417, §44D-5-501, §44D-5-502, §44D-5-503, §44D-5-504, §44D-5-505, §44D-5-506, §44D-5-507, §44D-5-508, §44D-6-601, §44D-6-602, §44D-6-603, §44D-6-604, §44D-7-701, §44D-7-702, §44D-7-703, §44D-7-704, §44D-7-705, §44D-7-706, §44D-7-707, §44D-7-708, §44D-7-709, §44D-8-801, §44D-8-802, §44D-8-803, §44D-8-804, §44D-8-805, §44D-8-806, §44D-8-807, §44D-8-808, §44D-8-809, §44D-8-810, §44D-8-811, §44D-8-812, §44D-8-813, §44D-8-814, §44D-8-815, §44D-8-816, §44D-8-817, §44D-9-901, §44D-10-1001, §44D-10-1002, §44D-10-1003, §44D-10-1004, §44D-10-1005, §44D-10-1006, §44D-10-1007, §44D-10-1008, §44D-10-1009, §44D-10-1010, §44D-10-1011, §44D-10-1012, §44D-10-1013, §44D-11-1101, §44D-11-1102, §44D-11-1103, §44D-11-1104 and §44D-11-1105, all relating generally to estates and trusts and their administration; providing that certain provisions of current law to have no effect after specified date; providing certain provisions of current law are not to apply to trusts and trustees after specified date; changing names of certain articles of existing code; providing for the creation, administration, revision and termination of trusts; providing for trustees, powers and duties of trustees and substitution of trustees; providing for distribution of trust assets; specifying powers and certain restrictions on powers of fiduciaries; amending the Uniform Prudent Investor Act; modernizing language of certain existing sections of code and deleting obsolete language; adopting West Virginia Uniform Trust
Code; providing general provisions and definitions; providing for judicial proceedings; providing for representation of trusts; providing for creation, validity, modification and termination of trusts; providing for creditor's claims; providing for spendthrift trusts, discretionary trusts and revocable trusts; providing for the office of trustee; providing duties and powers of trustees; providing for liability of trustees and rights of persons dealing with trustee; providing various miscellaneous provisions for trusts and trustees; specifying delayed effective date for West Virginia Uniform Trust Code; and providing rules for application of that date.

Be it enacted by the Legislature of West Virginia:

That §36-1-4, §36-1-6, §36-1-17 and §36-1-18 of the Code of West Virginia, 1931, as amended, be repealed; that §44-5-12, §44-5-13, §44-5-14 and §44-5-15 be repealed; that §44-6-2 be repealed; that §44-14-1, §44-14-2, §44-14-3, §44-14-4 and §44-14-5 be repealed; that §38-1-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-4-22; that §44-5-1, §44-5-7, §44-5-11 of said code be amended and reenacted; that §44-5A-2, §44-5A-3 and §44-5A-4 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §44-5A-5, §44-5A-6 and §44-5A-7; that §44-6-1 and §44-6-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-6-11; that §44-6C-1, §44-6C-2, and §44-6C-9 of said code be amended and reenacted; that §44-7-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §44-7-4; and that said code be amended by adding thereto a new chapter, designated §44D-1-101, §44D-1-102, §44D-1-103, §44D-1-104, §44D-1-105, §44D-1-106, §44D-1-107, §44D-1-108, §44D-1-109, §44D-1-110, §44D-1-111, §44D-1-112, §44D-2-201, §44D-2-202, §44D-2-203, §44D-2-204, §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, §44D-3-305, §44D-4-401, §44D-4-402, §44D-4-403,
ARTICLE 1. VENDOR’S AND TRUST DEED LIENS.

§38-1-13. Substitution of trustees under a trust deed securing a debt.

(a) When a trust deed to secure a debt or obligation does not by its terms prescribe a method for substitution, the party secured by the trust deed, or any surety indemnified by the deed, or the assignee or personal representative of any secured party or surety may, if there is a death, removal, declination, resignation, refusal or inability of the original trustee or trustees named in the instrument, substitute a trustee or trustees in his or her, or its place by a writing duly signed and acknowledged and recorded in the office of the clerk of the county commission where the real estate covered by the trust deed is situate.
(b) When a substitution is made under this section of a trustee or trustees of a trust deed securing a debt or obligation, the substitution is effected when the party secured, or a surety indemnified by the deed, or the assignee or personal representative of any such secured party or surety has deposited true copies of the notice of the substitution in the United States mail, first class postage prepaid, addressed to the last known addresses of the grantor or grantors or any other person owing the debt or obligation, and has presented the original of the notice to the clerk of the county commission in whose office the trust deed is recorded, causing the notice to be recorded and indexed in a general lien book or other appropriate book in which trust deeds or assignments of trust deeds are recorded. There shall be appended to the notice presented for recording a certificate by the party making the substitution, certifying that copies of the notice were mailed as required by this subsection, and showing the date of the mailing.

(c) It is not necessary to give notice under this section to a trustee who has removed from the state, declined to accept the trust, refused to act as trustee, or has resigned, or to the personal representative of one who has died.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 4. ACCOUNTING BY PERSONAL REPRESENTATIVES.

§44-4-22. Application only to personal representatives, guardians, curators or committees.

The provisions of this article apply only to personal representatives, guardians, curators or committees, as the case may be, and do not apply to or affect trustees who are
4 governed by the provisions of the West Virginia Uniform
5 Trust Code in chapter forty-four-d of this code.

ARTICLE 5. GENERAL PROVISIONS AS TO PERSONAL
REPRESENTATIVES.

§44-5-1. List of fiduciaries.

(a) The clerk of the county commission of each county
shall keep a record, to be known as the “Record of
Fiduciaries,” in which he or she shall enter, in separate
columns, first, the name of every fiduciary authorized to act
as such by the county commission or clerk of the county
commission; secondly, the name of the decedent for whose
estate he or she is personal representative or curator; thirdly,
the names of the distributees of the estate, showing their
relation to the decedent; fourthly, the name of the living
person or persons for whom he or she is minor guardian,
curator, committee or trustee; fifthly, the penalty of his or her
bond; sixthly, the names of his or her sureties; seventhly, the
date of the order conferring his or her authority, and a
reference to the book and page where entered; eighthly, the
date of any order revoking his or her authority, and a
reference to the book and page where entered; ninthly, the
date of the return of every inventory and appraisement of the
estate; tenthly, the date of the confirmation of each report of
settlement of the accounts of the fiduciary; and the clerk shall
index the record in the name of the decedent, estate, ward or
person represented by the fiduciary. Any clerk failing to
make entry, as to any fiduciary, within ten days after the
order conferring or revoking the authority, or the date of the
return of the inventory and/or appraisement, or the date of the
confirmation of any report of settlement, shall, for every
failure, forfeit $20.

(b) This section does not apply to a trustee.
§44-5-7. Authority of personal representatives to compound and compromise liabilities due to or from them.

It is lawful for any guardian, committee or trustee, to compound and compromise any liability due to or from him or her, unless the compounding and compromise is ratified and approved by a court of competent jurisdiction, all parties in interest being before the court by proper process. When the compounding and compromise has been ratified and approved, it is binding on all parties in interest before the court. It is lawful for any personal representative to compound and compromise any liability due to or from him or her, as long as the compounding and compromise is ratified and approved by the fiduciary commissioner to whom the estate or trust has been referred, or by a commissioner appointed by the circuit court when the estate of the decedent is being settled in a chancery suit, and is reported by the fiduciary commissioner to his or her court. When the report is confirmed, the compounding and compromise shall be binding on all parties to the proceedings.

§44-5-11. Application only to personal representatives, curators, and minor guardians.

The provisions of this article apply only to personal representatives, curators, and minor guardians, as the case may be, and do not apply to or affect guardians and conservators of adult protected persons who are governed by the provisions of the Guardian and Conservatorship Act in chapter forty-four-a of this code or trustees who are governed by the provisions of the West Virginia Uniform Trust Code in chapter forty-four-d of this code.

ARTICLE 5A. POWERS OF FIDUCIARIES.

§44-5A-2. Incorporation by reference of enumerated powers by testator; restriction on exercise of powers.

(a) After June 30, 2011, by an intention of the testator expressed in a will, any or all of the powers or any portion of the
powers enumerated in section three of this article, as they exist
at the time of the signing of the will by the testator may be, by
appropriate reference made thereto, incorporated in the will, with
the same effect as though the language were set forth verbatim
in the instrument. Incorporation of one or more of the powers
contained in section three of this article by reference to that
section is in addition to and not in limitation of the common law
or statutory powers of the fiduciary.

(b) No power of authority conferred upon a fiduciary as
provided in this article may be exercised by the fiduciary in
a manner as, in the aggregate, to deprive the trust or the estate
involved of an otherwise available tax exemption, deduction
or credit, expressly including the marital deduction, or
operate to impose a tax upon a donor or testator or other
person as owner of any portion of the trust or estate involved.
“Tax” includes, but is not limited to, any federal, state, or
local income, gift, estate or inheritance tax.

(c) Nothing in this section prevents the incorporation of
the powers enumerated in section three of this article in any
other kind of instrument or agreement.

§44-5A-3. Powers which may be incorporated by reference in
trust instrument.

The following powers may be incorporated by reference
by a testator in the will as provided in section two of this
article and the following powers apply without the need for
incorporation by reference to trustees who are governed by
the provisions of the West Virginia Uniform Trust Code in
chapter forty-four-d of this code:

(a) *Retain original property.* -- To retain for the time the
fiduciary considers advisable any property, real or personal,
which the fiduciary may receive, even though the retention of
the property by reason of its character, amount, proportion to
the total estate or otherwise would not be appropriate for the
fiduciary apart from this provision.

(b) Sell and exchange property. -- To sell, exchange, give
options upon, partition or otherwise dispose of any property
or interest therein which the fiduciary may hold from time to
time, with or without order of court, at public or private sale
or otherwise, upon the terms and conditions, including credit,
and for the consideration the fiduciary considers advisable,
and to transfer and convey the property or interest therein
which is at the disposal of the fiduciary, in fee simple
absolute or otherwise, free of all trust; and the party dealing
with the fiduciary is not under a duty to follow the proceeds
or other consideration received by the fiduciary from the sale
or exchange.

(c) Invest and reinvest. -- To invest and reinvest, as the
fiduciary considers advisable, in stocks (common or
preferred), bonds, debentures, notes, mortgages or other
securities, in or outside the United States; in insurance
contracts on the life of any beneficiary or of any person in
whom a beneficiary has an insurable interest, or in annuity
contracts for any beneficiary, in any real or personal
property, in investment trusts; in participations in common
trust funds, and generally in property the fiduciary considers
advisable, even though the investment is not of the character
approved by applicable law but for this provision.

(d) Invest without diversification. -- To make investments
which cause a greater proportion of the total property held by
the fiduciary to be invested in investments of one type or of
one company than would be considered appropriate for the
fiduciary apart from this provision.
(e) *Continue business.* -- To the extent and upon terms and conditions and for the periods as the fiduciary considers necessary or advisable, to continue or participate in the operation of any business or other enterprise, whatever its form of organization, including, but not limited to, the power:

1. To effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
2. To dispose of any interest therein or acquire the interest of others therein;
3. To contribute thereto or invest therein additional capital or to lend money thereto, in any case upon terms and conditions the fiduciary approves from time to time;
4. To determine whether the liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate or trust set aside for use in the business or to the estate or trust as a whole; and
5. In all cases in which the fiduciary is required to file accounts in any court or in any other public office, it is not necessary to itemize receipts and disbursements and distributions of property but it is sufficient for the fiduciary to show in the account a single figure or consolidation of figures, and the fiduciary is permitted to account for money and property received from the business and any payments made to the business in lump sum without itemization.

(f) *Form corporation or other entity.* -- To form a corporation or other entity and to transfer, assign, and convey to the corporation or entity all or any part of the estate or of any trust property in exchange for the stock, securities or obligations of the corporation or entity, and to continue to hold the stock and securities and obligations.

(g) *Operate farm.* -- To continue any farming operation
received by the fiduciary pursuant to the will or other instrument and to do any and all things considered advisable by the fiduciary in the management and maintenance of the farm and the production and marketing of crops and dairy, poultry, livestock, orchard and forest products including, but not limited to, the following powers:

(1) To operate the farm with hired labor, tenants or sharecroppers;

(2) To lease or rent the farm for cash or for a share of the crops;

(3) To purchase or otherwise acquire farm machinery and equipment and livestock;

(4) To construct, repair and improve farm buildings of all kinds needed in the fiduciary’s judgment, for the operation of the farm;

(5) To make or obtain loans or advances at the prevailing rate or rates of interest for farm purposes such as for production, harvesting or marketing, or for the construction, repair or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock;

(6) To employ approved soil conservation practices in order to conserve, improve and maintain the fertility and productivity of the soil;

(7) To protect, manage and improve the timber and forest on the farm and sell the timber and forest products when it is to the best interest of the estate;

(8) To ditch, dam and drain damp or wet fields and areas of the farm when and where needed;

(9) To engage in the production of livestock, poultry or
dairy products, and to construct such fences and buildings
and plant pastures and crops necessary to carry on the
operations;

(10) To market the products of the farm; and

(11) In general, to employ good husbandry in the farming
operation.

(h) Manage real property. -- (1) To improve, manage,
protect and subdivide any real property;

(2) To dedicate or withdraw from dedication parks,
streets, highways or alleys;

(3) To terminate any subdivision or part thereof;

(4) To borrow money for the purposes authorized by this
subdivision for periods and upon terms and conditions as to
rates, maturities and renewals the fiduciary considers
advisable and to mortgage or otherwise encumber any
property or part thereof, whether in possession or reversion;

(5) To lease any property or part thereof to commence at
the present or in the future, upon terms and conditions,
including options to renew or purchase, and for such period
or periods the fiduciary considers advisable although the
period or periods may extend beyond the duration of the trust
or the administration of the estate involved;

(6) To make coal, gravel, sand, oil, gas and other mineral
leases, contracts, licenses, conveyances or grants of every
nature and kind which are lawful in the jurisdiction in which
the property lies;

(7) To manage and improve timber and forests on the
property, to sell the timber and forest products, and to make
grants, leases, and contracts with respect thereto;
(8) To modify, renew or extend leases;

(9) To employ agents to rent and collect rents;

(10) To create easements and release, convey or assign any right, title or interest with respect to any easement on the property or part of the property;

(11) To erect, repair or renovate any building or other improvement on the property, and to remove or demolish any building or other improvement, in whole or in part; and

(12) To deal with the property and every part of the property in all other ways and for other purposes or considerations as it would be lawful for any person owning the same to deal with the property either in the same or in different ways from those specified elsewhere in this subdivision.

(i) Pay taxes and expenses. -- To pay taxes, assessments, compensation of the fiduciary, and other expenses incurred in the collection, care, administration, and protection of the trust or estate.

(j) Receive additional property. -- To receive additional property from any source and administer the additional property as a portion of the appropriate trust or estate under the management of the fiduciary but the fiduciary is not required to receive the property without his or her consent.

(k) Deal with other trusts. -- In dealing with one or more fiduciaries:

(1) To sell property, real or personal, to, or to exchange property with, the trustee of any trust which the decedent or the settlor or his or her spouse or any child of his or her creation, for estates and upon terms and conditions as to sale
price, terms of payment, and security as the fiduciary
considers advisable; and the fiduciary is under no duty to
follow the proceeds of any such sale; and

(2) To borrow money for periods and upon terms and
conditions as to rates, maturities, renewals and securities the
fiduciary considers advisable from any trust created by the
decedent, his or her spouse, or any child of his or her, for the
purpose of paying debts of the decedent, taxes, the costs of
the administration of the estate, and like charges against the
estate, or any part thereof, or discharging the liability of any
fiduciary thereof and to mortgage, pledge or otherwise
encumber a portion of the estate or any trust as may be
required to secure the loan or loans and to renew the loans.

(1) Borrow money. -- To borrow money for periods and
upon terms and conditions as to rates, maturities, renewals,
and security the fiduciary considers advisable, including the
power of a corporate fiduciary to borrow from its own
banking department, for the purpose of paying debts, taxes or
other charges against the estate or any trust, or any part
thereof, and to mortgage, pledge or otherwise encumber a
portion of the estate or any trust as may be required to secure
the loan or loans; and to renew existing loans either as maker
or endorser.

(m) Make advances. -- To advance money for the
protection of the trust or estate, and for all expenses, losses
and liabilities sustained in the administration of the trust or
estate or because of the holding or ownership of any trust or
estate assets, for which advances with any interest the
fiduciary has a lien on the assets of the trust or estate as
against a beneficiary.

(n) Vote shares. -- To vote shares of stock owned by the
estate or any trust at stockholders meetings in person or by
special, limited or general proxy, with or without power of
substitution.
(o) Register in name of nominee. -- To hold a security in
the name of a nominee or in other form without disclosure of
the fiduciary relationship so that title to the security may pass
by delivery, but the fiduciary is liable for any act of the
nominee in connection with the stock so held.

(p) Exercise options, rights and privileges. -- To exercise
all options, rights, and privileges to convert stocks, bonds,
debentures, notes, mortgages or other property into other
stocks, bonds, debentures, notes, mortgages or other
property; to subscribe for other or additional stocks, bonds,
debentures, notes, mortgages or other property; and to hold
the stocks, bonds, debentures, notes, mortgages or other
property so acquired as investments of the estate or trust so
long as the fiduciary considers advisable.

(q) Participate in reorganizations. -- To unite with other
owners of property similar to any which may be held at any
time in the decedent's estate or in any trusts in carrying out
any plan for the consolidation or merger, dissolution or
liquidation, foreclosure, lease or sale of the property,
incorporation or reincorporation, reorganization or
readjustment of the capital or financial structure of any
corporation, company or association the securities of which
may form any portion of an estate or trust; to become and
serve as a member of a stockholders or bondholders
protective committee; to deposit securities in accordance with
any plan agreed upon; to pay any assessments, expenses or
sums of money that may be required for the protection or
furtherance of the interest of the distributees of an estate or
beneficiaries of any trust with reference to the plan; and to
receive as investments of an estate or any trust any securities
issued as a result of the execution of the plan.

(r) Reduce interest rates. -- To reduce the interest rate
from time to time on any obligation, whether secured or
unsecured, constituting a part of an estate or trust.
(s) Renew and extend obligations. -- To continue any obligation, whether secured or unsecured, upon and after maturity with or without renewal or extension upon terms the fiduciary considers advisable, without regard to the value of the security, if any, at the time of the continuance.

(t) Foreclose and bid in. -- To foreclose, as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust or other lien securing the bond, note or other obligation, and to bid in the property at the foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid in or taken over without foreclosure.

(u) Insure. -- To carry insurance coverage, including public liability, for hazards and in amounts, either in stock companies or in mutual companies, as the fiduciary considers advisable.

(v) Collect. -- To collect, receive and receipt for rents, issues, profits, and income of an estate or trust.

(w) Litigate, compromise or abandon. -- To compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle claims in favor of or against the estate or trust as the fiduciary considers advisable, and the fiduciary’s decision is conclusive between the fiduciary and the beneficiaries of the estate or trust and the person against or for whom the claim is asserted, in the absence of fraud by those persons; and in the absence of fraud, bad faith or gross negligence of the fiduciary, is conclusive between the fiduciary and the beneficiaries of the estate or trust.

(x) Employ and compensate agents, etc. -- To employ and compensate, out of income or principal or both and in proportion as the fiduciary considers advisable, persons considered by the fiduciary needful to advise or assist in the
proper settlement of the estate or administration of any trust, including, but not limited to, agents, accountants, brokers, attorneys-at-law, attorneys-in-fact, investment brokers, rental agents, realtors, appraisers, and tax specialists; and to do so without liability for any neglect, omission, misconduct or default of the agent or representative as long as he or she was selected and retained with due care on the part of the fiduciary.

(y) Acquire and hold property of two or more trusts undivided. -- To acquire, receive, hold and retain the principal of several trusts created by a single instrument undivided until division becomes necessary in order to make distributions; to hold, manage, invest, reinvest, and account for the several shares or parts of shares by appropriate entries in the fiduciary's books of account, and to allocate to each share or part of share its proportionate part of all receipts and expenses: Provided, That the provisions of this subdivision do not defer the vesting in possession of any share or part of share of the estate or trust.

(z) Establish and maintain reserves. -- To set up proper and reasonable reserves for taxes, assessments, insurance premiums, depreciation, obsolescence, amortization, depletion of mineral or timber properties, repairs, improvements and general maintenance of buildings or other property out of rents, profits or other income received; and to set up reserves also for the equalization of payments to or for beneficiaries: Provided, That the provisions of this subdivision do not affect the ultimate interests of beneficiaries in the reserves.

(aa) Distribute in cash or kind. -- To make distribution of capital assets of the estate or trust in kind or in cash, or partially in kind and partially in cash, in divided or undivided interests, as the fiduciary finds to be most practicable and for the best interests of the distributees; and to determine the
value of capital assets for the purpose of making distribution thereof if and when there is more than one distributee thereof, which determination is binding upon the distributees unless clearly capricious, erroneous and inequitable:  *Provided,*
That the fiduciary may not exercise any power under this subdivision unless the fiduciary holds title to or an interest in the property to be distributed and is required or authorized to make distribution thereof.

(bb) *Pay to or for minors or incompetents.* -- To make payments in money, or in property in lieu of money, to or for a minor or incompetent in any one or more of the following ways:

1. Directly to the minor or incompetent;
2. To apply directly in payment for the support, maintenance, education, and medical, surgical, hospital or other institutional care of the minor or incompetent;
3. To the legal or natural guardian of the minor or incompetent;
4. To any other person, whether or not appointed guardian of the person by any court, who does, in fact, have the care and custody of the person of the minor or incompetent.

The fiduciary is not under any duty to see to the application of the payments so made, if the fiduciary exercised due care in the selection of the person, including the minor or incompetent, to whom the payments were made; and the receipt of the person is full acquittance to the fiduciary.

(cc) *Apportion and allocate receipts and expenses.* -- Where not otherwise provided by statute to determine:
(1) What is principal and what is income of any estate or trust and to allocate or apportion receipts and expenses as between principal and income in the exercise of the fiduciary's discretion, and, by way of illustration and not limitation of the fiduciary's discretion, to charge premiums on securities purchased at a premium against principal or income or partly against each;

(2) Whether to apply stock dividends and other noncash dividends to income or principal or apportion them as the fiduciary considers advisable; and

(3) What expenses, costs, taxes (other than estate, inheritance, and succession taxes and other governmental charges) shall be charged against principal or income or apportioned between principal and income and in what proportions.

(dd) Make contracts and execute instruments. -- To make contracts and to execute instruments, under seal or otherwise, as may be necessary in the exercise of the powers granted in this section.

(ee) The foregoing powers are limited as follows for any trust which is classified as a "private foundation" as that term is defined by section 509 of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws (including each nonexempt charitable trust described in section 4947(a)(1) of the code which is treated as a private foundation) or nonexempt split-interest trust described in section 4947(a)(2) of the Internal Revenue Code of 1954 or corresponding provisions of any subsequent federal tax laws (but only to the extent that section 508(e) of the code is applicable to the nonexempt split-interest trust under section 4947(a)(2)):

(1) The fiduciary shall make distributions of amounts, for each taxable year, at times and in a manner as not to become
subject to the tax imposed by section 4942 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(2) No fiduciary may engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(3) No fiduciary may retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(4) No fiduciary may make any investments in a manner as to subject the trust to tax under section 4944 of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws;

(5) No fiduciary may make any taxable expenditures as defined in section 4945(e) of the Internal Revenue Code of 1954, or corresponding provisions of any subsequent federal tax laws.

§44-5A-4. Designation of testamentary trustee as beneficiary of insurance.

A policy of life insurance may contain a designation of a beneficiary, a trustee or trustees named or to be named by will, if the designation is made in accordance with the provisions of the policy and the requirements of the insurer. The proceeds of the insurance shall be paid to the trustee or trustees to be held and disposed of under the terms of the will as they exist at the death of the testator; but if no trustee or trustees makes claim to the proceeds from the insurance company within one year after the death of the insured, or if satisfactory evidence is furnished the insurance company
within the one-year period showing that no trustee can qualify to receive the proceeds, payment shall be made by the insurance company to the executors, administrators or assigns of the insured, unless otherwise provided by agreement with the insurance company during the lifetime of the insured. The proceeds of the insurance as collected by the trustee or trustees are not subject to debts of the insured or to inheritance tax to any greater extent than if the proceeds were payable to any other named beneficiary other than the estate of the insured, and are not considered as payable to the estate of the insured for any purpose. The insurance proceeds so held in trust may be commingled with any other assets which may properly come into the trust as provided in the will. Enactment of this section does not invalidate previous life insurance policy designations naming trustees of trusts established by will.

§44-5A-5. Distribution of assets in satisfaction of pecuniary bequests; authority of fiduciaries to enter into certain agreements; validating certain agreements; providing for discretionary division of trusts for tax, administrative or other purposes.

(a) Where a will, trust or other governing instrument authorizes or directs the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or a separate trust to be funded by a pecuniary amount or formula unless the will, trust or other governing instrument expressly provides otherwise, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution, and if any pecuniary bequests or separate trusts established under the will or trust by a pecuniary amount or formula is not entirely funded or an amount necessary to fund the bequest or trust completely is not irrevocably set aside within fifteen months after the date of the testator’s or grantor’s death, the fiduciary shall allocate to the bequest or
trust a prorata share of the income earned by the estate of the
testator or grantor or other fund from which the bequest or
trust is to be funded between the date of death of the testator
or grantor and the date or dates of the funding.

(b) Whenever a fiduciary under the provisions of a will,
trust or other governing instrument is required to satisfy a
pecuniary bequest or transfer in trust and is authorized to
satisfy the bequest or transfer by selection and distribution of
assets in kind, and the will, trust or other governing
instrument further provides that the assets to be so distributed
shall or may be valued by some standard other than their fair
market value on the date of distribution, the fiduciary, unless
the will, trust or other governing instrument otherwise
specifically directs, shall distribute assets, including cash,
fairly representative of appreciation or depreciation in the
value of all property available for distribution in satisfaction
of the pecuniary bequest or transfer. This section does not
apply to prevent a fiduciary from carrying into effect the
provisions of the will, trust or other governing instrument that
the fiduciary, in order to implement the bequest or transfer,
must distribute assets, including cash, having an aggregate
fair market value at the date or dates of distribution
amounting to no less than the amount of the pecuniary
bequest or transfer as finally determined for federal estate tax
purposes.

(c) (1) Any fiduciary having discretionary powers under
a will or other governing instrument with respect to the
selection of assets to be distributed in satisfaction of a
pecuniary bequest or transfer in trust is authorized to enter
into agreements with the Commissioner of Internal Revenue
of the United States of America and other taxing authorities
requiring the fiduciary to exercise the fiduciary’s discretion
so that cash and other properties distributed in satisfaction of
the bequest or transfer in trust will be fairly representative of
the appreciation or depreciation in value of all property then
available for distribution in satisfaction of the bequest or
transfer in trust and any such agreement heretofore entered
into after April 1, 1964, is hereby validated. The fiduciary is
authorized to enter into any other agreement not in conflict
with the express terms of the will, trust or other governing
instrument that may be necessary or advisable in order to
secure for federal estate tax purposes the appropriate marital
deduction or other deduction or exemption available under
the Internal Revenue laws of the United States of America,
and to do and perform all acts incident to that purpose.

(2) Unless ordered by a court of competent jurisdiction,
the bank or trust company operating a common trust fund, as
provided in section six of this article, is not required to render
an accounting with regard to the fund, before any fiduciary
commissioner but it may, by application to the circuit court
of the county in which is located the principal place of
business of the bank or trust company, secure the approval of
an accounting in the condition the court may fix: Provided,
That nothing in this section relieves a fiduciary acquiring,
holding or disposing of an interest in any common trust fund
from making an accounting as required by law with respect
of the interest.

(d) The fiduciary of any trust created by will, trust or
other governing instrument may from time to time without
need of court approval to divide the trust or trusts for
purposes of the generation skipping transfer tax ("GST") of
section 2601 of the Internal Revenue Code of 1986, as in
effect on January 1, 2010, or any similar or successor law of
like import, or for any other tax, administrative or other
purposes. In exercising this authority for inclusion ratio,
marital deduction election, reverse qualified terminal interest
property election or other GST or other tax purposes, the
power shall be exercised in a manner that complies with
applicable Internal Revenue Code Treasury Regulations or
other requirements for accomplishing the intended purposes.
If that division is made for purposes of separating assets with respect to which the federal estate tax marital deduction election is to be made from those as to which the election is not to be made, the division shall be done on a fractional or percentage basis and the assets of the trust or other fund to be divided shall be valued for purposes of the division on the date or dates of division.


(a) A power conferred upon a person in his or her capacity as fiduciary to make discretionary distributions of principal or income to himself or herself or to make discretionary allocations in his or her favor of receipts or expenses between income and principal cannot be exercised by him or her. If the power is conferred on two or more fiduciaries, it may be exercised by the fiduciaries who are not so disqualified. If there is no fiduciary qualified to exercise the power, it may be exercised by a special fiduciary appointed by the court authorized under article fourteen of this chapter, and in accordance with the procedure described therein, to appoint a successor or substitute trustee. Except as provided in subsection (c) of this section this section applies to all trusts now in existence and to all trusts which are created later.

(b) Unless either: (1) Mandatory; (2) limited by an ascertainable standard relating to the health, education, support or maintenance of the fiduciary; or (3) exercisable by the fiduciary only in conjunction with another person having a substantial interest in the trust which is adverse to the interest of the fiduciary, a power to make distributions of principal or income is a discretionary power for purposes of this section.

(c) This section does not apply to trusts that come into existence or are amended after the effective date of this

(a) For purposes of this section:

(1) "Environmental law" means any federal, state or local law, rule, regulation or ordinance relating to the regulation of hazardous substances or hazardous wastes, air pollution, water pollution and underground storage tanks;

(2) "Hazardous substance" means any substance defined as hazardous in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") [42 U.S.C. 9601, et seq. (1980)] as amended and in effect on January 1, 2010, and regulations promulgated thereunder;

(3) "Hazardous waste" means a waste characterized or listed as hazardous in the Resource, Conservation and Recovery Act ("RCRA") [42 U.S.C. 6901, et seq. as amended] as in effect on January 1, 2010, and regulations promulgated thereunder;

(4) "Fiduciary" means a fiduciary as defined by section one-d, article four-d, chapter thirty-one of this code.

(b) In addition to powers, remedies and rights which may be set forth in any will, trust agreement or other document which is the source of authority, a trustee, executor, administrator, guardian or one acting in any other fiduciary capacity, whether an individual, corporation or other entity ("fiduciary") has the following powers, rights and remedies whether or not set forth in the will, trust agreement or other document which is the source of authority:
(1) To inspect property held by the fiduciary including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with any environmental law affecting the property and to take necessary or reasonable action, including reporting to the appropriate regulatory authority as may be otherwise required by law, with respect to any actual or potential violation of any environmental law affecting property held by the fiduciary;

(2) To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body;

(3) To refuse to accept property in trust or estate if the fiduciary determines any property to be donated or conveyed to the trust or estate is contaminated by any hazardous substance or hazardous waste or is being used or has been used for any activity directly or indirectly involving any violation of an environmental law which is reasonably likely to result in liability to the fiduciary: Provided, That the refusal does not limit the liability of the trust or estate or its income or principal, for any liability the trust or estate may otherwise have in connection with any environmental law, but only to limit the liability of the fiduciary. Property not accepted into a trust or estate by the fiduciary may revert to the grantor or its successors or pass by the laws of descent and distribution, as may otherwise be provided by law;

(4) To settle or compromise at any time any and all claims against the trust or estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate;
(5) To decline to serve as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between it and its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust or estate because of the type or condition of assets held therein.

(c) The fiduciary is entitled to charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized herein against the income or principal of the trust or estate.

(d) A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary’s compliance with any environmental law, specifically including any reporting requirement under the law.

(e) Neither the acceptance by the fiduciary of property nor the failure by the fiduciary to inspect property creates any inference as to whether or not there is or may be any liability under any environmental law with respect to the property.

ARTICLE 6. INVESTMENTS BY FIDUCIARIES.

§44-6-1. Fiduciaries to put money out at interest.

(a) Executors, administrators, guardians, curators, committees or trustees may, by direction of the circuit court of the county, where they were appointed or qualified, put out at interest all moneys in their hands which they are or may be lawfully required to retain, whether it belongs to minors, legatees or other person or persons, upon security, and for the length of time, as the court will allow, and if the security so taken, bona fide and without fraud, proves insufficient, it is the loss of the beneficiaries entitled thereto; and it is the duty of the executors, administrators, guardians, curators,
committees or trustees, in cases where the estates in their hands may be materially benefited thereby, to make application to the circuit court for direction, and in case they neglect so to do they are accountable for the interest that might have been made thereby; but if no person who may be willing to take the money at interest, giving the security, can be found by the executors, administrators, guardians, curators, committees or trustees, then the executors, administrators, guardians, curators, committees or trustees, in those cases, are accountable for the principal money only, until it can be put out at interest as aforesaid; but in any case where executors, administrators, guardians, curators, committees or trustees use the money of the estates which come to their hands, they are accountable not only for the principal, but also for the interest thereon.

(b) This section does not apply to a trust or a trustee.

§44-6-2. In what securities fiduciaries may invest trust funds.

(a) In bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United
States is distinctly pledged to provide for the payment of the principal and interest thereof, including, but not by way of limitation, bonds or debentures issued under the "Farm Credit Act Amendments of 1986" (12 U. S. C. §2001 et. seq.), as amended, debentures issued by the Federal National Mortgage Association, securities issued by the Federal Home Loan Bank System; and in bonds, interest-bearing notes and obligations issued, guaranteed or assumed by the "International Bank for Reconstruction and Development" or by the "Inter-American Development Bank" or by the "Asian Development Bank" or by the "African Development Bank";

(b) In bonds or interest-bearing notes or obligations of this state;

(c) In bonds of any state of the United States which has not within ten years previous to the making of the investment defaulted in the payment of any part of either principal or interest on any of its bonds issued by authority of the Legislature of the state;

(d) In the bonds or interest-bearing notes or obligations of any county, district, school district or independent school district, municipality or any other political division of this state that have been issued pursuant to the authority of any law of this state, since May 9, 1917;

(e) In bonds and negotiable notes secured by first mortgage or first trust deed upon improved real estate where the amount secured by the mortgage or trust deed does not at the time of making the same exceed eighty percent of the assessed value, or sixty-six and two-thirds percent of the appraised value as determined by wholly disinterested and independent appraisers, whichever value is the higher, of the real estate covered by the mortgage or trust deed, and when the mortgage or trust deed is accompanied by a satisfactory abstract of title, certificate of title or title insurance policy,
showing good title in the mortgagor when making the mortgage or trust deed, and by a fire insurance policy in an old line company with loss, if any, payable to the mortgagee or trustee as his or her interest may appear: Provided, That the rate of interest upon the above enumerated securities in this subdivision, in which the investments may be made, may not be less than three and one-half percent per annum nor greater than the maximum rate of interest which the bonds or negotiable notes may bear under applicable law: Provided, however, That the provisions herein establishing a minimum rate of interest do not apply to investments in force as of the effective date of this section;

(f) In savings accounts and time deposits of bank or trust companies to the extent that the deposits are insured by the Federal Deposit Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created, if there is an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, That the rate of interest upon the savings accounts or time deposits may not be less than the rate paid other depositors in the bank or trust company;

(g) In shares of state building and loan associations, or federal savings and loan associations, to the extent that the shares are insured by the Federal Savings and Loan Insurance Corporation, or by any other similar federal instrumentality that may be hereafter created: Provided, That there is an instrumentality in existence and available for the purpose, or by bonds of solvent surety companies: Provided, however, That the dividend rate upon the shares may not be less than the rate paid to other shareholders in the associations; and

(h) In other securities of corporations organized and existing under the laws of the United States, or of the District of Columbia or any state of the United States, including, but not by way of limitation, bonds, debentures, notes, equipment
trust obligations or other evidences of indebtedness and
shares of common and preferred stocks of the corporations
and securities of any open end or closed end management
type investment company or investment trust registered under
the “Federal Investment Company Act” of 1940, as from time
to time amended, which persons of prudence, discretion and
intelligence acquire or retain for their own account, as long
as:

(1) An investment may not be made pursuant to the
provisions of this subdivision which, at the time the
investment is made, will cause the aggregate market value
thereof to exceed fifty percent of the aggregate market value
at that time of all of the property of the fund held by the
fiduciary. Notwithstanding the aforesaid percentage
limitation the cash proceeds of the sale of securities received
or purchased by a fiduciary and made eligible by this
subdivision may be reinvested in any securities of the type
described in this subdivision;

(2) Bonds, debentures, notes, equipment trust obligations
or other evidence of indebtedness of the corporations may not
be purchased under authority of this subdivision unless the
obligations, if other than issues of a common carrier subject
to the provisions of section twenty-a of the “Interstate
Commerce Act”, as amended, are obligations issued,
guaranteed or assumed by corporations which have any
securities currently registered with the Securities and
Exchange Commission; and

(3) Common or preferred stocks, other than bank and
insurance company stocks, may not be purchased under
authority of this subdivision unless currently fully listed and
registered upon an exchange registered with the Securities
and Exchange Commission as a national securities exchange.
A sale or other liquidation of any investment may not be
required solely because of any change in the relative market
value of those investments made eligible by this subdivision
and those made eligible by the preceding subdivisions of this
section. In determining the aggregate market value of the
property of a fund and the percentage of a fund to be invested
under the provisions of this subdivision, a fiduciary may rely
upon published market quotations as to those investments for
which the quotations are available, and upon such valuations
of other investments as in the fiduciary's best judgment seem
fair and reasonable according to available information.

Trust funds received by executors, administrators,
guardians, curators, committees, trustees and other fiduciaries
may be kept invested in the securities originally received by
them, or if the trust funds originally received were stock or
securities of a bank, in shares of stock or other securities (and
securities received as distributions in respect thereof) of a
holding company subject to the federal Bank Holding
Company Act of 1956, as amended, received upon
conversion of, or in exchange for, shares of stock or other
securities of the bank; unless otherwise ordered by a court
having jurisdiction of the matter, as hereinafter provided, or
unless the instrument under which the trust was created
directs that a change of investment be made, and any such
fiduciary is not liable for any loss that may occur by
depreciation of the securities.

This section does not apply where the instrument creating
the trust, or the last will and testament of any testator or any
court having jurisdiction of the matter, specially directs in
what securities the trust funds shall be invested, and every the
court has power specially to direct by order or orders, from
time to time, additional securities in which trust funds may be
invested, and any investment thereof made in accordance
with the special direction is legal, and no executor,
administrator, guardian, curator, committee, trustee or other
fiduciary may be held for any loss resulting in any such case.

This section does not apply to trusts or trustees.
§44-6-11. Application only to executors, administrators, guardians, curators or committees.

The provisions of this article apply only to executors, administrators, guardians, curators or committees, as the case may be, and do not apply to or affect trustees who are governed by the provisions of the West Virginia Uniform Prudent Investor Act in article six-c of this chapter and the West Virginia Uniform Trust Code in chapter forty-four-d of this code.

ARTICLE 6C. UNIFORM PRUDENT INVESTOR ACT.

§44-6C-1. Prudent investor rule.

(a) Except as otherwise provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

(b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust instrument. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust instrument.

§44-6C-2. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(b) A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a
part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, regularity of income and preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(e) A trustee may invest in any kind of property or type of investment consistent with the standards of this article.
34 (f) A trustee who has special skills or expertise, or is
35 named trustee in reliance upon the trustee’s representation
36 that the trustee has special skills or expertise, has a duty to
37 use those special skills or expertise.

38 (g)(1) Unless otherwise directed by the terms of the trust
39 instrument, the duties of a trustee of an irrevocable life
40 insurance trust with respect to acquiring or retaining a
41 contract of insurance upon the life of the grantor, or the lives
42 of the grantor and the grantor’s spouse, do not include a
duty:

44 (A) To determine whether the contract is or remains a
45 proper investment;

46 (B) To exercise policy options available under the
47 contract in the event the policy lapses or is terminated due to
48 failure to pay premiums; or

49 (C) To diversify the contract.

50 (2) A trustee is not liable to the beneficiaries of the trust
51 or to any other party for any loss arising from the absence
52 of those duties upon the trustee.


1 (a) A trustee may delegate investment and management
2 functions that a prudent trustee of comparable skills could
3 properly delegate under the circumstances. The trustee shall
4 exercise reasonable care, skill and caution in:

5 (1) Selecting an agent;

6 (2) Establishing the scope and terms of the delegation,
7 consistent with the purposes and terms of the trust; and
(3) Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

(e) The delegating trustee is not responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and the trustee’s compliance with the scope and specific terms of the delegation.

ARTICLE 7. RESIGNATION OF PERSONAL REPRESENTATIVES AND PROCEDURE UPON RESIGNATION.

§44-7-1. Fiduciary desiring to resign to file petition; summons thereon.

A personal representative or curator desiring to resign his or her trust, may file his or her petition for that purpose in the county commission of the county in which he or she was appointed, stating the names of all persons, so far as known.
by him or her, interested in the estate in his or her hands or
under his or her control, and to which his or her duties as
fiduciary relate, and if any of them are under disability, or
nonresidents of the state; or if there are persons interested in
the estate whose names are unknown, all of these facts, and
the names of the guardians and committees of the persons
under disability, if there are guardians or committees, shall be
stated in the petition. Upon the filing of the petition the clerk
of the court shall issue a summons against all the persons so
named and the guardians and the committees of those under
disability, if they have any, and against "the unknown parties
in interest," if any there are, mentioned in the petition, to
appear before the court on a day to be named in the
summons, which day may be not less than thirty days from
the filing of the petition, and answer the petition, and state to
the court the reasons, if any they have, why the petition
should not be granted. If any of the persons interested reside
in another county in this state, the summons as to them shall
be directed and sent by mail by the clerk to the sheriff of that
county to be served and returned by him or her; and as to the
persons named in the petition who reside out of this state, or
who cannot by the use of due diligence be found, and as to
the unknown parties, an order of publication shall be awarded
against them, which shall be published or posted and
published, as in cases of appointment and qualification of
personal representatives.

§44-7-4. Application only to personal representatives, curators
or minor guardians.

The provisions of this article apply only to personal
representatives, curators and minor guardians, as the case
may be, and do not apply to or affect guardians and
conservators of an adult protected person who are governed
by the provisions of the Guardian and Conservatorship Act
in chapter forty-four-a of this code or trustees who are
governed by the provisions of the West Virginia Uniform
Trust Code in chapter forty-four-d of this code.
CHAPTER 44D. UNIFORM TRUST CODE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


This chapter may be cited as the “West Virginia Uniform Trust Code.”

§44D-1-102. Scope.

This chapter applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

§44D-1-103. Definitions.

In this chapter:

(a) “Action,” with respect to an act of a trustee, includes a failure to act.

(b) “Ascerturable standard” means a standard relating to an individual’s health, education, support or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

(c) “Beneficiary” means a person that:

(1) Has a present or future beneficial interest in a trust, vested or contingent;

(2) In a capacity other than that of trustee, holds a power of appointment over trust property; or

(3) A charitable organization that is expressly designated in the terms of the trust instrument to receive distributions.
(d) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection (a), section four hundred five, article four of this chapter.

(e) "Conservator" means a person appointed by the court to administer the estate and financial affairs of a protected person.

(f) "Court" means a court of this state having proper jurisdiction under section two hundred three, article two of this chapter, and venue under section two hundred four of that article.

(g) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

(h) "Environmental law" means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.

(i) "Grantor" means a person, including a testator, who creates, or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(j) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person or a parent to make decisions regarding the support, care, education, health and welfare of a minor. The term does not include a guardian ad litem.

(k) "Interested person" means heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust or the property in a
trust. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(l) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(m) "Internal Revenue Code" or "Internal Revenue Code of 1986" means the Internal Revenue Code of 1986 codified in 26 U.S.C. 1 et seq., as amended and in effect on January 1, 2011.

(n) "Jurisdiction" with respect to a geographic area, includes a state or country.

(o) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, unincorporated nonprofit association, charitable organization, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

(p) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(1) Exercisable by a trustee and limited by an ascertainable standard; or

(2) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(q) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable or any interest therein.
(r) “Qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined:

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or

(3) Would be a distributes or permissible distributes of trust income or principal if the trust terminated on that date.

(s) “Revocable,” as applied to a trust, means revocable by the grantor without the consent of the trustee or a person holding an adverse interest.

(t) “Spendthrift provision” means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(u) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(v) “Terms of a trust” means the manifestation of the grantor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(w) “Trust instrument” means a writing, including a will, executed by the grantor that contains terms of the trust, including any amendments thereto.
(x) “Trustee” includes an original, additional, successor trustee, and a cotrustee.

(y) “Writing” or “written instrument” does not include an electronic record or electronic signature as provided in chapter 39A of this code.

§44D-1-104. Knowledge.

(a) Subject to subsection (b) of this section, a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual’s regular duties or the individual knows a matter involving the trust would be materially affected by the information.
§44D-1-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust instrument, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this chapter except:

1. The requirements for creating a trust;

2. The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust;

3. The requirement that a trust and its terms have a purpose that is lawful, not contrary to public policy, and possible to achieve;

4. The power of the court to modify or terminate a trust under section four hundred ten through four hundred sixteen, article four of this chapter;

5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article five of this chapter;

6. The power of the court under section seven hundred two, article seven of this chapter to require, dispense with, or modify or terminate a bond;

7. The power of the court under subsection (b), section seven hundred eight, article seven of this chapter, to adjust a trustee’s compensation specified in the terms of the trust instrument which is unreasonably low or high;

8. The effect of an exculpatory term under section one thousand eight, article ten of this chapter;
(9) The rights under sections one thousand ten through one thousand thirteen, article ten of this chapter, of a person other than a trustee or beneficiary;

(10) Periods of limitation for commencing a judicial proceeding;

(11) The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice; and

(12) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in sections two hundred three and two hundred four, article two of this chapter.

§44D-1-106. Common law of trusts; principles of equity.

The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of this state.


The meaning and effect of the terms of a trust are determined by:

(1) The law of the jurisdiction designated in the terms of the trust instrument, including terms which may provide for change of jurisdiction from time to time, unless the designation of that jurisdiction’s law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

(2) In the absence of a controlling designation in the terms of the trust instrument, the law of the jurisdiction in which the grantor is domiciled when the trust becomes irrevocable.
§44D-1-108. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee’s principal place of business is located in or a trustee is a resident of the designated jurisdiction; or

(2) All or part of the administration occurs in the designated jurisdiction.

(b) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, may transfer the trust’s principal place of administration to another state or to a jurisdiction outside of the United States that is appropriate to the trust’s purposes, its administration and the interests of the beneficiaries.

(c) When the proposed transfer of a trust’s principal place of administration is to another state or to a jurisdiction outside of the United States, the trustee shall notify the current beneficiaries of a proposed transfer of a trust’s principal place of administration not less than sixty days before initiating the transfer. A corporate trustee that maintains a place of business in West Virginia where one or more trust officers are available on a regular basis for personal contact with trust customers and beneficiaries has not transferred its principal place of administration merely because all or a significant portion of the administration of the trust is performed outside West Virginia. The notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;
(2) The address and telephone number at the new location at which the trustee can be contacted;

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the proposed transfer is anticipated to occur; and

(5) The date, not less than sixty days after the giving of the notice, by which the current beneficiary must notify the trustee of an objection to the proposed transfer.

(d) The authority of a trustee under this section to transfer a trust’s principal place of administration to another state or to a jurisdiction outside the United States terminates if a current beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(e) In connection with a transfer of the trust’s principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust instrument or appointed pursuant to section seven hundred four, article seven of this chapter.

§44D-1-109. Methods and waiver of notice.

(a) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person’s last known place of residence or place of business, or a properly directed electronic message.
(b) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

(c) Notice under this chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

(d) Notice of a judicial proceeding shall be given as provided in the applicable rules of civil procedure.

§44D-1-110. Others treated as qualified beneficiaries.

(a) Whenever notice to qualified or current beneficiaries of a trust is required under this chapter, the trustee shall also give notice to any other beneficiary who has sent the trustee a request for notice.

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter.

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section four hundred eight or four hundred nine, article four of this chapter has the rights of a qualified beneficiary under this chapter.

§44D-1-111. Nonjudicial settlement agreements.

(a) For purposes of this section “interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.
(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, including, but not limited to:

(1) The interpretation or construction of the terms of the trust;

(2) The approval of a trustee’s report or accounting or waiver of the preparation of a trustee’s report or accounting;

(3) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

(4) The resignation or appointment of a trustee and the determination of a trustee’s compensation;

(5) Transfer of a trust’s principal place of administration;

(6) Liability or release from liability of a trustee for an action relating to the trust;

(7) Questions relating to the property or an interest in property held as part of a trust;

(8) An investment decision, policy, plan or program of the trustee;

(9) The grant to a trustee of any necessary or desirable power;

(10) The exercise or nonexercise of any power by a trustee;

(11) An action or proposed action by or against a trust or trustee;
(12) The modification or termination of a trust; and

(13) Any other matter concerning the administration of a trust.

(c) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(d) Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in article three of this chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.


The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

ARTICLE 2. JUDICIAL PROCEEDINGS.

§44D-2-201. Role of court in administration of trust.

(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

(b) A trust is not subject to continuing judicial supervision unless ordered by the court.
(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.


(a) By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.

§44D-2-203. Subject-matter jurisdiction.

The court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

§44D-2-204. Venue.

(a) Except as otherwise provided in subsection (b) of this section, venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is or will be located unless the proceeding is to recover land, determine title to the land or subject it to a debt, determine the county where the land or any part may
be, or, if the trust is created by will and the estate is not yet closed, in the county in which the decedent’s estate is being administered.

(b) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, or if the trust is created by will, in the county in which the decedent’s estate was or is being administered.

ARTICLE 3. REPRESENTATION.

§44D-3-301. Representation; basic effect.

(a) Notice to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective.

(c) Except as otherwise provided in section four hundred eleven, article four of this chapter, and section six hundred two, article six of this chapter, a person who under this article may represent a grantor who lacks capacity may receive notice and give a binding consent on the grantor’s behalf.

(d) A grantor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under subsection (a), section four hundred eleven, article four of this chapter.
§44D-3-302. Representation by holder of general testamentary power of appointment.

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

§44D-3-303. Representation by fiduciaries and parents.

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator or guardian of the protected person may represent and bind the estate that the fiduciary controls;

(2) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(3) A trustee may represent and bind the beneficiaries of the trust;

(4) A personal representative of a decedent’s estate may represent and bind persons interested in the estate;

(5) A parent may represent and bind the parent’s minor or unborn child if a conservator or guardian for the child has not been appointed; and

(6) If a minor or unborn person is not otherwise represented under this section, a grandparent or more remote ancestor may represent and bind that minor or unborn person.
§44D-3-304. Representation by person having substantially identical interest.

1 Unless otherwise represented, a minor, incapacitated or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question or dispute between the representative and the person represented.

§44D-3-305. Appointment of representative.

1 (a) If the court determines in a judicial proceeding that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated or unborn individual, or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

9 (b) A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

13 (c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

ARTICLE 4. CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST.

§44D-4-401. Methods of creating trust.

1 (a) A trust may be created by:
(1) Transfer of property to another person as trustee during the grantor's lifetime by the grantor or by will or by other disposition taking effect upon the grantor's death;

(2) Declaration by the owner of property that the owner holds identifiable property as trustee;

(3) Exercise of a power of appointment in favor of a trustee; or

(4) An order of the court.

(b) During the grantor's lifetime, a trust may also be created by the grantor's agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor's behalf or which expressly authorizes the agent to fund an existing trust of the grantor on the grantor's behalf.

§44D-4-402. Requirement for creation.

(a) Except as created by an order of the court, a trust is created only if:

(1) The grantor has capacity to create a trust;

(2) The grantor indicates an intention, in writing, to create the trust;

(3) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in section four hundred eight of this article; or

(C) A trust for a noncharitable purpose, as provided in section four hundred nine, article four of this chapter;
(4) The trustee has duties to perform; and

(5) The same person is not the sole trustee and sole beneficiary.

(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

(d) Notwithstanding the foregoing:

(1) In accordance with the provisions of section eight, article three of chapter forty-one of this code, a trust is valid regardless of the existence, value or character of the corpus of the trust.

(2) The grantor need not have capacity to create a trust if the trust is created in writing during the grantor’s lifetime by the grantor’s agent acting in accordance with authority granted under a durable power of attorney which expressly authorizes the agent to create a trust on the grantor’s behalf.

(e) A trust is not invalid or terminated, and title to trust assets is not merged, because the trustee or trustees are the same person or persons as the beneficiaries of the trust.

§44D-4-403. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:
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5 (1) The grantor was domiciled, had a place of abode, or
6 was a national;

7 (2) A trustee was domiciled or had a place of business; or

8 (3) Any trust property was located.

§44D-4-404. Trust purposes.

1 A trust may be created only to the extent its purposes are
2 lawful, not contrary to public policy and possible to achieve.
3 A trust and its terms must be for the benefit of its
4 beneficiaries.

§44D-4-405. Charitable purposes; enforcement.

1 (a) A charitable trust may be created for the relief of
2 poverty, the advancement of education or religion, the
3 promotion of health, governmental or municipal purposes or
4 other purposes the achievement of which is beneficial to the
5 community.

6 (b) If the terms of a charitable trust do not indicate a
7 particular charitable purpose or beneficiary, upon petition by
8 the trustee or a person having a special interest in the trust,
9 the court may select one or more charitable purposes or
10 beneficiaries. The selection must be consistent with the
11 grantor's intention to the extent it can be ascertained.

12 (c) The grantor of a charitable trust, trustee or a person
13 having a special interest in the trust, may maintain a
14 proceeding to enforce the trust.

15 (d) This section is not intended to override the provisions
16 of section four, article one, chapter thirty-five of this code,
17 concerning conveyances, devises, dedications, gifts or
18 bequests to religious organizations and to the extent there is
19 a conflict with that section, this section controls.
§44D-4-406. Creation of trust induced by fraud, duress or undue influence.

A trust is void to the extent its creation was induced by fraud, duress or undue influence. As used in this section, "fraud," "duress" and "undue influence" have the same meanings for trust validity purposes as they have for purposes of determining the validity of a will.

§44D-4-407. Oral trusts unenforceable.

Oral trusts are unenforceable in this state.

§44D-4-408. Trust for care of animal.

(a) A trust may be created to provide for the care of an animal alive during the grantor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the grantor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust instrument or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not required for the intended use must be distributed to the grantor, if then living, otherwise to the grantor's successors in interest.
§44D-4-409. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in section four hundred eight of this article, or by the provisions of article five-a, chapter thirty-five of this code, or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than the period set forth in section one, article one-a, chapter thirty-six of this code.

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust instrument or, if no person is so appointed, by a person appointed by the court.

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust instrument, property not required for the intended use must be distributed to the grantor, if then living, otherwise to the grantor’s successors in interest.

§44D-4-410. Modification or termination of trust; proceedings for approval or disapproval.

(a) In addition to the methods of termination prescribed by sections four hundred eleven through four hundred fourteen, article four of this chapter, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.
(b) A proceeding to approve or disapprove a proposed modification or termination under sections four hundred eleven through four hundred sixteen of this article, or trust combination or division under section four hundred seventeen of this article, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section four hundred eleven of this article may be commenced by the grantor. The grantor of a charitable trust may maintain a proceeding to modify the trust under section four hundred thirteen of this article.

§44D-4-411. Modification or termination of noncharitable irrevocable trust by consent.

(a) If, upon petition, the court finds that the grantor and all beneficiaries consent to the modification or termination of a noncharitable irrevocable trust, the court shall approve the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust. A grantor’s power to consent to a trust’s modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust instrument; by the grantor’s conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the grantor’s guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.
(c) A spendthrift provision in the terms of the trust instrument is presumed to constitute a material purpose of the trust.

(d) Upon termination of a trust under subsection (a) or (b) of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

(e) If all of the beneficiaries do not consent to a proposed modification or termination of the trust under subsection (a) or (b) of this section, the modification or termination including any distributions of the trust property, may be approved by the court if the court is satisfied that:

(1) If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a beneficiary who does not consent will be adequately protected.

§44D-4-412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

(a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the grantor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the grantor’s probable intention.

(b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust’s administration.
(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

§44D-4-413. Cy pres.

(a) Except as otherwise provided in subsection (b) of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

(1) The charitable trust does not fail, in whole or in part;

(2) The charitable trust property does not revert to the grantor or the grantor's successors in interest; and

(3) Upon petition by a trustee or a person having a special interest in the trust, the court shall apply cy pres to fulfill as nearly as possible the grantor's charitable intention, whether it be general or specific.

(b) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection (a) of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

(1) The charitable trust property is to revert to the grantor and the grantor is still living; or

(2) Fewer than twenty-one years have elapsed since the date of the trust's creation.

§44D-4-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of a noncharitable trust property having a total value less than $100,000 may terminate the trust, without the necessity of court approval, if the trustee
concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

§44D-4-415. Reformation to correct mistakes.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the grantor’s intention if it is proved by preponderance of the evidence that both the grantor’s intent and the terms of the trust instrument were affected by a mistake of fact or law, whether in expression or inducement.

§44D-4-416. Modification to achieve grantor’s tax objectives.

To achieve the grantor’s tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the grantor’s probable intention. The court may provide that the modification has retroactive effect.

§44D-4-417. Combination and division of trusts.

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.
ARTICLE 5. CREDITOR’S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

§44D-5-501. Rights of beneficiary’s creditor or assignee.

To the extent a beneficiary’s interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary’s interest in a trust by execution or other process against the present or future distributions to or for the benefit of the beneficiary. The court may limit the award to relief as appropriate under the circumstances.

§44D-5-502. Spendthrift provision.

(a) A spendthrift provision contained in a trust instrument is valid if it contains language substantially to the effect that it restrains both voluntary and involuntary transfers of a beneficiary’s interest.

(b) A term of a trust instrument providing that the interest of a beneficiary is held subject to a “spendthrift trust,” or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary’s interest.

(c) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

§44D-5-503. Exceptions to spendthrift provision.

(a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another state.
(b) A spendthrift provision is unenforceable against:

(1) A beneficiary’s child, who has a judgment or court order against the beneficiary for child support;

(2) A judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust; and

(3) A claim of this state or the United States to the extent a statute of this state or federal law so provides.

(c) A claimant against whom a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

§44D-5-504. Discretionary trusts; effect of standard.

(a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another state.

(b) Except as otherwise provided in subsection (c) of this section, whether or not a trust instrument contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion, even if:

(1) The discretion is expressed in the form of a standard of distribution; or

(2) The trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:
(1) A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for child support of the beneficiary’s child; and

(2) The court shall direct the trustee to pay to the child, spouse or former spouse such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(e) A creditor may not reach the interest of a beneficiary who is also a trustee or cotrustee or otherwise compel a distribution, if the trustee’s discretion to make distributions for the trustee’s own benefit is limited by an ascertainable standard.

§44D-5-505. Creditor’s claim against grantor.

(a) Whether or not the terms of a trust instrument contain a spendthrift provision, the following rules apply:

(1) During the lifetime of the grantor, the property of a revocable trust is subject to claims of the grantor’s creditors.

(2) During the lifetime of the grantor, with respect to an irrevocable trust, a creditor or assignee of the grantor may reach the maximum amount that can be distributed to or for the grantor’s benefit. If a trust has more than one grantor, the amount the creditor or assignee of a particular grantor may reach may not exceed the grantor’s interest in the portion of the trust attributable to that grantor’s contribution.
(3) After the death of a grantor, and subject to the grantor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the grantor's death is subject to claims of, to the extent the grantor's probate estate is inadequate to satisfy them:

(A) The costs and expenses of administration of the grantor's estate;

(B) Reasonable funeral expenses;

(C) Debts and taxes with preference under federal law;

(D) Unpaid child support which is due and owing at the time of the decedent's death;

(E) Debts and taxes with preference under other laws of the State of West Virginia;

(F) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation for persons attending the decedent during his or her last illness; and

(G) All other claims.

(b) For purposes of this section:

(1) During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the grantor of a revocable trust to the extent of the property subject to the power; and

(2) Upon the lapse, release or waiver of the power, the holder is treated as the grantor of the trust only to the extent the value of the property affected by the lapse, release or waiver exceeds the greater of the amount specified in Section
§44D-5-506. Overdue distribution.

(a) In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust instrument, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if:

(1) The discretion is expressed in the form of a standard of distribution; or

(2) The terms of the trust instrument authorizing a distribution couple language of discretion with language of direction.

(b) Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

§44D-5-507. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

ARTICLE 6. REVOCABLE TRUSTS.

§44D-6-601. Capacity of grantor of revocable trust.

The capacity required to create, amend, revoke or add property to a revocable trust, or to direct the actions of the
trustee of a revocable trust, is the same as that required to
make a will.

§44D-6-602. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the
trust is irrevocable, the grantor may revoke or amend the
trust. This subsection does not apply to a trust created under
an instrument executed before the effective date of this
chapter.

(b) Unless the terms of a trust provide otherwise, if a
revocable trust is created or funded by more than one grantor:

(1) To the extent the trust consists of community
property, the trust may be revoked by either spouse acting
alone but may be amended only by joint action of both
spouses;

(2) To the extent the trust consists of property other than
community property, each grantor may revoke or amend the
trust with regard the portion of the trust property attributable
to that grantor’s contribution; and

(3) Upon the revocation or amendment of the trust by
fewer than all of the grantors, the trustee shall promptly
notify the other grantors of the revocation or amendment.

(c) The grantor may revoke or amend a revocable trust:

(1) By substantially complying with a method provided
in the terms of the trust instrument; or

(2) If the terms of the trust instrument do not provide a
method, by any other method manifesting clear and
convincing evidence of the grantor’s intent.
Upon revocation of a revocable trust, the trustee shall deliver the trust property as the grantor directs.

A grantor’s powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust instrument or the power.

A conservator of the grantor or, if no conservator has been appointed, a guardian of the grantor may exercise a grantor’s powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

A trustee who does not know that a trust has been revoked or amended is not liable to the grantor or grantor’s successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

No trust which is otherwise irrevocable because the trust instrument expressly provides or states that the trust is irrevocable is or becomes revocable by the grantor because the grantor is the sole beneficiary of the trust.

(a) While a trust is revocable and the grantor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the grantor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a grantor of a revocable trust under this section to the extent of the property subject to the power.
§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) (1) An interested person may commence a judicial proceeding to contest the validity of a trust that was revocable at the grantor’s death within the earlier of:

(A) Two years after the grantor’s death; or

(B) Six months after the trustee has sent the beneficiary a copy of the trust instrument and a notice informing the beneficiary of the trust’s existence, of the trustee’s name and address, and of the time allowed for commencing a proceeding.

(2) Notwithstanding subdivision (1) of this subsection:

(A) If the beneficiary is under the age of eighteen years or is a convict or mentally incapacitated person, the beneficiary has one year after he or she becomes of age or the disability ceases to commence a judicial proceeding; and

(B) If the beneficiary resided out of the state at the time the beneficiary received the trust instrument and notice, the beneficiary has one year after receipt thereof to commence the judicial proceeding.

(b) Upon the death of the grantor of a trust that was revocable at the grantor’s death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust instrument. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding.
proceeding is commenced within sixty days after the contestant sent the notification.

(c) A beneficiary of a trust that was revocable at the grantor’s death that is determined to have been invalid is liable to return any distribution received.

ARTICLE 7. OFFICE OF THE TRUSTEE.

§44D-7-701. Accepting or declining trusteeship.

(a) Except as otherwise provided in subsection (c) of this section, a person designated as trustee accepts the trusteeship:

(1) By substantially complying with a method of acceptance provided in the terms of the trust instrument; or

(2) If the terms of the trust instrument do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship including by signing a written instrument so stating.

(b) A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

(c) A person designated as trustee, without accepting the trusteeship, may:

(1) Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the grantor or, if the grantor is dead or lacks capacity, to a qualified beneficiary; and
(2) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other proper purpose.

§44D-7-702. Trustee's bond.

(a) A trustee shall give bond to secure performance of the trustee's duties only if a bond is required by the terms of the trust instrument or if the court having jurisdiction of the trust finds that a bond is needed to protect the interests of the beneficiaries and the court has not dispensed with the requirement of a bond.

(b) The court may specify the amount of a bond, its liabilities and whether sureties are necessary. The court may modify or terminate a bond at any time upon petition by the grantor, if living, a qualified beneficiary, or cotrustee.

(c) In accordance with the provisions of section eighteen, article four, chapter thirty-one-a of this code, a regulated financial-service institution authorized to exercise trust powers in this state need not give bond, even if required by the terms of the trust instrument.

§44D-7-703. Cotrustees.

(a) Unless otherwise provided in the terms of the trust instrument, cotrustees who are unable to reach a unanimous decision may act by majority decision. Unless otherwise provided by the trust instrument, when a dispute arises among trustees as to the exercise or nonexercise of any of their powers and there is no agreement by a majority of them, the court in its discretion upon petition filed by any of the trustees, the grantor, if living, a qualified beneficiary, or any interested person, may direct the exercise or nonexercise of the power as it considers necessary for the best interest of the trust.
(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust, unless otherwise provided in the terms of the trust instrument.

(c) A cotrustee must participate in the performance of a trustee’s function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation of a function previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Each trustee shall exercise reasonable care to:

(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notifies any
cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

§44D-7-704. Vacancy in trusteeship; appointment of successor.

(a) A vacancy in a trusteeship occurs if:

(1) A person designated as trustee rejects the trusteeship;

(2) A person designated as trustee cannot be identified or does not exist;

(3) A trustee resigns;

(4) A trustee is disqualified or removed;

(5) A trustee dies; or

(6) A guardian or conservator is appointed for an individual serving as trustee.

(b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled, unless otherwise provided in the terms of the trust instrument. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

(c) Unless otherwise provided in the terms of the trust instrument, a vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(1) By a person designated in the terms of the trust instrument to act as successor trustee;

(2) By a person appointed by unanimous written agreement of the qualified beneficiaries; or
(3) By a person appointed by the court having jurisdiction of the trust.

(d) Unless otherwise provided, a vacancy in a trusteeship of a charitable trust that is required to be filled shall be filled in the following order of priority:

(1) By a person designated in the terms of the trust to act as successor trustee;

(2) By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust instrument if the Attorney General of West Virginia either concurs in writing to the selection or fails to make a written objection to the selection within ninety days after receiving by certified or registered mail a notice of the selection by the charitable organizations; or

(3) By a person appointed by the court having jurisdiction over the trust.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may upon petition of the grantor, a qualified beneficiary, or a cotrustee appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

§44D-7-705. Resignation of trustee.

(a) Unless otherwise provided in the terms of the trust instrument, a trustee may resign without court approval by giving at least thirty days’ notice in writing to the grantor, if living, all of the qualified beneficiaries, and all cotrustees, if any.

(b) A trustee may resign with the approval of the court having jurisdiction of the trust upon the filing of a petition for
such purpose which joins as respondents the grantor, if living, all of the qualified beneficiaries, and all cotrustees, if any. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Unless otherwise provided by order of the court, any liability of a resigning trustee or of any sureties on the trustee’s bond for acts or omissions of the trustee is not discharged or affected by the trustee’s resignation.

§44D-7-706. Removal of trustee.

(a) The grantor, a cotrustee or a beneficiary may upon petition request the court to remove a trustee, or a trustee may be removed by the court on its own initiative. In the case of a charitable trust, the Attorney General of West Virginia shall also have standing to petition the court to remove a trustee.

(b) The court may remove a trustee if the court finds by a preponderance of the evidence that:

(1) The trustee has committed a serious breach of trust;

(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) Because of unfitness, unwillingness or persistent failure of the trustee to administer the trust effectively, removal of the trustee best serves the interests of the beneficiaries; or

(4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, removal of the trustee best serves the interests of all of the beneficiaries, removal is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
(c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under subsection (b), section one thousand one, article ten of this chapter as may be necessary to protect the trust property or the interests of the beneficiaries.

§44D-7-707. Delivery of property by former trustee.

(a) Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

(b) A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee or other person entitled to it.

(c) Title to all trust property shall be owned and vested in any successor trustee, upon acceptance of the trusteeship, without any conveyance, transfer or assignment by the prior trustee.

§44D-7-708. Compensation of trustee.

(a) If the terms of the trust instrument do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

(b) If the terms of the trust instrument specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may upon petition of the grantor, qualified beneficiary, the trustee or cotrustee, if any, may allow more or less compensation if:
§ 44D-7-709. Reimbursement of expenses.

(a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

(1) Expenses that were properly incurred in the administration of the trust; and

(2) To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

(b) An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.

§ 44D-8-801. Duty to administer trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust and invest the trust assets in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter. In administering, managing and investing trust assets, the trustee shall comply with the provisions of the Uniform Prudent Investor Act in article six-c, chapter forty-four of this code, and the Uniform Principal and Income Act in chapter forty-four-b of this code.
§44D-8-802. Duty of loyalty.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section one thousand twelve, article ten of this chapter, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee’s own personal account or which is otherwise affected by a conflict between the trustee’s fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

1. The transaction was authorized by the terms of the trust instrument;
2. The transaction was approved by the court having jurisdiction over the trust;
3. The beneficiary did not commence a judicial proceeding within the time allowed by section one thousand five, article ten of this chapter;
4. The beneficiary consented to the trustee’s conduct, ratified the transaction or released the trustee in compliance with section one thousand nine, article ten of this chapter; or
5. The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

1. The trustee’s spouse;
(2) The trustee’s descendants, siblings, parents or their spouses;

(3) An agent or attorney of the trustee; or

(4) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee’s best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage beyond the normal commercial advantage from such transaction is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee’s individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust, mutual fund or other investment or financial product to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Uniform Prudent Investor Act in article six-c, chapter forty-four of this code. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company, investment trust, mutual fund or other investment or financial product, or by the affiliated entity sponsoring, selling or providing the service, and the compensation may be in addition to the
compensation the trustee is receiving as a trustee if the trustee notifies the persons entitled to receive a copy of the trustee’s annual report as provided hereunder of the rate and method by which that compensation was determined and of any subsequent changes to the rate or method of compensation.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(2) Payment of reasonable compensation to the trustee;

(3) A transaction between a trust and another trust, decedent’s estate or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(4) A deposit of trust money in a regulated financial service institution operated by the trustee; or

(5) An advance by the trustee of money for the protection of the trust.

(i) The court having jurisdiction over the trust may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.
§44D-8-803. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries’ respective interests.

§44D-8-804. Prudent administration.

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

§44D-8-805. Costs of administration.

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

§44D-8-806. Trustee’s skills.

A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, shall use those special skills or expertise.

§44D-8-807. Delegation by trustee.

(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

   (1) Selecting an agent;

   (2) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust instrument; and
(3) Periodically reviewing the agent’s actions in order to monitor the agent’s performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

c) A trustee who complies with subsection (a) of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

(e) The delegating trustee is not responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and the trustee’s compliance with the scope and specific terms of the delegation.

§44D-8-808. Powers to direct.

(a) While a trust is revocable, the trustee may follow a direction of the grantor that is contrary to the terms of the trust instrument.

(b) If the terms of a trust instrument confer upon a person other than the grantor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust instrument or the trustee knows the attempted exercise
would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) The terms of a trust instrument may confer upon a trustee or other person a power to direct the modification or termination of the trust.

(d) A person, other than a beneficiary, who holds a power to direct is presumptively a fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that results from the holder’s breach of a fiduciary duty.

§44D-8-809. Control and protection of trust property.

A trustee shall take reasonable steps to take control of and protect the trust property.

§44D-8-810. Recordkeeping and identification of trust property.

(a) A trustee shall keep adequate records of the administration of the trust.

(b) A trustee shall keep trust property separate from the trustee’s own property.

(c) Except as otherwise provided in subsection (d) of this section, a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.
§44D-8-811. Enforcement and defense of claims.

1 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

§44D-8-812. Collecting trust property.

1 A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

§44D-8-813. Duty to inform and report.

(a) A trustee shall keep the current beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall within a reasonable time respond to a beneficiary’s request for information related to the administration of the trust.

(b) A trustee:

(1) Upon request of a beneficiary, shall within a reasonable time furnish to the beneficiary a copy of the trust instrument;

(2) Within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee’s name, address and telephone number;

(3) Within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the grantor or otherwise, shall notify the qualified beneficiaries of the trust’s existence, of the identity of the grantor or grantors, of
the right to request a copy of the trust instrument, and of the
right to a trustee’s report as provided in subsection (c) of this
section; and

(4) Shall notify the qualified beneficiaries within a
reasonable time in advance of any change in the method or
rate of the trustee’s compensation.

(c) A trustee shall send to the distributees or permissible
distributees of trust income or principal, and to other
qualified or nonqualified beneficiaries who request it, at least
annually and at the termination of the trust, a report of the
trust property, liabilities, receipts, and disbursements,
including the source and amount of the trustee’s
compensation, a listing of the trust assets and, if feasible,
their respective market values. Upon a vacancy in a
trusteeship, unless a cotrustee remains in office, a report shall
be sent to the qualified beneficiaries by the former trustee. A
personal representative, conservator or guardian is
responsible for sending the qualified beneficiaries a report on
behalf of a deceased or incapacitated trustee.

(d) A beneficiary may waive the right to a trustee’s report
or other information otherwise required to be furnished under
this section. A beneficiary, with respect to future reports and
other information, may withdraw a waiver previously given.

(e) Subdivisions (2) and (3), subsection (b) of this section
do not apply to a trustee who accepts a trusteeship before the
effective date of this chapter, to an irrevocable trust created
before the effective date of this chapter, or to a revocable
trust that becomes irrevocable before the effective date of this
chapter.

§44D-8-814. Discretionary powers; tax savings.

(a) Notwithstanding the breadth of discretion granted to
a trustee in the terms of the trust instrument, including the use
of such terms as “absolute,” “sole” or “uncontrolled,” the
trustee shall exercise a discretionary power in good faith and
in accordance with the general and specific terms and
purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d) of this section, and unless
the terms of the trust instrument expressly indicate that a rule
in this subsection does not apply:

(1) A person other than a grantor who is a beneficiary and
trustee of a trust that confers on the trustee a power to make
discretionary distributions to or for the trustee’s personal
benefit may exercise the power only in accordance with an
ascertainable standard; and

(2) A trustee may not exercise a power to make
discretionary distributions to satisfy a legal obligation of
support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by
subsection (b) of this section may be exercised by a majority
of the remaining trustees whose exercise of the power is not
so limited or prohibited. If the power of all trustees is so
limited or prohibited, the court having jurisdiction may
appoint a special fiduciary with authority to exercise the
power.

(d) Subsection (b) of this section does not apply to:

(1) A power held by the grantor’s spouse who is the
trustee of a trust for which a marital deduction, as defined in
Section 2056(b)(5) or Section 2523(e) of the Internal
Revenue Code;

(2) Any trust during any period that the trust may be
revoked or amended by its grantor; or
(3) A trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code.

§44D-8-815. General powers of trustee.

(a) A trustee, without authorization by the court having jurisdiction, may exercise:

(1) Powers conferred by the terms of the trust instrument; or

(2) Except as limited by the terms of the trust instrument:

(A) All powers over the trust property which an unmarried competent owner has over individually owned property;

(B) Any other powers appropriate to achieve the proper investment, management and distribution of the trust property; and

(C) Any other powers conferred by this code.

(b) The exercise of a power is subject to the fiduciary duties prescribed by this article.

§44D-8-816. Specific powers of trustee.

Without limiting the authority conferred by section eight hundred fifteen of this article, a trustee has the powers enumerated in the provisions of section three, article five-a, chapter forty-four of this code.

§44D-8-817. Distribution upon termination.

(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for
distribution. The right of any beneficiary to object to the
proposed distribution terminates if the beneficiary does not
notify the trustee of an objection within sixty days after the
proposal was sent but only if the proposal informed the
beneficiary of the right to object and of the time allowed for
objection.

(b) Upon the occurrence of an event terminating or
partially terminating a trust, the trustee shall proceed
expeditiously to distribute the trust property to the persons
entitled to it, subject to the right of the trustee to retain a
reasonable reserve for the payment of debts, expenses and
taxes.

(c) A release by a beneficiary of a trustee from liability
for breach of trust is invalid to the extent:

(1) It was induced by improper conduct of the trustee; or

(2) The beneficiary, at the time of the release, did not
know of the beneficiary’s rights or of the material facts
relating to the breach.

ARTICLE 9. UNIFORM PRUDENT INVESTOR ACT.


The Uniform Prudent Investor Act is contained in article
six-c, chapter forty-four of this code.

ARTICLE 10. LIABILITY OF TRUSTEES AND RIGHTS OF
PERSONS DEALING WITH TRUSTEE.

§44D-10-1001. Remedies for breach of trust.

(a) A violation by a trustee of a duty the trustee owes to
a beneficiary is a breach of trust.
(b) To remedy a breach of trust that has occurred or may occur, the court may:

1. Compel the trustee to perform the trustee’s duties;
2. Enjoin the trustee from committing a breach of trust;
3. Compel the trustee to redress a breach of trust by paying money, restoring property or other means;
4. Order a trustee to account;
5. Appoint a special fiduciary to take possession of the trust property and administer the trust in accordance with the limitations and directions as ordered by the court;
6. Suspend the trustee;
7. Remove the trustee as provided in section seven hundred six, article seven of this chapter;
8. Reduce or deny compensation to the trustee;
9. Subject to section one thousand twelve of this article, void an act of the trustee, impose a lien or a constructive trust on trust property or trace trust property wrongfully disposed of and recover the property or its proceeds; or
10. Order any other appropriate relief.

§44D-10-1002. Damages for breach of trust.

(a) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

1. The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or
(2) The profit the trustee made by reason of the breach.

(b) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§44D-10-1003. Damages in absence of breach.

Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

§44D-10-1004. Attorney’s fees and costs.

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney’s fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

§44D-10-1005. Limitation of action against trustee.

(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.
(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative of the beneficiary knows of the potential claim or should know of the existence of the potential claim.

(c) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after the first to occur of:

1. The removal, resignation or death of the trustee;
2. The termination of the beneficiary’s interest in the trust;
3. The termination of the trust; or
4. The time when the beneficiary knew or should have known of the breach of trust.

§44D-10-1006. Reliance on trust instrument.

A trustee who acts in reasonable reliance on the terms of the trust instrument as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

§44D-10-1007. Event affecting administration or distribution.

If the happening of an event, including, but not limited to, marriage, divorce, performance of educational requirements, attaining a specific age or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the trustee’s lack of knowledge.
§44D-10-1008. Exculpation of trustee.

(a) A term of a trust instrument relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

(1) Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

(2) Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the grantor.

(b) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless:

(1) The trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the grantor; or

(2) The grantor was represented by an attorney not employed by the trustee with respect to the trust and the attorney provided independent legal advice.

§44D-10-1009. Beneficiary’s consent, release or ratification.

(a) A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) The consent, release or ratification of the beneficiary was induced by improper conduct of the trustee; or
(2) At the time of the consent, release or ratification, the beneficiary did not know of the beneficiary’s rights or of the material facts relating to the breach.

(b) A beneficiary is also bound to the extent an approval is given by a person authorized to represent the beneficiary as provided in article three of this chapter.

§44D-10-1010. Limitation on personal liability of trustee.

(a) Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the trustee’s fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee’s fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee’s fiduciary capacity, whether or not the trustee is personally liable for the claim.

§44D-10-1011. Interest as general partner.

(a) Except as otherwise provided in subsection (c) of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust’s
acquisition of the interest if the fiduciary capacity was disclosed in the contract. The requirement of disclosure in the contract is satisfied if the trustee signs the contract, or signs another writing which is contemporaneously delivered to the other parties to the contract, in a manner that clearly evidences that the trustee executed the contract in a fiduciary capacity.

(b) Except as otherwise provided in subsection (c) of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(c) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee’s spouse or one or more of the trustee’s descendants, siblings or parents or the spouse of any of them.

(d) If the trustee of a revocable trust holds an interest as a general partner, the grantor is personally liable for contracts and other obligations of the partnership as if the grantor were a general partner.

§44D-10-1012. Protection of person dealing with trustee.

(a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee’s powers is protected from liability as if the trustee properly exercised the power.

(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee’s powers or the propriety of their exercise.
9 (c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

11 (d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.

16 (e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

§44D-10-1013. Certification of trust.

1 (a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:

5 (1) That the trust exists and the date the trust instrument was executed;

7 (2) The identity of the grantor;

8 (3) The identity and address of the currently acting trustee;

10 (4) The powers of the trustee;

11 (5) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;

13 (6) The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;
(7) The trust's taxpayer identification number; and

(8) The manner of taking title to trust property.

(b) A certification of trust may be signed or otherwise authenticated by any trustee.

c) A certification of trust must state that the trust has not been revoked, modified or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

d) A certification of trust need not contain the dispositive terms of a trust.

e) A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust instrument may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court having jurisdiction over the trust
determines that the person did not act in good faith in demanding the trust instrument.

(i) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

(j) Nothing in this section expands, limits or otherwise affects the provisions contained in section four-a, article one, chapter thirty-six of this code pertaining to memoranda of trust.

ARTICLE 11. MISCELLANEOUS PROVISIONS.

§44D-11-1101. Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§44D-11-1102. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of the records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

§44D-11-1103. Severability clause.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or
application, and to this end the provisions of this chapter are
severable.

§44D-11-1104. Effective date.

This chapter takes effect on July 1, 2011.

§44D-11-1105. Application to existing relationships.

(a) Except as otherwise provided in this chapter:

(1) This chapter applies to all trusts created before, on, or
    after July 1, 2011;

(2) This chapter applies to all judicial proceedings
    concerning trusts commenced on or after July 1, 2011;

(3) This chapter applies to judicial proceedings
    concerning trusts commenced before July 1, 2011, unless the
    court finds that application of a particular provision of this
    chapter would substantially interfere with the effective
    conduct of the judicial proceedings or prejudice the rights of
    the parties, in which case the particular provision of this
    chapter does not apply and the superseded law applies;

(4) Any rule of construction or presumption provided in
    this chapter applies to trust instruments executed before July
    1, 2011, unless there is a clear indication of a contrary intent
    in the terms of the trust instrument; and

(5) An act done before July 1, 2011 is not affected by this
    chapter.

(b) If a right is acquired or vested before July 1, 2011, or
    if a right is extinguished or barred upon the expiration of a
    prescribed period that has commenced to run under any other
    statute before July 1, 2011, that right or statute continues to
    apply even if the statute has been repealed or superseded.
CHAPTER 67

(Com. Sub. for H. B. 2464 - By Delegates Miley, Boggs, Fragale, Poling, Morgan, Hunt, Fleischauer, Moore, Ellem, Hamilton and Lane)

[Amended and again passed, in an effort to meet the objections of the Governor, March 18, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §6B-2-6 and §6B-2-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6B-3-2 of said code, all relating to the Ethics Act generally; requiring public servants and spouses to disclose additional information on financial disclosure statements including, with limited exceptions, certain spousal information; defining a spouse; directing the ethics commission to publish and make available to the public notice of delinquent filing of financial statements; providing that the ethics commission publish financial statements in certain circumstances and clarifying existing requirements; and prohibiting certain public employees and public servants from registering as a lobbyist during and for a year following state government employment.

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

That §6B-2-6 and §6B-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that 6B-3-2 be amended and reenacted, all to read as follows:
§6B-2-6. Financial disclosure statement; filing requirements.

(a) The financial disclosure statement shall be filed on the first day of February of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the Ethics Commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;

(2) All members of state boards, commissions and agencies appointed by the governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

A person who is required to file a financial disclosure statement under this section by virtue of becoming an elected or appointed public official whose office is described in subdivision (1), (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date established herein or who assumes the office after the filing
date, shall file a financial disclosure statement for the
previous twelve months no later than thirty days after the date
on which the person assumes the duties of the office, unless
the person has filed a financial disclosure statement with the
commission during the twelve-month period before he or she
assumed office.

(b) A candidate for public office shall file a financial
disclosure statement for the previous calendar year with the
state ethics commission no later than ten days after he or she
files a certificate of candidacy, but in all circumstances, not
later than ten days prior to the election, unless he or she has
filed a financial disclosure statement with the state ethics
commission during the previous calendar year.

The Ethics Commission shall file a duplicate copy of the
financial disclosure statement required in this section in the
following offices within ten days of the receipt of the
candidate's statement of disclosure:

(1) Municipal candidates in municipalities which have
opted, by ordinance, to be covered by the disclosure
provisions of this section, in the office of the clerk of the
municipality in which the candidate is seeking office;

(2) Legislative candidates in single county districts and
candidates for a county office or county school board in the
office of the clerk of the county commission of the county in
which the candidate is seeking office;

(3) Legislative candidates from multi-county districts and
congressional candidates in the office of the clerk of the
county commission of the county of the candidate’s
residence.

After a ninety-day period following any election, the
clerks who receive the financial disclosure statements of
candidates may destroy or dispose of those statements filed
by candidates who were unsuccessful in the election.
(c) No candidate for public office may maintain his or her place on a ballot and no public official may take the oath of office or enter or continue upon his or her duties or receive compensation from public funds unless he or she has filed a financial disclosure statement with the state ethics commission as required by the provisions of this section.

(d) The Ethics Commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for a reasonable period of time: Provided, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.

(e) No person shall fail to file a statement required by this section.

(f) No person shall knowingly file a materially false statement that is required to be filed under this section.

(g) The Ethics Commission shall publish either on the internet or by printed document made available to the public, a list of all persons who have violated any ethics commission’s financial disclosure statement filing deadline.

(h) The Ethics Commission shall, in addition to making all financial disclosure statements available for inspection upon request:

(1) Publish on the internet all financial disclosure statements filed by members of the Legislature and candidates for legislative office, elected members of the executive department and candidates for the offices that constitute the executive department, and members of the Supreme Court of Appeals and candidates for the Supreme Court of Appeals, commencing with those reports filed on or after January 1, 2012; and
(2) Publish on the internet all financial disclosure statements filed by any other person required to file such financial disclosure statements, as the commission determines resources are available to permit the Ethics Commission to make such publication on the internet. The commission shall redact financial disclosure statements published on the internet to exclude from publication personal information such as signatures, home addresses and mobile and home telephone numbers.

§6B-2-7. Financial disclosure statement; contents.

(a) The financial disclosure statement required under this article shall contain the following information:

(1) The name, residential and business addresses of the person filing the statement and of his or her spouse and all names under which the person or the person’s spouse, or both, do business. For purposes of this section, the word “spouse” means any individual who is legally married to and cohabits with the person filing the statement.

(2) For each position of employment held by the person filing the statements and the person’s spouse:

(A) The name of the employer;

(B) The address of the employer;

(C) The job title; and

(D) A general description of job duties.

(3) The name and address of each business in which the person filing the statement or that person’s spouse has or had in the last year an interest of at least $10,000 at fair market value.
(A) For the purposes of this subsection, business interests include, but are not limited to, an interest in:

(i) Non-publicly owned businesses;

(ii) Publicly or privately traded stocks, bonds or securities, including those held in self-directed retirement accounts; and

(iii) Commercial real estate.

(B) For the purposes of this subsection, business interests do not include mutual funds, specific holdings in mutual funds or retirement accounts.

(4) The name, address, and brief description of a nonprofit organization in which the individual or spouse is a director or officer.

(5) The identification, by category, of every source of income over $1,000, including distributions from retirement accounts received during the preceding calendar year, in his or her own name or by any other person for his or her use or benefit, by the person filing the statement, or that person’s spouse, and a brief description of the nature of the income producing activities for which the income was received. This subdivision does not require a person filing the statement who derives income from a business, profession or occupation, or who’s spouse derives income from a business, profession or occupation, to disclose the individual sources and items of income that constitute the gross income of that business, profession or occupation.

(6) If the person filing the statement, or that person’s spouse, profited or benefitted in the year before the date of filing from a contract for the sale of goods or services to a state, county, municipal or other local governmental agency either directly or through a partnership, corporation or
association in which the person, or that person's spouse, owned or controlled more than ten percent, the person shall describe the nature of the goods or services and identify the governmental agencies which purchased the goods or services.

(7) Each interest group or category listed below doing business in this state with which the person filing the statement, did business or furnished services and from which the person filing the statement, or that person's spouse, received more than twenty percent of his or her gross income during the preceding calendar year. The groups or categories are electric utilities, gas utilities, telephone utilities, water utilities, cable television companies, interstate transportation companies, intrastate transportation companies, oil or gas retail, wholesale, exploration, production or drilling companies, banks, savings and loan associations, loan or finance companies, manufacturing companies, surface mining companies, deep mining companies, mining equipment companies, chemical companies, insurance companies, retail companies, beer, wine or liquor companies or distributors, recreation related companies, timbering companies, hospitals or other health care providers, trade associations, professional associations, associations of public employees or public officials, counties, cities or towns, labor organizations, waste disposal companies, wholesale companies, groups or associations promoting gaming or lotteries, advertising companies, media companies, race tracks, promotional companies, lobbying, economic development entities, state government, construction, information technology and legal service providers.

(8) The names of all persons, excluding that person's immediate family, parents or grandparents residing or transacting business in the state to whom the person filing the statement, owes, on the date of execution of this statement in the aggregate in his or her own name or in the name of any other person more than $5,000: Provided, That nothing
herein requires the disclosure of a mortgage on the person's primary and secondary residences or of automobile loans on automobiles maintained for the use of the person's immediate family, or of a student loan, nor does this section require the disclosure of debts which result from the ordinary conduct of the person's business, profession or occupation or of debts of the person filing the statement to any financial institution, credit card company or business, in which the person has an ownership interest: Provided, however, That the previous proviso does not exclude from disclosure loans obtained pursuant to the linked deposit program provided in article one-a, chapter twelve of this code or any other loan or debt incurred which requires approval of the state or any of its political subdivisions.

(9) The names of all persons except immediate family members, parents and grandparents residing or transacting business in the state (other than a demand or savings account in a bank, savings and loan association, credit union or building and loan association or other similar depository) who owes on the date of execution of this statement more than, in the aggregate, $5,000 to the person filing the statement, either in his or her own name or to any other person for his or her use or benefit. This subdivision does not require the disclosure of debts owed to the person filing the statement which debts result from the ordinary conduct of the person's business, profession or occupation or of loans made by the person filing the statement to any business in which the person has an ownership interest.

(10) The source of each gift, including those described in subdivision (2), subsection (c), section five of this article, having a value of over $100, received from a person having a direct and immediate interest in a governmental activity over which the person filing the statement has control, shall be reported by the person filing the statement when the gift is given to that person in his or her name or for his or her use or benefit during the preceding calendar year: Provided, That
any person filing a statement required to be filed pursuant to this section is not required to report those gifts described in subdivision (2), subsection (c), section five of this article that are otherwise required to be reported by a registered lobbyist under section four, article three of this chapter: Provided, however, That gifts received by will or by virtue of the laws of descent and distribution, or received from one’s spouse, child, grandchild, parents or grandparents, or received by way of distribution from an inter vivos or testamentary trust established by the spouse or child, grandchild or by an ancestor of the person filing the statement are not required to be reported. As used in this subdivision, any series or plurality of gifts which exceeds in the aggregate the sum of $100 from the same source or donor, either directly or indirectly, and in the same calendar year are regarded as a single gift in excess of that aggregate amount.

(11) The name of each for-profit business of which the person filing the statement, or that person’s spouse, serves as a member of the board of directors or an officer, as well as a general description of the type of business.

(12) The name and business address of any child or step-child who is eighteen years or older and employed by state, county or municipal government.

(13) The signature of the person filing the statement.

(b) Notwithstanding the provisions of subsection (a) of this section, any person serving on a board, commission or agency for which no compensation, other than expense reimbursement, is statutorily authorized, is not required to disclose the financial information relating to his or her spouse as required by subdivisions three or five of subsection (a) of this section if:

(1) His or her spouse, or a business with which he or she is associated, are not regulated by, do not have a contract
with, or do not receive any grants or appropriations from, the
board, the commission or agency on which the person filing
the statement serves. A business with which a filer’s spouse
is associated means a business in which the person or an
immediate family member is a director, officer, owner,
employee, compensated agent, or holder of stock which
constitutes five percent or more of the total outstanding
stocks of any class; and

(2) The filer executes a signed statement on a form
provided by the commission verifying these facts.

ARTICLE 3. LOBBYISTS.

§6B-3-2. Registration of lobbyists.

(a) Before engaging in any lobbying activity, or within
thirty days after being employed as a lobbyist, whichever
occurs first, a lobbyist shall register with the Ethics
Commission by filing a lobbyist registration statement. The
registration statement shall contain information and be in a
form prescribed by the Ethics Commission by legislative
rule, including, but not limited to, the following information:

(1) The registrant’s name, business address, telephone
numbers and any temporary residential and business
addresses and telephone numbers used or to be used by the
registrant while lobbying during a legislative session;

(2) The name, address and occupation or business of the
registrant’s employer;

(3) A statement as to whether the registrant is employed
or retained by his or her employer solely as a lobbyist or as
a regular employee performing services for the employer
which include, but are not limited to, lobbying;
(4) A statement as to whether the registrant is employed or retained by his or her employer under any agreement, arrangement or understanding according to which the registrant’s compensation, or any portion of the registrant’s compensation, is or will be contingent upon the success of his or her lobbying activity;

(5) The general subject or subjects, if known, on which the registrant will lobby or employ some other person to lobby in a manner which requires registration under this article; and

(6) An appended written authorization from each of the lobbyist’s employers confirming the lobbyist’s employment and the subjects on which the employer is to be represented.

(b) Any lobbyist who receives or is to receive compensation from more than one person for services as a lobbyist shall file a separate notice of representation with respect to each person compensating him or her for services performed as a lobbyist. When a lobbyist whose fee for lobbying with respect to the same subject is to be paid or contributed by more than one person, then the lobbyist may file a single statement, in which he or she shall detail the name, business address and occupation of each person paying or contributing to the fee.

(c) Whenever a change, modification or termination of the lobbyist’s employment occurs, the lobbyist shall, within one week of the change, modification or termination, furnish full information regarding the change, modification or termination by filing with the commission an amended registration statement.

(d) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the Monday preceding the second Wednesday in January of each odd-
numbered year and failure to do so terminates his or her
authorization to lobby. Until the registration is renewed, the
person may not engage in lobbying activities unless he or she
is otherwise exempt under paragraph (B), subdivision (7),
section one of this article.

(e) The following public officers or employees may not,
during or up to one year after the termination of their public
employment or service, be allowed to register as lobbyists:

(1) Members of the Legislature;

(2) Members of the Executive Department as referenced
in article VII, section one of the Constitution of West
Virginia;

(3) Will and pleasure professional employees of the
Legislature under the direct supervision of a member of the
Legislature;

(4) Will and pleasure professional employees of members
of the Executive Department under the direct supervision of
the Executive Department officer and who regularly,
personally and substantially participates in a decision-making
or advisory capacity regarding agency or department policy;

(5) Members of the Supreme Court of Appeals;

(6) Any department secretary of an executive branch
department created by the provisions of section two, article
one, chapter five-f of this code; and,

(7) Heads of any state departments or agencies.
CHAPTER 68

(H. B. 2695 - By Delegates Morgan, Givens and Stephens)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend reenact §5F-2-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §10-5-1, §10-5-2, §10-5-3 and §10-5-4 of said code; and to amend said code by adding thereto a new section, designated §10-5-6, all relating generally to organization and authority of executive branch agencies and departments; relating to the educational broadcasting authority; modifying organizational structure; declaring legislative findings; deleting outdated language; authorizing the authority and its employees to work with certain private nonprofit corporations; authorizing the use of the authority’s property and facilities for fundraising purposes; authorizing the authority to solicit funds for the support of public broadcasting; requiring memoranda of understanding; and providing exemption from disclosure for names of private donors.

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; that §10-5-1, §10-5-2, §10-5-3 and §10-5-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §10-5-6, all to read as follows:
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;

*Clerk's Note: This section was also amended by Com. Sub. for S. B. 241 (Chapter 158) which passed prior to this act and Com. Sub. for S. B. 238 (Chapter 157) which passed subsequent to this act.
(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 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 Service;

(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;

(9) Division of Tourism Commission provided in article two-h, 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 the Water Development Authority 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 administrative support and liaison with the office of the Governor:

(1) Air Quality Board provided in article two, chapter twenty-two-b of this code;

(2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this code;

(3) Environmental Quality Board, or its successor board, provided in article three, chapter twenty-two-b of this code;

(4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;

(5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-c of this code;

(6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this code; and

(7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c of this code.

(f) 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 Education and
the Arts:

(1) Library Commission provided in article one, chapter
ten of this code;

(2) Division of Culture and History provided in article
one, chapter twenty-nine of this code;

(3) Division of Rehabilitation Services provided in
section two, article ten-a, chapter eighteen of this code.

(g) The Educational Broadcasting Authority provided in
article five, chapter ten of this code, is part of the Department
of Education and the Arts for purposes of administrative
support and liaison with the office of the Governor.

(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 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 the
Emergency Medical Services 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.

(i) 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;
Division of Justice and Community Services provided in article nine, chapter fifteen of this code;

Division of Corrections provided in chapter twenty-five of this code;

Fire Commission provided in article three, chapter twenty-nine of this code;

Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-one of this code;

Board of Probation and Parole provided in article twelve, chapter sixty-two of this code.

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 Revenue:

Tax Division provided in chapter eleven of this code;

Racing Commission provided in article twenty-three, chapter nineteen of this code;

Lottery Commission and position of Lottery Director provided in article twenty-two, chapter twenty-nine of this code;

Insurance Commissioner provided in article two, chapter thirty-three of this code;

West Virginia Alcohol Beverage Control Commissioner provided in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a of this code;
(7) Lending and Credit Rate Board provided in chapter forty-seven-a of this code;

(8) Division of Banking provided in article two, chapter thirty-one-a of this code;

(9) The State Budget Office provided in article two of 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.

(k) 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) Public Port Authority provided in article sixteen-b, chapter seventeen of this code.

(l) The Veterans' Council provided in article one, chapter nine-a of this code, including all of the allied, advisory, affiliated or related entities and funds associated with it is, incorporated in and administered as part of the Department of Veteran’s Assistance.

(m) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the position of administrator and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(n) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department and any reference to a division of
a department so transferred and incorporated means a section of the appropriate division of the department.

(p) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-1. Legislative findings; definitions.

(a) The Legislature hereby finds and declares that:

(1) It is the duty of this state to provide the best educational training possible for all its citizens;

(2) The encouragement and use of noncommercial educational radio, television and related media operating and originating from educational broadcasting, closed circuit or related facilities located at a site or sites within this state serving all the citizens of this state on a regional basis or as part of a coordinated statewide plan is a proper, necessary and beneficial means of providing and extending enriched educational instruction to all the citizens of this state at the
(3) Private nonprofit corporations have been established in this state for the sole purpose of raising funds for the financial support of the state's Public Broadcasting Network, which funds have been a vital source of private funding for the authority and enure to the benefit of all the citizens of the state; and

(4) Because of the unique educational benefit conferred upon and available to all the citizens of the state by the efforts of the authority and the private nonprofit corporations established for the sole purpose of providing support for public broadcasting in this state, authorizing the authority to allow its employees to work with, and its property and facilities to be used by, the private nonprofit corporations is a proper, necessary and beneficial means of providing financial support for the state's Public Broadcasting Network.

(b) The following terms have the following meanings:

(1) "Authority" means the Educational Broadcasting Authority established by the provisions of this article.

(2) "Distance learning" means educational courses, seminars, programs and teleconferences transmitted electronically and designed to instruct students who are remote from the instructor or other participants; such courses, seminars, programs and teleconferences may constitute all or a significant portion of a class offered for college or public school credit, or they may be provided for faculty development, continuing professional education, for training employees of governmental agencies, nonprofit organizations, business or industry;

(3) "EdNet" means those individuals identified as an enterprise of the University of West Virginia College of
Graduate Studies and West Virginia State College on behalf of the state college and university systems who are delegated the responsibility for developing, operating and maintaining facilities for the production and transmission of distance learning; and

(4) "SatNet" means those individuals identified as an enterprise of the state college and university systems who are delegated the responsibility for developing and providing distance learning.

§10-5-2. West Virginia Educational Broadcasting Authority; members; organization; officers; employees; meetings; expenses.

(a) The West Virginia Educational Broadcasting Authority is continued as a public benefit corporation. The Authority shall consist of eleven voting members, who shall be residents of the state, including:

(1) The Governor or designee;

(2) The State Superintendent of Schools;

(3) One member of the West Virginia Board of Education to be selected by it annually;

(4) One member of the West Virginia Higher Education Policy Commission to be selected by it annually; and

(5) Seven members appointed by the Governor by and with the advice and consent of the Senate for overlapping terms of seven years, one term expiring each year.

(b) Not less than one appointive member shall come from each congressional district. Any vacancy among the appointed members shall be filled by the Governor by appointment for the unexpired term.
(c) Employees of noncommercial broadcasting stations in West Virginia are not eligible for appointment to the Authority.

(d) The authority shall annually select a member to serve as the chair. The authority shall annually select one of its public members as vice chair and shall appoint a secretary who need not be a member of the Authority and who shall keep records of its proceedings.

(e) The authority shall appoint the executive director and fix his or her salary. The executive director is responsible for managing and administering the daily functions of the authority and for performing all other functions necessary to the effective operation of the authority. The authority is authorized to establish offices for the proper performance of its duties.

(f) The authority shall hold at least one annual meeting. The time and place of the meetings shall be established upon its own resolution or at the call of the chairperson of the authority. The members shall serve without compensation but may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.


The authority shall have the power:

1. To act as advisor and consultant to television and radio stations concerning noncommercial educational programs supported by federal, state, county, city or private funds;
(2) To cooperate with and assist all local and state educational institutions in planning and development of the use of educational radio, television and related media;

(3) To promote and coordinate the use of these media for noncommercial educational purposes;

(4) To construct, maintain and operate educational broadcasting, closed circuit or related facilities located at a suitable site or sites within this state including, without limitation thereby, production centers, broadcasting stations and an audio-video microwave system for a statewide broadcasting network connecting such communities or stations as may be designated by the authority;

(5) To acquire in the name of the state for the use and benefit of the authority by purchase, lease or agreement, any property, both real and personal, and any interest in such property necessary to carry out the provisions of this article;

(6) To apply for and receive any license from the appropriate federal agency necessary to operate any educational broadcasting, closed circuit or related facility;

(7) To supervise and approve the origination and transmission of all noncommercial educational radio, television and related media programs in this state which would be carried through the facilities of a state network;

(8) To employ such personnel as may be necessary to operate and maintain any facility created under the provisions of this article, and to work with private nonprofit corporations to raise funds for the financial support of the state's public broadcasting network;

(9) To lease from communications common carriers and use such transmission channels as may be necessary or, if it
determines it could more economically construct and
maintain such transmission channels, it may design,
construct, maintain and operate the same, including an audio-
video microwave network;

(10) To sue and be sued, plead and be impleaded;

(11) To contract and be contracted with, including the
power to enter into contracts with any person, firm or
corporation, including any like authority of neighboring
states; and shall have the authority, within state regulations,
to enter into program royalty and distribution contracts and
receive moneys for these purposes: Provided, That any
proceeds from such contracts shall be used by the authority
for noncommercial purposes only;

(12) To have and use a corporate seal;

(13) To promulgate reasonable rules and regulations to
carry out the provisions of this article in accordance with the
provisions of article three, chapter twenty-nine-a of the code;
and

(14) To perform such other services in behalf of
noncommercial educational radio, television and related
media as it may consider to be in the best interest of the state,
including the use of the authority's employees, property and
facilities for the purpose of raising funds for the support of
public broadcasting.

§10-5-4. Funds; right of state agencies, etc., to contribute to
authority.

(a) The authority may solicit, apply for and receive
appropriations, gifts, bequests or grants from any agency of
the United States government, any agency of the State of
West Virginia, any municipality or county within this state,
any school board or college or university supported in whole
or in part by this state or any other person, firm, partnership,
association or corporation, within or without this state, and
any agency of the State of West Virginia, any municipality or
county within this state, or any school board or college or
university supported in whole or in part by this state is hereby
authorized and empowered to make appropriations or grants
to the authority, to assist in achieving the public purpose of
the authority.

(b) All such funds shall be deposited with the State
Treasurer of West Virginia or with a private nonprofit
corporation established for the sole purpose of providing
support for public broadcasting in this state which has
entered into a memorandum of understanding with the
authority pursuant to the provisions of section six of this
article, and used exclusively for carrying out the provisions
of this article: Provided, That any appropriations, gifts,
bequests or grants received by the authority with any
restriction or restrictions on the use thereof shall be expended
by the authority in accordance with such restriction or
restrictions.

§10-5-6. Cooperation with private nonprofit corporations.

(a) In furtherance of its mission and fulfillment of its
duties, the authority is expressly authorized to allow its
employees to work with, and its property and facilities to be
used by, private nonprofit corporations established for the
sole purpose of providing support for public broadcasting in
this state.

(b) To document the implementation of subsection (a) of
this section, the authority shall enter into memoranda of
understanding with private nonprofit corporations established
for the sole purpose of providing support for public
broadcasting in this state, to delineate the rights and
responsibilities of the parties.
(c) Notwithstanding any provision in this code to the contrary, the names of individual donors to the authority or to a private nonprofit corporation established for the sole purpose of providing support for public broadcasting in this state are not subject to the provisions of chapter twenty-nine-b of this code.

CHAPTER 69

(Com. Sub. for H. B. 2986 - By Delegates Hartman, Michael, Williams, Crosier, Shaver, D. Campbell and Romine)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §20-3-5 of the Code of West Virginia, 1931, as amended, relating to forest fire seasons; modifying prohibited and permissible fire times and forest fire seasons; revising the procedure for obtaining a burning permit; establishing permit fees for certain entities; exempting agriculture from permit fees; setting forth fire control requirements; and establishing criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

That §20-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-5. Forest fire seasons; prohibited and permissible fires; burning permits and fees; fire control measures; criminal and civil penalties.

1 (a) Forest fire seasons. -- March 1 through May 31, and October 1 through December 31 are designated as forest fire seasons. During any fire season, a person may set on fire or cause to be set on fire any forest land, or any grass, grain, stubble, slash, debris, or other inflammable materials only between five o’clock p.m. and seven o’clock a.m., at which time the fire must be extinguished.

(b) Permissible fires during forest fire seasons. -- The following attended fires are permitted without a burning permit unless there is a burning ban in effect:

1. Small fires set for the purpose of food preparation, or providing light or warmth around which all grass, brush, stubble, or other debris has been removed for a distance of ten feet from the fire; and

2. Burning conducted at any time when the ground surrounding the burning site is covered by one inch or more of snow.

(c) Burning permits. -- The director or his or her designee may issue burning permits authorizing fires during forest fire seasons that are otherwise prohibited by this section. The permits shall state the requisite conditions and time frame to prevent danger from the fire to life or property.

1. Permit fees. -- Entities required to pay a permit fee are those engaged in commercial, manufacturing, public utility, mining and like activities. Agricultural activities are exempt from paying the permit fee. The permit fee is $125 per site and shall be deposited into the Division of Forestry Fund (3081) to be used to administer the provisions of this section.
The permit fee covers the fire season during which it is issued.

(2) Noncompliance with any condition of the permit is a violation of this section. Any permit which was obtained through willful misrepresentation is invalid and violates this section.

(3) Permit holders shall take all necessary and adequate precautions to confine and control fires authorized by the permit. Failure to take action is a violation of this section and is justification for the director to revoke the permit.

(d) Fire control. --

(1) With approval of the Governor, the director may prohibit the starting of and require the extinguishment of fire in any designated area, including fires permitted by this section.

(2) With approval of the Governor, the director may designate any forest area as a danger area, prohibit entry, and declare conditional uses and prohibited areas of the forest by proclamation at any time of the year. The proclamation shall be furnished to newspapers, radio stations and television stations that serve the designated area and shall become effective after twenty-four hours. The proclamation remains in effect until the director, with the approval of the Governor, terminates it. The order shall designate the time of termination, and notice of the order shall be furnished to each newspaper, radio station and television station that received a copy of the proclamation.

(3) Burning is not permitted by this section until all inflammable material has been removed from around the material to be burned and a safety strip of at least ten feet is established to ensure that the fire will not escape.
(e) **Criminal and civil penalties.** -- A person or entity that violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than $100 and not more than $1,000 for each violation. In addition to fines and costs, a person or entity convicted of a violation of this section shall pay a $200 civil penalty to the division within sixty days. The civil penalty shall be collected by the court in which the person is convicted and forwarded to the division and deposited in the Division of Forestry Fund (3081) to be used to administer the provisions of this section.

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**CHAPTER 70**

(Com. Sub. for S. B. 460 - By Senators Laird, Williams, D. Facemire and Fanning)

[Passed March 10, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 4, 2011.]

AN ACT to amend and reenact §15-10-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1A-4 of said code; and to amend and reenact §20-7-1 of said code, all relating to clarifying that Division of Forestry natural resources police officers are under the control and direction of the Director of the Division of Forestry; permitting the director to enter into memorandums of understanding with other law-enforcement agencies; and clarifying the duties of the director.

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

That §15-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §19-1A-4 of said code be amended
and reenacted; and that §20-7-1 of said code be amended and reenacted, all to read as follows:

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, a county sheriff or the Director of the Division of Forestry.

(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 ordinances, and includes 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, although those institutions may not be considered law-enforcement agencies. The term includes
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 is not a law-enforcement
agency.

(4) "Head of campus police" means the superintendent or
administrative head of state or local law-enforcement officers
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.

(5) "Head of the rangers of the Hatfield-McCoy Regional
Recreation Authority" means the superintendent or
administrative head of state or local law-enforcement officers
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.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-4. Additional duties of the Director of the Division of
Forestry generally.

(a) The director shall:

(1) Develop, promote and advance the growth of the
forest products industries of this state;

(2) Cooperate with educational institutions, development
agencies, and private and public organizations to promote the
expansion of the forest products industries of this state in
local and global markets;

(3) Conduct research on marketing and developing forest
products and forest products industries; conserving,
managing, and utilizing the state's forest land and its multiple
uses; and
improving the forestry knowledge and practices of private
landowners.

(4) Compile its findings and recommendations, and
disseminate the results of its research to the public, the forest
products industry, the Governor and the Legislature.

(b) The director has the power to carry out and effectuate
the purposes of this article, article one-b of this chapter, and
article three of chapter twenty of this code, including the
power to:

(1) Accept and use gifts, donations or contributions from
individuals, organizations or corporations, and to acquire by
gift, lease or purchase real estate.

(2) Establish law enforcement practices and procedures
to address the law enforcement requirements of the division;
and

(3) To promulgate rules and regulations, subject to the
provisions of chapter twenty-nine-a of this code.

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.

(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 except as otherwise provided. 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 Director of the Division of Forestry is authorized to appoint and revoke Division of Forestry special natural resources police officers who are full-time civil service personnel who have satisfactorily completed a course of training as required by the Director of the Division of Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources police officers are set forth by the Director of the Division of Forestry pursuant to article three of this chapter, and articles one-a and one-b, chapter nineteen of this code.

(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.
CHAPTER 71

(H. B. 2475 - By Delegates Perry and Ellem)

[Passed February 16, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2011.]

AN ACT to amend and reenact §29B-1-4 of the Code of West Virginia, 1931, as amended, relating to including certain records of the Division of Juvenile Services in the exemptions from disclosure under the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

That §29B-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

1 (a) The following categories of information are specifically exempt from disclosure under the provisions of this article:

4 (1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article or trade or a service or to locate
minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance: Provided, That nothing in this article shall be construed as precluding an individual from inspecting or copying his or her own personal, medical or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examination;

(4) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law-enforcement;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage such record, archive, document or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or
supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared or maintained to prevent, mitigate or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications and network security records, passwords, security codes or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;
Security or disaster recovery plans, risk assessments, tests or the results of those tests;

Architectural or infrastructure designs, maps or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

Codes for facility security systems; or codes for secure applications for such facilities referred to in subdivision (15) of this subsection;

Specific engineering plans and descriptions of existing public utility plants and equipment;

Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222; and

Records of the Division of Corrections, Regional Jail Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be utilized by an inmate or resident to escape a facility, or to cause injury to another inmate, resident or to facility personnel.

As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

1. Intimidate or coerce the civilian population;
(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) Nothing in the provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section should be construed to make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat thereof which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

CHAPTER 72

(Com. Sub. for S. B. 550 - By Senators Klempa, Kessler (Acting President), Wills, Snyder, Yost, Miller, Edgell and D. Facemire)

[Passed March 12, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-23-12d; to amend and reenact §29-22A-6, §29-22A-10 and §29-22A-10c of said code; and to amend and reenact §29-25-19 and §29-25-22 of said code, all relating generally to gaming at licensed racetracks and historic resort hotels; allowing
simulcast pari-mutuel racing and wagering at certain historic resort hotels; defining terms; permitting the issuing of licenses; providing for payments; setting forth conditions for out-of-state tracks and interstate pools; registering of persons conducting wagering activities; setting forth the licensee’s retainage; setting forth the amounts of payments made by a licensee and to whom they are to be paid; making reference to certain federal law; authorizing rulemaking; exempting certain pari-mutuel wagering and equipment, services and supplies from state sales and service taxes; permitting licensees at racetracks and historic resort hotels to establish minimum and maximum wager limits at video lottery terminals; authorizing the use of video lottery terminal bill acceptors for all United States currency; directing up to $10 million each year until June 30, 2020, from racetrack video lottery gross terminal income into a new racetrack modernization fund to be used to subsidize racetrack purchases of new video lottery terminals and related equipment; reducing the required life for capital investments by licensees at racetracks to be reimbursed from the Capital Investment Fund; extending the time for recoupment of expenditures for capital improvements; and directing that two and one-half percent of the gross terminal income of certain historic resort hotels be deposited into a new historic resort hotel modernization fund to be used to subsidize certain historic resort hotel purchases.

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 §19-23-12d; that §29-22A-6, §29-22A-10 and §29-22A-10c of said code be amended and reenacted; and that §29-25-19 and §29-25-22 of said code be amended and reenacted, all to read as follows:
CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12d. Simulcast races and pari-mutuel wagering at authorized gaming facility in historic resort hotel.

(a) Definitions. -- In addition to the words and phrases defined in section three of this article, the words and phrases defined in subsection (b) of this section have the meanings provided in that subsection when used in this section, unless the context in which the term or phrase is used clearly indicates that a different meaning is intended.

(b) Defined words and phrases. --

(1) “Applicant” means any gaming licensee who is licensed under article twenty-five, chapter twenty-nine of this code, applying for a license under this section to conduct pari-mutuel wagering on televised horse and dog races.

(2) “Designated pari-mutuel wagering area” means one or more specific areas of an existing historic resort hotel within which the Racing Commission has authorized the gaming licensee to offer pari-mutuel wagering to patrons of the hotel.

(3) “Gaming facility” means a designated area on the premises of an existing historic resort hotel in which pari-mutuel wagering is conducted by a gaming licensee.

(4) “Gaming licensee” means the licensed operator of a gaming facility under article twenty-five, chapter twenty-nine of this code, who is also licensed under this article to offer pari-mutuel wagering on simulcast horse or dog races or on both types of races.

(5) “Historic resort hotel” means a historic resort hotel as defined in section two, article twenty-five, chapter twenty-nine of this code.
(6) "In-state host track" means a racetrack within this state licensed to conduct horse or dog race meetings at which pari-mutuel wagering is conducted and which is an in-state sending track.

(7) "In-state sending track" means a racetrack in this state licensed under this article to conduct horse or dog race meetings at which pari-mutuel wagering is conducted and which is equipped to conduct simulcasting of those races and intertrack pari-mutuel wagering on those races.

(8) "In-state track" means an in-state host track or an in-state sending track.

(9) "Interstate common pool" means a pari-mutuel pool established within this state or in another state or foreign nation within which is combined comparable pari-mutuel pools of one or more receiving legal wagering entities located in one or more states or foreign nations upon a race at a sending track located within or outside of this state for the purpose of establishing payoff prices in the various jurisdictions.

(10) "Intertrack wagering" means parimutuel wagering on simulcast horse or dog races held at an in-state sending track by patrons at a gaming facility licensed under this section and the electronic transmission of the wagers to the in-state sending track.

(11) "License" means a license issued by the Racing Commission pursuant to this section, including:

(A) A license to operate a gaming facility in which pari-mutuel wagering on simulcast races will be available to patrons;
(B) A license to be employed in connection with the operation of a gaming facility at which pari-mutuel wagering is offered on simulcast races; or

(C) A license to provide management services under a contract to a gaming facility licensed under this article.

(12) “Licensed gaming facility employee” means any individual licensed or registered to be employed by a gaming licensee in connection with the operation of a pari-mutuel wagering pursuant to this section.

(13) “Out-of-state host track” means a racetrack in a jurisdiction other than this state, the operator of which is lawfully permitted to conduct a horse or dog race meeting and which conducts horse or dog races upon which pari-mutuel wagers may be placed.

(14) “Out-of-state track” means an out-of-state host track or an out-of-State sending track.

(15) “Out-of-state sending track” means a racetrack in a jurisdiction other than the State of West Virginia which is lawfully permitted to conduct a horse or dog race meeting and to provide simulcast horse or dog races to a racetrack in this state.

(16) “Participation agreement” means the written contract that provides for the establishment or implementation of simulcasting of horse or dog races and pari-mutuel wagering. Each contract shall set forth the manner in which the pari-mutuel wagering system shall be managed, operated and capitalized, as well as how expenses and revenues shall be allocated and distributed by and among the licensed gaming facility under this section and the other eligible participants in the contract.
(17) "Premises of an existing historic resort hotel" means the historic resort hotel, attachments of the historic resort hotel, and the traditional, immediate grounds of the historic resort hotel.

(18) "Receiving gaming facility" means a licensed racetrack or authorized gaming facility within this state licensed under this article which is equipped to receive simulcast horse and dog races and to conduct intertrack or interstate wagering on those races.

(19) "Simulcast horse or dog races" means horse or dog races conducted at an in-state sending track or an out-of-state sending track, as the case may be, and transmitted simultaneously by picture to the authorized gaming facility licensed under this section or other legal wagering facility.

(20) "Simulcasting" means the simultaneous audio or visual transmission of horse or dog races conducted at in-state and out-of-state racetracks to the gaming facility licensee under this section and pari-mutuel wagering on the results of those races.

(c) Application for license. -- An applicant who is licensed under article twenty-five, chapter twenty-nine of this code may apply to the West Virginia Racing Commission for a license to conduct at the historic resort hotel pari-mutuel wagering on simulcast horse and dog races held at a licensed racetrack in this state, or in another jurisdiction, where pari-mutuel wagering is permitted and conducted. The application shall be submitted in the form prescribed by the commission and provide the information required by the commission.

(d) Issuance of license. -- Within sixty days after an application is filed pursuant to subsection (b) of this section, the Racing Commission shall act on the application and
either grant or deny the application: Provided, That issuance
of the license shall not be unreasonably withheld. Once
issued, the license shall expire, be renewed, revoked or
suspended on the same basis as licenses issued under this
article to racetracks to hold live racing and conduct
pari-mutuel wagering.

(e) Transmission of races from in-state sending tracks.
--- An in-state sending track may transmit to a gaming
licensee under this section all or some of the live races
conducted at the racetrack.

(f) Receipt of simulcasts transmitted from out-of-state
tracks. -- The gaming licensee under this section may, in
accordance with this article, and any applicable rules of the
Racing Commission and with the approval of the
commission, receive at the facility simulcast horse or dog
races, or both, conducted at out-of-state sending tracks.

(g) Payments to sending track. -- The authorized gaming
facility receiving a simulcast horse or dog race from an
out-of-state sending track shall pay to the out-of-state sending
track for the transmission such amount, if any, as may be
agreed upon by the authorized gaming facility and the
out-of-state sending track. The authorized gaming facility
accepting pari-mutuel wagers on a horse or dog race
conducted at an out-of-state host track shall pay to the
out-of-state host track such amount, if any, as provided for in
the agreement, if any, between the authorized gaming facility
and the out-of-state host track.

(h) Conditions for participation by out-of-state tracks;
interstate common pools. --

(1) Except as provided in subdivision (2) of this
subsection, the Racing Commission shall not permit an
out-of-state sending track or an out-of-state host track to
participate in simulcast pari-mutuel wagering or qualify as an out-of-state host track, respectively, unless the pari-mutuel pools respecting the authorized gaming facility under this article are combined with comparable pari-mutuel pools at the out-of-state track. The types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and the percentage of deposits remaining undistributed from a pari-mutuel pool after payment is made to winning ticket holders shall be determined in accordance with the law or policy applicable to the out-of-state track.

(2) With the prior approval of the Racing Commission and the concurrence of the out-of-state track, an authorized gaming facility under this article and receiving tracks or entities in other states other than the state in which the out-of-state track is located may form an interstate common pool. With respect to such interstate common pools, the Racing Commission may approve types of wagering, takeout, distribution of winnings, rules of racing, method of calculating breakage, and a percentage of deposits remaining undistributed from a parimutuel pool after payment is made to winning ticket holders which are different from those which would otherwise be applied in this state but which are consistent for all parties to the interstate common pool.

(i) Licensing or registration of persons conducting wagering-related activities. -- All persons engaged in conducting wagering-related activities at the authorized gaming facility licensed under this section, whether employed directly by the licensee or by a person or entity conducting or operating the simulcast racing and pari-mutuel wagering facility under an agreement with the licensee, shall be licensed or registered in accordance with such rules as may be promulgated by the Racing Commission. All other employees at the simulcast racing and pari-mutuel wagering facility shall be licensed or registered in accordance with
regulations of the Racing Commission: Provided, That when the employee is licensed by the Lottery Commission, that employee must register with the Racing Commission is not required to have a separate license issued by the Racing Commission. The Racing Commission shall have the authority to promulgate rules, regulations and conditions under which all such licenses are issued, or registrations made, in this state and to revoke or refuse to issue a license, or revoke or refuse to accept a registration, if in the opinion of the commission the revocation or refusal is in the public interest: Provided, That the rules, regulations and conditions are uniform in their application to both the gaming facility licensed under this section and racetracks licensed under this article to hold race meetings at which pari-mutuel wagering is conducted. The fees under this subsection may not be in excess of the fee charge for a similar occupational permit or license at a licensed racetrack.

(j) Retainage of gaming licensee. -- The gaming licensee under this section shall retain from pari-mutuel wagers a basic commission of seventeen and twenty-five one-hundredths percent on horse races and a basic commission of sixteen and twenty-five one-hundredths percent on dog races. Breakage shall be calculated and distributed in the manner provided in subsection (c), section nine of this article.

(k) Payments by the licensee. -- Out of the commission retained or deducted by a gaming licensee under the provisions of subsection (j) of this section, the gaming licensee shall pay:

1. One-tenth of one percent into the General Revenue Fund of county commission of the county in which the historic resort hotel is located;
(2) Each day, the daily pari-mutuel pools tax calculated under section ten of this article; and

(3) The amount required to be paid under the terms of a contract with a host licensed racing association in this state or in another jurisdiction that permits pari-mutual wagering on horse or dog races held or conducted in that jurisdiction.

(l) After making the payments required by subsection (k) of this section, the remaining balance may be retained by the gaming licensee under this section.

(m) **Compliance with federal law.** -- The federal Interstate Horseracing Act of 1978, P. L. 95-515, 15 U.S.C. §§3001-3007, is instructive as the legislative intent of this section.

(n) **Promulgation of rules.** -- The Racing Commission shall promulgate rules in accordance with article three, chapter twenty-nine-a of this code, it deems necessary to implement and efficiently administer this section: *Provided,* That the rules are to be consistent with the rules promulgated for pari-mutuel wagering on televised races at the racetracks.

(o) **Pari-mutuel wagers and equipment exempt from sales tax.** -- Notwithstanding any provision of this code to the contrary, the license tax imposed in section ten of this article shall be in lieu of payment of the tax imposed by article fifteen, chapter eleven of this code, on pari-mutuel wagering and on the purchase of equipment, services and supplies directly used in pari-mutual wagering under this section.
CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-6. Video lottery terminal hardware and software requirements; hardware specifications; software requirements for randomness testing; software requirements for percentage payout; software requirements for continuation of video lottery game after malfunction; software requirements for play transaction records.

(a) The commission may approve video lottery terminals and in doing so shall take into account advancements in computer technology, competition from nearby states and the preservation of jobs in the West Virginia pari-mutuel racing industry. In approving video lottery terminals licensed for placement in this state, the commission shall ensure that the terminals meet the following hardware specifications:

1. Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

2. A surge protector shall be installed on the electrical power supply line to each video lottery terminal. A battery or equivalent power back-up for the electronic meters shall be capable of maintaining accuracy of all accounting records and terminal status reports for a period of one hundred eighty days after power is disconnected from the terminal. The power back-up device shall be located within the locked logic board compartment of the video lottery terminal.

3. An on/off switch which controls the electrical current used in the operation of the terminal shall be located in an accessible place within the interior of the video lottery terminal.

4. The operation of each video lottery terminal may not be adversely affected by any static discharge or other electromagnetic interference.
(5) A minimum of one electronic or mechanical coin acceptor or other means accurately and efficiently to establish credits shall be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for any legal United States currency. All coin and bill acceptors shall be approved by the commission prior to use on any video lottery terminal in this state.

(6) Access to the interior of a video lottery terminal shall be controlled through a series of locks and seals.

(7) The main logic boards and all erasable programmable read-only memory chips (EPROMS) are considered to be owned by the commission and shall be located in a separate locked and sealed area within the video lottery terminal.

(8) The cash compartment shall be located in a separate locked area within or attached to the video lottery terminal.

(9) No hardware switches, jumpers, wire posts or any other means of manipulation may be installed which alter the pay tables or payout percentages in the operation of a game. Hardware switches on a video lottery terminal to control the terminal’s graphic routines, speed of play, sound and other purely cosmetic features may be approved by the commission.

(10) Each video lottery terminal shall contain a single printing mechanism capable of printing an original ticket and retaining an exact legible copy within the video lottery terminal or other means of capturing and retaining an electronic copy of the ticket data as approved by the commission: Provided, That such printing mechanism is optional on any video lottery terminal which is designed and equipped exclusively for coin or token payouts. The following information shall be recorded on the ticket when credits accrued on a video lottery terminal are redeemed for cash:
(i) The number of credits accrued;

(ii) Value of the credits in dollars and cents displayed in both numeric and written form;

(iii) Time of day and date;

(iv) Validation number; and

(v) Any other information required by the commission.

(11) A permanently installed and affixed identification plate shall appear on the exterior of each video lottery terminal and the following information shall be on the plate:

(i) Manufacturer of the video lottery terminal;

(ii) Serial number of the terminal; and

(iii) Model number of the terminal.

(12) The rules of play for each game shall be displayed on the video lottery terminal face or screen. The commission may reject any rules of play which are incomplete, confusing, misleading or inconsistent with game rules approved by the commission. For each video lottery game there shall be a display detailing the credits awarded for the occurrence of each possible winning combination of numbers or symbols. A video lottery terminal may allow the amounts of minimum and maximum wagers on a single game to be determined by licensee or permit holder in the exercise of its business judgment subject to the approval of the commission. All information required by this subdivision shall be displayed under glass or another transparent substance. No stickers or other removable devices shall be placed on the video lottery terminal screen or face without the prior approval of the commission.
Communication equipment and devices shall be installed to enable each video lottery terminal to communicate with the commission's central computer system by use of a communications protocol provided by the commission to each permitted manufacturer, which protocol shall include information retrieval and terminal activation and disable programs, and the commission may require each licensed racetrack to pay the cost of a central site computer as a part of the licensing requirement.

All video lottery terminals shall have a security system which temporarily disables the gaming function of the terminal while opened.

Each video lottery terminal shall have a random number generator to determine randomly the occurrence of each specific symbol or number used in video lottery games. A selection process is random if it meets the following statistical criteria:

1. **Chi-square test.** Each symbol or number shall satisfy the ninety-nine percent confidence level using the standard chi-square statistical analysis of the difference between the expected result and the observed result.

2. **Runs test.** Each symbol or number may not produce a significant statistic with regard to producing patterns of occurrences. Each symbol or number is random if it meets the ninety-nine percent confidence level with regard to the runs test for the existence of recurring patterns within a set of data.

3. **Correlation test.** Each pair of symbols or numbers is random if it meets the ninety-nine percent confidence level using standard correlation analysis to determine whether each symbol or number is independently chosen without regard to another symbol or number within a single game play.
(4) Serial correlation test. -- Each symbol or number is random if it meets the ninety-nine percent confidence level using standard serial correlation analysis to determine whether each symbol or number is independently chosen without reference to the same symbol or number in a previous game.

(c) Each video lottery terminal shall meet the following maximum and minimum theoretical percentage payout during the expected lifetime of the terminal:

(1) Video lottery games shall pay out no less than eighty percent and no more than ninety-five percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory.

(2) Manufacturers must file a request and receive approval from the commission prior to manufacturing for placement in this state video lottery terminals programmed for a payout greater than ninety-two percent of the amount wagered. Commission approval shall be obtained prior to applying for testing of the high payout terminals.

(3) Each terminal shall have a probability greater than one in seventeen million of obtaining the maximum payout for each play.

(d) Each video lottery terminal shall be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. If a video lottery terminal is rendered totally inoperable during game play, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction shall be returned to the player.

(e) Each video lottery terminal shall at all times maintain electronic accounting regardless of whether the terminal is being supplied with electrical power. Each meter shall be
capable of maintaining a total of no less than eight digits in length for each type of data required. The electronic meters shall record the following information:

1. Number of coins inserted by players or the coin equivalent if a bill acceptor is being used or tokens or vouchers are used;

2. Number of credits wagered;

3. Number of total credits, coins and tokens won;

4. Number of credits paid out by a printed ticket;

5. Number of coins or tokens won, if applicable;

6. Number of times the logic area was accessed;

7. Number of times the cash door was accessed;

8. Number of credits wagered in the current game;

9. Number of credits won in the last complete video lottery game; and

10. Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected.

(f) No video lottery terminal may have any mechanism which allows the electronic accounting meters to clear automatically. Electronic accounting meters may not be cleared without the prior approval of the commission. Both before and after any electronic accounting meter is cleared, all meter readings shall be recorded in the presence of a commission employee.
(g) The primary responsibility for the control and regulation of any video lottery games and video lottery terminals operated pursuant to this article rests with the commission.

(h) The commission shall, directly or through a contract with a third-party vendor other than the video lottery licensee, maintain a central site system of monitoring the lottery terminals utilizing an on-line or dial-up inquiry. The central site system shall be capable of monitoring the operation of each video lottery game or video lottery terminal operating pursuant to this article and, at the direction of the director, immediately disable and cause not to operate any video lottery game and video lottery terminal. As provided in this section, the commission may require the licensed racetrack to pay the cost of a central site computer as part of the licensing requirement.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer’s permit, the protocol documentation data necessary to enable the respective manufacturer’s video lottery terminals to communicate with the commission’s central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.
(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission:

(1) The commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: Provided, That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery Fund. For the fiscal years ending June 30, 2011 through June 30, 2020, the term "actual costs and expenses" may include transfers of $ up to $10 million in surplus allocations for each fiscal year, as calculated by the commission when it has closed its books for the fiscal year, to the Licensed Racetrack Modernization Fund created by subdivision (2), subsection (b) of this section. For all fiscal years beginning on or after July 1, 2001, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on June 30, 2001, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter; and
A Licensed Racetrack Modernization Fund is created within the lottery fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, 2020, the commission shall deposit such amounts as are available according to subdivision (1), subsection (b) of this section into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack. Each racetrack’s share of each year’s deposit shall be calculated in the same ratio as each racetrack’s apportioned contribution to the four percent administrative costs and expenses allowance provided for in subdivision (1), subsection (b) of this section for that year. For each two dollars expended by a licensed racetrack for facility modernization improvements at the racetrack, having a useful life of three or more years and placed in service after July 1, 2011, the licensed racetrack shall receive $1 in recoupment from its facility modernization account. If the licensed racetrack’s facility modernization account contains a balance in any fiscal year, the unexpended balance from that fiscal year will be available for matching for one additional fiscal year, after which time, the remaining unused balance carried forward shall revert to the lottery fund. For purposes of this section, the term “facility modernization improvements” includes acquisitions of new and unused video lottery terminals and related equipment. Video lottery terminals financed through the recoupment provided in this subdivision must be retained by the licensee in its West Virginia licensed location for a period of not less than five years from the date of initial installation.

The amount resulting after the deductions required by subsection (b) of this section constitutes net terminal income that shall be divided as set out in this subsection. For all fiscal years beginning on or after July 1, 2001, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on June 30, 2001, shall be divided as set out in section ten-b of
this article. The licensed racetrack’s share is in lieu of all
lottery agent commissions and is considered to cover all costs
and expenses required to be expended by the licensed
racetrack in connection with video lottery operations. The
division shall be made as follows:

(1) The commission shall receive thirty percent of net
terminal income, which shall be paid into the State Lottery
Fund as provided in section ten-a of this article;

(2) Until July 1, 2005, fourteen percent of net terminal
income at a licensed racetrack shall be deposited in the
special fund established by the licensee, and used for
payment of regular purses in addition to other amounts
provided for in article twenty-three, chapter nineteen of this
code, on and after July 1, 2005, the rate shall be seven
percent of net terminal income;

(3) The county where the video lottery terminals are
located shall receive two percent of the net terminal income:
Provided, That:

(A) Beginning July 1, 1999, and thereafter, any amount
in excess of the two percent received during the fiscal year
1999 by a county in which a racetrack is located that has
participated in the West Virginia Thoroughbred Development
Fund since on or before January 1, 1999 shall be divided as
follows:

(i) The county shall receive fifty percent of the excess
amount; and

(ii) The municipalities of the county shall receive fifty
percent of the excess amount, said fifty percent to be divided
among the municipalities on a per capita basis as determined
by the most recent decennial United States census of
population; and
(B) Beginning July 1, 1999, and thereafter, any amount in excess of the two percent received during the fiscal year 1999 by a county in which a racetrack other than a racetrack described in paragraph (A) of this proviso is located and where the racetrack has been located in a municipality within the county since on or before January 1, 1999 shall be divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess amount; and

(ii) The municipality shall receive fifty percent of the excess amount; and

(C) This proviso shall not affect the amount to be received under this subdivision by any other county other than a county described in paragraph (A) or (B) of this proviso;

(4) One percent of net terminal income shall be paid for and on behalf of all employees of the licensed racing association by making a deposit into a special fund to be established by the Racing Commission to be used for payment into the pension plan for all employees of the licensed racing association;

(5) The West Virginia Thoroughbred Development Fund created under section thirteen-b, article twenty-three, chapter nineteen of this code and the West Virginia Greyhound Breeding Development Fund created under section ten of said article shall receive an equal share of a total of not less than one and one-half percent of the net terminal income;

(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code.
(7) A licensee shall receive forty-six and one-half percent of net terminal income.

(8)(A) The Tourism Promotion Fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income: Provided, that for the fiscal year beginning July 1, 2003, the tourism commission shall transfer from the Tourism Promotion Fund $5 million of the three percent of the net terminal income described in this section and section ten-b of this article into the fund administered by the West Virginia Economic Development Authority pursuant to section seven, article fifteen, chapter thirty-one of this code, $5 million into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to section six, article four, chapter five-a of this code and $5 million into the Tax Reduction and Federal Funding Increased Compliance Fund; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after June 30, 2004, this three percent of net terminal income and the three percent of net terminal income described in paragraph (B), subdivision (8), subsection (a), section ten-b of this article shall be distributed as provided in this paragraph as follows:

(i) 1.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Tourism Promotion Fund created under section twelve, article two, chapter five-b of this code;

(ii) 0.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Development Office Promotion Fund created under section three-b, article two, chapter five-b of this code;
(iii) 0.5 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Research Challenge Fund created under section ten, article one-b, chapter eighteen-b of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to section six, article four, chapter five-a of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the 2004 Capitol Complex Parking Garage Fund administered by the Department of Administration pursuant to section five-a, article four, chapter five-a of this code;

(9)(A) On and after July 1, 2005, seven percent of net terminal income shall be deposited into the Workers’ Compensation Debt Reduction Fund created in section five, article two-d, chapter twenty-three of this code: Provided, That in any fiscal year when the amount of money generated by this subdivision totals $11 million, all subsequent distributions under this subdivision shall be deposited in the special fund established by the licensee and used for the payment of regular purses in addition to the other amounts provided in article twenty-three, chapter nineteen of this code;

(B) The deposit of the seven percent of net terminal income into the Worker’s Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for
payment of regular purses in addition to the other amounts provided in article twenty-three, chapter nineteen of this code, on and after the first day of the month following the month in which the Governor certifies to the Legislature that:

(i) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired or payment of the debt service provided for; and (ii) that an independent certified actuary has determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety; and

(10) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning July 1, 2003, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The moneys shall be deposited in the State Treasury in the Division of Culture and History special fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than $20,000 of the one percent of net terminal income provided in this subdivision shall be deposited into a special revenue fund in the State Treasury, to be known as the “John F. ‘Jack’ Bennett Fund”. The moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers for the graves of veterans in perpetual cemeteries in this state. The Division of Veterans Affairs shall promulgate legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code specifying the manner in which the funds are spent, determine the ability of the surviving
spouse to pay for the placement of the marker and setting forth the standards to be used to determine the priority in which the veterans grave markers will be placed in the event that there are not sufficient funds to complete the placement of veterans grave markers in any one year, or at all. Upon payment in full of the bonded indebtedness on the veterans memorial, $100,000 of the one percent of net terminal income provided in this subdivision shall be deposited in the special fund in the Division of Culture and History created under section three, article one-i, chapter twenty-nine of this code and be expended by the Division of Culture and History to establish a West Virginia veterans memorial archives within the Cultural Center to serve as a repository for the documents and records pertaining to the veterans memorial, to restore and maintain the monuments and memorial on the capitol grounds: Provided, however, That $500,000 of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created under section five, article four, chapter five-a of this code, to be used for construction and maintenance of a parking garage on the state Capitol Complex; and the remainder of the one percent of net terminal income shall be deposited in equal amounts in the Capitol Dome and Improvements Fund created under section two, article four, chapter five-a of this code and Cultural Facilities and Capitol Resources Matching Grant Program Fund created under section three, article one of this chapter.

(B) For each fiscal year beginning after June 30, 2004:

(i) Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created under section five, article four, chapter five-a of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and
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(ii) The remainder of the one percent of net terminal income and all of the one percent of net terminal income described in paragraph (B), subdivision (9), subsection (a), section ten-b of this article shall be distributed as follows:

The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol Improvements Fund created under section two, article four, chapter five-a of this code and the Cultural Facilities and Capitol Resources Matching Grant Program Fund created under section three, article one, chapter twenty-nine of this code until a total of $1,500,000 is deposited into the Cultural Facilities and Capitol Resources Matching Grant Program Fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements Fund.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack’s failure to maintain this balance, the commission may disable all of a licensed racetrack’s video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code. The interest shall begin to accrue on the date payment is due to the commission.

(e) The commission’s central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee’s video lottery terminals. Each licensed racetrack shall report to the commission any discrepancies between the commission’s statement and each terminal’s mechanical and electronic meter readings. The licensed racetrack is solely responsible
for resolving income discrepancies between actual money
collected and the amount shown on the accounting meters or
on the commission’s billing statement.

(f) Until an accounting discrepancy is resolved in favor
of the licensed racetrack, the commission may make no credit
adjustments. For any video lottery terminal reflecting a
discrepancy, the licensed racetrack shall submit to the
commission the maintenance log which includes current
mechanical meter readings and the audit ticket which
contains electronic meter readings generated by the
terminal’s software. If the meter readings and the
commission’s records cannot be reconciled, final disposition
of the matter shall be determined by the commission. Any
accounting discrepancies which cannot be otherwise resolved
shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the
electronic transfer of funds is not operational or the
commission notifies licensed racetracks that remittance by
this method is required. The licensed racetracks shall report
an amount equal to the total amount of cash inserted into
each video lottery terminal operated by a licensee, minus the
total value of game credits which are cleared from the video
lottery terminal in exchange for winning redemption tickets,
and remit the amount as generated from its terminals during
the reporting period. The remittance shall be sealed in a
properly addressed and stamped envelope and deposited in
the United States mail no later than noon on the day when the
payment would otherwise be completed through electronic
funds transfer.

(h) Licensed racetracks may, upon request, receive
additional reports of play transactions for their respective
video lottery terminals and other marketing information not
considered confidential by the commission. The commission
may charge a reasonable fee for the cost of producing and
mailing any report other than the billing statements.
(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack’s possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

§29-22A-10c. Surcharge; Capital Reinvestment Fund.

(a) For all fiscal years beginning on or after July 1, 2001, there shall be imposed a surcharge of ten percent against the excess of total net terminal income generated from a licensed racetrack for that fiscal year over total net terminal income from that licensed racetrack for the fiscal year ending June 30, 2001.

(b) A Capital Reinvestment Fund is hereby created within the Lottery Fund. Forty-two percent of the surcharge amount attributable to each racetrack shall be retained by the commission and deposited into a separate Capital Reinvestment Account for that licensed racetrack. For each dollar expended by a licensed racetrack for capital improvements at the racetrack, at the location of any amenity associated with the licensed racetrack’s destination resort facility operations, or at adjacent facilities owned by the licensee, having a useful life of three or more years and placed in service after April 1, 2001, the licensed racetrack shall receive $1 in recoupment from its Capital Reinvestment Fund Account: Provided, That in the case of thoroughbred horse tracks, four cents of every dollar in recoupment shall be reserved into a separate account, which shall only be spent on capital improvements and upgrading to facilities used for the housing and care of horses, facilities located inside the perimeter of the racing surface, including the surface thereof, facilities used for housing persons responsible for the care of horses, and that any such capital improvements and
upgrading shall be subject to recoupment under this section only if they have been approved by the Horsemen’s Benevolent and Protective Association acting on behalf of the horsemen: *Provided, however,* That in the case of greyhound race tracks, four cents of every dollar in recoupment shall be spent on capital improvements and upgrading in the kennel area or other areas at the track. If a licensed racetrack’s unrecouped capital improvements exceed its capital reinvestment fund account at the end of any fiscal year, the excess improvements may be carried forward to fifteen subsequent fiscal years.

(c) Fifty-eight percent of the surcharge amount plus any moneys remaining in a racetrack’s Capital Reinvestment Fund Account at the end of any fiscal year shall be deposited in the State Excess Lottery Revenue Fund created in section eighteen-a, article twenty-two of this chapter.

ARTICLE 25. AUTHORIZED GAMING FACILITY.

§29-25-19. Consent to presence of law-enforcement officers; wagering limits; operations and services; posting of betting limits.

(a) *Consent to presence of law-enforcement officers.* -- Any individual entering the gaming facility shall be advised by the posting of a notice or other suitable means of the possible presence of state, county or municipal law-enforcement officers and by entering the gaming facility impliedly consents to the presence of the law-enforcement officers.

(b) *Commission discretion in gaming operations.* -- Video lottery terminals operated at the gaming facility may allow minimum and maximum wagers on a single game the amounts determined by the license in the exercise of its business judgment subject to the approval of the commission.
(1) Subject to the approval of the commission, the gaming facility licensee shall, with respect to West Virginia Lottery table games, establish the following:

(A) Maximum and minimum wagers;

(B) Advertising and promotional activities;

(C) Hours of operation;

(D) The days during which games may be played; and

(2) The commission may consider multiple factors, including, but not limited to, industry standards, outside competition and any other factors as determined by the commission to be relevant in its decision to approve the gaming facility’s determination of those items listed in subdivision (1) of this subsection.

(c) Setting of operations. — Notwithstanding anything to the contrary contained elsewhere in this chapter, the commission may establish the following parameters for commission regulated lottery games of any kind which is played at a licensed gaming facility:

(1) Minimum and maximum payout percentages;

(2) Any probability limits of obtaining the maximum payout for a particular play; and

(3) Limitations on the types and amounts of financial transactions, including extension of credit to a patron, which a gaming facility can enter into with its patrons.

(d) Posting of betting limits. — A gaming facility shall conspicuously post a sign at each West Virginia Lottery table game indicating the permissible minimum and maximum
wagers pertaining at that table. A gaming facility licensee may not require any wager to be greater than the stated minimum or less than the stated maximum. However, any wager actually made by a patron and not rejected by a gaming facility licensee prior to the commencement of play shall be treated as a valid wager.

§29-25-22. Historic Resort Hotel Fund; allocation of adjusted gross receipts; disposition of license fees.

(a) There is hereby created a special fund in the State Treasury which shall be designated and known as the Historic Resort Hotel Fund. Thirty-six percent of the gross terminal income received by the commission under section twenty of this article and thirty percent of the adjusted gross receipts received by the commission under section twenty-one of this article shall be deposited with the State Treasurer and placed in the Historic Resort Hotel Fund. The fund shall be an interest-bearing account with interest to be credited to and deposited in the Historic Resort Hotel Fund.

(b) All expenses of the commission shall be paid from the Historic Resort Hotel Fund, including reimbursement of the State Police for activities performed at the request of the commission in connection with background investigations or enforcement activities pursuant to this article. At no time may the commission’s expenses under this article exceed fifteen percent of the total of the annual revenue received from the licensee under this article, including all license fees, taxes or other amounts required to be deposited in the Historic Resort Hotel Fund.

(c) An Historic Resort Hotel Modernization Fund is hereby created within the Historic Resort Hotel Fund. For all fiscal years beginning on or after July 1, 2011, the commission shall deduct two and one-half percent from gross terminal income received by the commission under section...
twenty of this article for the fiscal year and deposit these amounts into a separate facility modernization account maintained within the Historic Resort Hotel Modernization Fund for each historic resort hotel. For each dollar expended by a historic resort hotel for video lottery or table gaming facility modernization improvements at the historic resort hotel, having a useful life of three or more years and placed in service after April 1, 2011, the historic resort hotel shall receive $1 in recoupment from its facility modernization account. For purposes of this section, the term “video lottery or table gaming facility modernization improvements” include acquisition of computer hardware and software, communications and Internet access equipment, security and surveillance equipment, video lottery terminals and other electronic equipment or other equipment designed to modernize the facility.

(d) The balance of the Historic Resort Hotel Fund shall become net income and shall be divided as follows:

(1) Sixty-four percent of the Historic Resort Hotel Fund net income shall be paid into the General Revenue Fund to be appropriated by the Legislature;

(2) Nineteen percent of the Historic Resort Hotel Fund net income shall be paid into the State Debt Reduction Fund established in section twenty-seven, article twenty-two-c of this chapter to be appropriated by the Legislature;

(3) The Tourism Promotion Fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the Historic Resort Hotel Fund net income;

(4) The county where the gaming facility is located shall receive four percent of the Historic Resort Hotel Fund net income;
The municipality where the gaming facility is located (5) or the municipality closest to the gaming facility by paved road access as of the effective date of the reenactment of this section by the 2009 regular session of the Legislature shall receive two and one-half percent of the Historic Resort Hotel Fund net income;

The municipalities within the county where the gaming facility is located, except for the municipality receiving funds under subdivision (5) of this subsection, shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income;

Each county commission in the state that is not eligible to receive a distribution under subdivision (4) of this subsection shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income: Provided, That funds transferred to the county commission under this subdivision shall be used only to pay regional jail expenses and the costs of infrastructure improvements and other capital improvements; and

The governing body of each municipality in the state that is not eligible to receive a distribution under subdivisions (5) and (6) of this subsection shall receive equal shares of two and one-half percent of the Historic Resort Hotel Fund net income: Provided, That funds transferred to municipalities under this subdivision shall be used only to pay for debt reduction in municipal police and fire pension funds and the costs of infrastructure improvements and other capital improvements.

Notwithstanding any provision of this article to the contrary, all limited gaming facility license fees and license renewal fees received by the commission pursuant to section nine of this article shall be deposited into the Community-Based Service Fund created in section twenty-seven, article twenty-two-c of this chapter.
(f) With the exception of the license fees and license renewal fees received by the commission pursuant to section nine of this article, all revenues received from licensees and license applicants under this article shall be retained by the commission as reimbursement for the licensing process.

CHAPTER 73

(Com. Sub. for H. B. 2885 - By Delegates Ellem, D. Campbell, Perdue, Poore, Barill, Fleischauer, Border, Moore, Hatfield and Rodighiero)

[Passed March 11, 2011; in effect from passage.]
[Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §44A-1-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §44A-1-15, all relating to the eligibility of guardians or conservators to be hired to provide care to a protected person through employment with a behavioral health provider in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §44A-1-8 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 §44A-1-15, all to read as follows:
§44A-1-8. Persons and entities qualified to serve as guardian and conservator; default guardian and conservator; exemptions from conservator appointment.

(a) Any adult individual may be appointed to serve as a guardian, a conservator or both upon a showing by the individual of the necessary education, ability and background to perform the duties of guardian or conservator and upon a determination by the court that the individual is capable of providing an active and suitable program of guardianship or conservatorship for the protected person. The individual may not be employed by or affiliated with any public agency, entity or facility that is providing substantial services or financial assistance to the protected person except as set forth in section fifteen of this article.

(b) The court may, after first determining it to be in the best interest of the protected person, appoint coguardians, coconservators or both.

(c) Any person being considered by a court for appointment as a guardian or conservator shall provide information regarding any crime, other than traffic offenses, of which he or she was convicted and the court or mental hygiene commissioner may order a background check to be conducted by the State Police or county sheriff. The court shall consider this information in determining the person’s fitness to be appointed a guardian or conservator.

(d) Any nonprofit corporation chartered in this state and licensed as set forth in subsection (e) of this section or a public agency that is not a provider of health care services to the protected person may be appointed to serve as a guardian, a conservator or both so long as the entity is capable of providing an active and suitable program of guardianship or conservatorship for the protected person and is not otherwise
providing substantial services or financial assistance to the protected person.

(e) A nonprofit corporation chartered in this state may be appointed to serve as a guardian or conservator or as a limited or temporary guardian or conservator for a protected person if it is licensed to do so by the Secretary of Health and Human Resources. The secretary shall propose legislative rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, for the licensure of nonprofit corporations and shall provide for the review of the licenses. The rules shall, at a minimum, establish standards to assure that any corporation licensed for guardianship or conservatorship:

1. Has sufficient fiscal and administrative resources to perform the fiduciary duties and make the reports and accountings required by this chapter;

2. Will respect and maintain the dignity and privacy of the protected person;

3. Will protect and advocate the legal human rights of the protected person;

4. Will assure that the protected person is receiving appropriate educational, vocational, residential and medical services in the setting least restrictive of the individual’s personal liberty;

5. Will encourage the protected person to participate to the maximum extent of his or her abilities in all decisions affecting him or her and to act in his or her own behalf on all matters in which he or she is able to do so;

6. Does not provide educational, vocational, residential or medical services to the protected person; and
(7) Has written provisions in effect for the distribution of assets and for the appointment of temporary guardians and conservators for any protected persons it serves in the event the corporation ceases to be licensed by the Department of Health and Human Resources or otherwise becomes unable to serve as guardian.

(f) A duly licensed nonprofit corporation that has been appointed to serve as a guardian or as a conservator pursuant to the provisions of this article is entitled to compensation in accordance with the provisions of section thirteen of this article.

(g) Except as provided in sections thirteen and fifteen of this article, no guardian or conservator nor any officer, agent, director, servant or employee of any guardian or conservator may do business with or in any way profit, either directly or indirectly, from the estate or income of any protected person for whom services are being performed by the guardian or conservator.

(h) A person who has an interest as a creditor of a protected person is not eligible for appointment as either a guardian or conservator of the protected person except that a bank or trust company authorized to exercise trust powers or to engage in trust business in this state may be appointed as a conservator if the court determines it is capable of providing suitable conservatorship for the protected person.

(i) The Secretary of the Department of Health and Human Resources shall designate the adult protective services division of the county of appointment, or another agency under his or her jurisdiction, to be appointed as guardian when there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve. The department may not refuse to accept the guardianship appointment when ordered by the court but may not be appointed as conservator.
(j) The sheriff of the county in which a court has jurisdiction shall be appointed as conservator when there is no other individual, nonprofit corporation or other public agency that is equally or better qualified and willing to serve. The sheriff may not refuse to accept the conservatorship appointment when ordered by the court but may not be appointed as guardian.

(k) A conservator shall not be appointed when the alleged protected person’s total assets are worth less than $2,000 or the alleged protected person’s income is:

1. From the Social Security Administration and a representative payee has been appointed to act in the best interest of the individual;
2. From Medicaid and the only income distributed to the individual is the personal account allotment; or
3. Less than $50 per month or $600 per year. In these instances, the guardian, representative payee or health care facility, if there is no other person or entity, shall manage the personal care account or assets.

§44A-1-15. Eligibility of guardians or conservators employed pursuant to a Department of Health and Human Resources waiver program.

(a) A person employed pursuant to a written contract or other employment arrangement with a licensed provider of behavioral health services for the purpose of providing services to a protected person, may be appointed by a court as the guardian or conservator of the protected person if:

1. Payment for services provided under the contract or employment agreement is made pursuant to a waiver program;
(2) The person is related to the protected person by blood, marriage or adoption;

(3) The contract or arrangement is disclosed in writing to the court, and

(4) The court finds that the appointment is in the best interests of the protected person.

(b) Without the prior approval of a court, a guardian or conservator may not enter into a written contract or other employment arrangement with a licensed provider of behavioral health services in which the guardian or conservator will receive compensation pursuant to a waiver program.

(c) For the purposes of this section:

(1) "Behavioral health services" means services provided for the care and treatment of persons with mental illness, intellectual disability, developmental disabilities or alcohol or drug abuse problems in an inpatient, residential or outpatient setting, including, but not limited to, habilitative or rehabilitative interventions or services and cooking, cleaning, laundry and personal hygiene services provided for such care; and

(2) "Waiver program" means a West Virginia Department of Health and Human Resource administered waiver program, including, but not limited to, the "MR/DD" or "Intellectual and Developmental Disabilities" waiver program authorized by section 1915(c) of the Social Security Act.

(d) A person appointed to serve as a guardian or conservator prior to the effective date of this section, enacted during the 2011 Regular Session of the Legislature, who
meets the requirements contained in subsection (a), shall retain his or her authority, powers and duties in that capacity under the provisions of this section: Provided, That the guardian or conservator informs the court, in writing, that he or she is employed pursuant to a written contract or other employment arrangement with a licensed provider of behavioral health services under the waiver program.

CHAPTER 74

(H. B. 3075 - By Delegates Perdue, Hatfield, Border, Reynolds and Morgan)

[Passed March 10, 2011; in effect ninety days from passage.] [Approved by the Governor on March 24, 2011.]

AN ACT to amend and reenact §16-1-4 of the Code of West Virginia, 1931, as amended, relating to increasing the time period in the hold-harmless provision, when distributing state aid to local health departments and basic public health services funds, from three years to four years.

Be it enacted by the Legislature of West Virginia:

That §16-1-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-4. Proposal of rules by the secretary.

1 The secretary may propose rules in accordance with the 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 sleeping accommodations of six or fewer rooms to install a restaurant-style or commercial food service facility: Provided, however, That the secretary may not require an owner of a bed and breakfast providing sleeping accommodations of more than six rooms to install a restaurant-type or commercial food service facility if the entire bed and breakfast inn or those rooms numbering above six are used on an aggregate of two weeks or less per year;

(h) Fees for services provided by the Bureau for Public Health including, but not limited to, laboratory service fees, environmental health service fees, health facility fees and permit fees;
(i) The collection of data on health status, the health system and the costs of health care;

(j) Opioid treatment programs duly licensed and operating under the requirements of chapter twenty-seven of this code. The Health Care Authority shall develop new certificate of need standards, pursuant to the provisions of article two-d of this chapter, that are specific for opioid treatment program facilities. No applications for a certificate of need for opioid treatment programs shall be approved by the Health Care Authority as of the effective date of the 2007 amendments to this subsection. The secretary shall promulgate revised emergency rules to govern licensed programs: Provided, That there is a moratorium on the licensure of new opioid treatment programs that do not have a certificate of need as of the effective date of the 2007 amendments to this subsection, which shall continue until the Legislature determines that there is a necessity for additional opioid treatment facilities in West Virginia. The secretary shall file revised emergency rules with the Secretary of State to regulate opioid programs in compliance with subsections (1) through (9), inclusive, of this section: Provided, however, That any opioid treatment program facility that has received a certificate of need pursuant to article two-d, of this chapter by the Health Care Authority shall be permitted to proceed to license and operate the facility. All existing opioid treatment programs shall be in compliance within one hundred eighty days of the effective date of the revised emergency rules as required herein. The revised emergency rules shall provide at a minimum:

(1) That the initial assessment prior to admission for entry into the opioid treatment program shall include an initial drug test to determine whether an individual is either opioid addicted or presently receiving methadone for an opioid addiction from another opioid treatment program. The patient may be admitted to the program if there is a positive
test for either opioids or methadone or there are objective symptoms of withdrawal, or both, and all other criteria set forth in the rule for admission into an opioid treatment program are met: Provided, That admission to the program may be allowed to the following groups with a high risk of relapse without the necessity of a positive test or the presence of objective symptoms: Pregnant women with a history of opioid abuse, prisoners or parolees recently released from correctional facilities, former clinic patients who have successfully completed treatment but who believe themselves to be at risk of imminent relapse and HIV patients with a history of intravenous drug use.

(2) That within seven days of the admission of a patient, the opioid treatment program shall complete an initial assessment and an initial plan of care. Subsequently, the opioid treatment program shall develop a treatment plan of care by the thirtieth day after admission and attach to the patient’s chart no later than five days after such plan is developed. The treatment plan is to reflect that detoxification is an option for treatment and supported by the program.

(3) That each opioid treatment program shall report and provide statistics to the Department of Health and Human 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;

(B) Methadone and any other medication used by the program as an intervention;

(C) Benzodiazepine including diazepam, lorazepan, clonazepam and alprazolam;

(D) Cocaine;

(E) Methamphetamine or amphetamine; and

(F) Other drugs determined by community standards, regional variation or clinical indication.
A positive test is a test that results in the presence of any drug or substance listed in this schedule and any other drug or substance prohibited by the opioid treatment program;

(6) That a positive drug test result after the first six months in an opioid treatment program shall result in the following:

(A) Upon the first positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling to the patient, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take home methadone privilege for a minimum of thirty days; and

(B) Upon a second positive drug test result within six months of a previous positive drug test result, the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of sixty days; and

(3) Provide mandatory documented treatment team meetings with the patient.
(C) Upon a third positive drug test result within a period of six months the opioid treatment program shall:

(1) Provide mandatory and documented weekly counseling, which shall include weekly meetings with a counselor who is licensed, certified or enrolled in the process of obtaining licensure or certification in compliance with the rules and on staff at the opioid treatment program;

(2) Immediately revoke the take-home methadone privilege for a minimum of one hundred twenty days; and

(3) Provide mandatory and documented treatment team meetings with the patient which will include, at a minimum: The need for continuing treatment; a discussion of other treatment alternatives; and the execution of a contract with the patient advising the patient of discharge for continued positive drug tests.

(D) Upon a fourth positive drug test within a six-month period, the patient shall be immediately discharged from the opioid treatment program or, at the option of the patient, shall immediately be provided the opportunity to participate in a twenty-one day detoxification plan, followed by immediate 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 four 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.

CHAPTER 75

(Com. Sub. for H. B. 2969 - By Delegates
Boggs, Caputo, White and Fragale)

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §16-9D-6 of the Code of West
Virginia, 1931, as amended, relating to enforcement of statutes
implementing tobacco master settlement agreement; reporting
of information; and requiring the Tax Commissioner to
disclose, at the request of a nonparticipating tobacco product
manufacturer, the branding information, sales, stamping and other information that is reported to the Tax Commissioner by distributors and stamping agents for products obtained from that nonparticipating manufacturer.

Be it enacted by the Legislature of West Virginia:

That §16-9D-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9D. ENFORCEMENT OF STATUTES IMPLEMENTING TOBACCO MASTER SETTLEMENT AGREEMENT.

§16-9D-6. Reporting of information; escrow installments.

(a) Reporting by distributors and other stamping agents.--

(1) Not later than twenty calendar days after the end of each calendar quarter, and more frequently if directed by the commissioner, each distributor or stamping agent shall submit information required by the commissioner to facilitate compliance with this article, including, but not limited to, a list by brand family of the total number of cigarettes of nonparticipating manufacturers, or in the case of roll your own, the equivalent stick count, for which the distributor or other stamping agent affixed West Virginia stamps and sold in West Virginia during the previous calendar quarter or otherwise paid the tax due for the cigarettes.

(2) The distributor or stamping agent shall maintain, and make available to the commissioner, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes sold in West Virginia and any other information relied upon in reporting to the commissioner for a period of five years.
(b) Disclosure of information. -- The commissioner may disclose to the Attorney General of this state any information received under this article and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this article. The commissioner and the Attorney General shall share with each other the information received under this article, and may share the information with other federal, state or local agencies only for purposes of enforcement of this article, article nine-b of this chapter, or corresponding laws of other states. The commissioner is further directed, upon request of a nonparticipating manufacturer, to disclose to that nonparticipating manufacturer any information that has been provided by a distributor or stamping agent as required by this section regarding the purchases from that manufacturer upon which tax stamps have been applied and cigarettes sold in West Virginia.

(c) Verification of qualified escrow fund. -- The Attorney General may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with article nine-b of this chapter, of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the qualified escrow fund, and the amount and date of each withdrawal from the fund.

(d) Requests for additional information. -- In addition to the information required to be submitted pursuant to this section, the Attorney General may require a stamping agent, distributor or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, that is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this article.
(e) *Quarterly escrow installments.* -- To promote compliance with the provisions of this article, a tobacco product manufacturer subject to the requirements of subdivision (2), subsection (a), section three of this article, who, in the opinion of the Attorney General, materially defaults in fully funding its escrow account timely and then cures the default shall make escrow deposits for the calendar year during which the default was cured and ensuing calendar years in quarterly installments during the year in which the sales covered by such deposits are made. The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

**CHAPTER 76**

(Com Sub. for H. B. 3021 - By Delegates Hatfield, Fleischauer, Perdue, Brown, C. Miller, Hall, Marshall, D. Campbell, Butcher, Morgan and Border)

[Passed March 12, 2011; in effect ninety days from passage.]  
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and and reenact §16-42-3, §16-42-5 and §16-42-7 of the Code of West Virginia, 1931, as amended, all relating to the Comprehensive Behavioral Health Commission; adding two members to the Commission; designating nonvoting members; requiring a chairperson be selected by the appointed commission members; prohibiting a chairperson from serving more than two consecutive years; changing the membership of the advisory board; authorizing commission and advisory board members to continue to serve; requiring yearly reports to the Governor and Legislature; and extending the commission three years.
Be it enacted by the Legislature of West Virginia:

That §16-42-3, §16-42-5 and §16-42-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 42. COMPREHENSIVE BEHAVIORAL HEALTH COMMISSION.


(a) Effective July 1, 2011, the Comprehensive Behavioral Health Commission is reestablished to continue the study of the current behavioral health system of care, including services to adults and children, substance abuse and domestic violence when those conditions have an effect upon or are impacted by the system.

(b) The commission consists of:

(1) A representative of the circuit and family court system, appointed by the Chief Justice of the West Virginia Supreme Court of Appeals;

(2) A representative of the Commissioner of the Division of Corrections;

(3) The Commissioner of the Bureau of Senior Services or a designee;

(4) The Secretary of the Department of Health and Human Resources or a designee, who is a nonvoting member;

(5) The Commissioner of the Bureau for Behavioral Health and Health Facilities or a designee, who is a nonvoting member;
(6) The Commissioner of the Bureau for Children and Families or a designee, who is a nonvoting member;

(7) The Executive Director of the West Virginia Chapter of the National Alliance on Mental Illness or a designee;

(8) The Chancellor for Higher Education or a designee, who is a nonvoting member;

(9) One physician with a specialty in psychiatry appointed by the Governor from a list provided by the West Virginia Medical Association;

(10) One physician with a specialty in child psychiatry, appointed by the Governor from a list of names provided by the West Virginia Medical Association;

(11) One member of the Advisory Board, selected by the Advisory Board, who shall serve as the vice chairperson of the Commission;

(12) One member of the House of Delegates, who is a nonvoting member, appointed by the Speaker; and

(13) One member of the Senate, who is a nonvoting member, appointed by the President.

(c) The commission shall meet at times and places as it finds necessary and shall be staffed by the Bureau for Behavioral Health and Health Facilities.

(d) The commission shall elect a chairperson from those who are appointed. The chairperson's term shall be no longer than two consecutive years whereupon the chairperson is to be replaced by a vote of the membership.

(e) Effective July 1, 2011, the Comprehensive Behavioral Health Commission Advisory Board is reestablished to serve
in a consulting role to the commission with the following
members appointed by the Governor:

(1) One member from a list provided by the West
Virginia Chapter of the National Association of Social
Workers;

(2) One member from a list provided by the West
Virginia Hospital Association;

(3) One member who is a psychologist from a list
provided by the West Virginia Psychological Association;

(4) One citizen member from a list of two nominees from
each medical school;

(5) One member who is an executive director of a
federally qualified health center in West Virginia;

(6) One member who is the chief executive officer of a
comprehensive behavioral health center;

(7) Two members who are the chairperson or the chief
executive officer of a not-for-profit corporation with its
principal headquarters in West Virginia, that provides
residential or non-residential care or treatment for children;
and

(8) One member from a list provided by the Council of
Churches.

(f) Those persons serving on the commission and the
advisory board on July 1, 2011, may continue serving on the
reestablished commission and advisory board and the person
so designated as chairperson of the commission shall remain
as chairperson until an election occurs as provided in this
section.
(g) Each member of the commission and advisory board is entitled to receive compensation and expense reimbursement for attending official meetings or engaging in official duties not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law. A commission member may not receive compensation for travel days that are not on the same day as the official meeting or official duties.


The commission shall submit a report on its study, including recommendations, to the Governor and the Legislature by January 1, 2012, and each January 1 thereafter.


The commission and advisory board terminate on June 30, 2014.

CHAPTER 77

(S. B. 349 - By Senators Laird, Snyder, Nohe, Miller and Klempa)

[Passed March 9, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-43-1 and §16-43-2, all relating to requiring the inclusion of a bittering agent in coolant and antifreeze; limiting liability; providing exceptions; and providing a criminal penalty.
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 §16-43-1 and §16-43-2, all to read as follows:

ARTICLE 43. ENGINE COOLANT AND ANTIFREEZE.

§16-43-1. Definitions.

For the purposes of this article:

(1) "Bittering agent" means an aversive agent that renders engine coolant or antifreeze unpalatable; and

(2) "Engine coolant" or "antifreeze" means:

(A) A substance or preparation, regardless of its origin used as the cooling medium in the cooling system of an internal combustion engine to provide protection against freezing, overheating and corrosion of the cooling system; and

(B) A product that is labeled to indicate or imply that it will prevent freezing or overheating of the cooling system of an internal combustion engine.

§16-43-2. Engine coolant and antifreeze; bittering agent required; penalty; exceptions.

(a) Any engine coolant or antifreeze manufactured in this state after January 1, 2012, or sold after that date within West Virginia that contains more than ten percent ethylene glycol shall include not less than thirty parts per million and not more than fifty parts per million denatonium benzoate as a
bittering agent in order to render the coolant or antifreeze unpalatable.

(b) A manufacturer, processor, distributor, recycler or seller of an engine coolant or antifreeze that is required to contain the bittering agent set forth in subsection (a) of this section is not liable to any person for any personal injury, death, property damage, damage to the environment or economic loss that results from the inclusion of denatonium benzoate in any engine coolant or antifreeze, if the inclusion of denatonium benzoate is present in concentrations as mandated by subsection (a) of this section. The limitation on liability does not apply to a particular liability to the extent that the cause of the liability is unrelated to the inclusion of denatonium benzoate in any engine coolant or antifreeze.

c) The provisions of this section do not apply to:

(1) The sale of a motor vehicle that contains engine coolant or antifreeze;

(2) A wholesale container of engine coolant or antifreeze designed to contain fifty-five gallons or more of engine coolant or antifreeze; and

(3) Engine coolant or antifreeze reformulated through on site recycling.

d) Any person who violates any provision of this section is guilty of a misdemeanor and shall be fined not more than $100. Each day of violation is a separate offense.
AN ACT to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended, relating to requiring the Secretary of the Department of Health and Human Services to use existing department funds to develop a program to compensate employees for personal property loss in work related incidents.

Be it enacted by the Legislature of West Virginia:

That §9-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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


1 Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the secretary, in addition to all other powers, duties and responsibilities granted and assigned to that office in this chapter and elsewhere by law, is authorized and empowered to:
(1) Promulgate, amend, revise and rescind department rules respecting the organization and government of the department and the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(2) Promulgate, amend, revise and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and policies, but not inconsistent with state law: Provided, That such rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of article two-e, chapter sixteen of this code by a licensed nurse midwife or midwife as this occupation is defined in section one, article fifteen, chapter thirty of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven of said article.

(3) Obtain by purchase or lease such grounds, buildings, office or other space, equipment, facilities and services as may be necessary for the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(4) Sign and execute in the name of the state by the State Department of Health and Human Resources any contract or agreement with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships or individuals.

(5) Establish such special funds as may be required by the federal Social Security Act, as amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of the benefits and provisions thereof relating to the federal-state assistance and federal assistance programs administered by the department and to make payments into
and disbursements out of any such special fund or funds in accordance with the requirements of the federal Social Security Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the State Department of Health and Human Resources, through the secretary, is hereby authorized to accept any and all gifts or grants, whether in money, land, services or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund shall revert to the General Revenue Funds of this state. No expenses incurred pursuant to this special fund shall be a charge against the General Funds of this state.

(6) Establish within the department an Office of Inspector General for the purpose of conducting and supervising investigations and for the purpose of providing quality control for the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit or prohibit the Inspector General or his or her employees from initiating, carrying out or completing any investigation, quality control review or other activity oversight of public integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of article six, chapter twenty-nine of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General.

(7) Provide at department expense a program of continuing professional, technical and specialized instruction for the personnel of the department.
(8) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his or her household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months or for any movement other than from one place of employment in this state to another place of employment in this state.

(9) Establish a program to provide reimbursement to employees of the department whose items of personal property, as defined by the department by policy, are damaged during the course of employment or other work-related activity as a result of aggressive behavior by a client or patient receiving services from the department: Provided, That such reimbursement is limited to a maximum amount of $250.00 per claim.

(10) Establish and maintain such institutions as are necessary for the temporary care, maintenance and training of children and other persons.

(11) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance and federal assistance and which are not inconsistent with state law.

(12) Organize within the department a Board of Review, consisting of a Chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance and federal assistance, such Board of Review
to have such powers of a review nature and such additional
powers as may be granted to it by the secretary and as may be
required by federal laws and rules respecting federal-state
assistance and federal assistance.

(13) Provide by rules such review and appeal procedures
within the Department of Health and Human Resources as
may be required by applicable federal laws and rules
respecting state assistance, federal-state assistance and
federal assistance and as will provide applicants for, and
recipients of all, classes of welfare assistance an opportunity
to be heard by the board of Review, a member thereof, or
individuals designated by the board, upon claims involving
denial, reduction, closure, delay or other action or inaction
pertaining to public assistance.

(14) Provide by rules, consistent with requirements of
applicable federal laws and rules, application forms and
application procedures for the various classes of public
assistance.

(15) Provide locations for making applications for the
various classes of public assistance.

(16) Provide a citizen or group of citizens an opportunity
to file objections and to be heard upon objections to the grant
of any class of public assistance.

(17) Delegate to the personnel of the department all
powers and duties vested in the secretary, except the power
and authority to sign contracts and agreements.

(18) Make such reports in such form and containing such
information as may be required by applicable federal laws
and rules respecting federal-state assistance and federal
assistance.

(19) Invoke any legal, equitable or special remedies for
the enforcement of the provisions of this chapter.
AN ACT to repeal §18-13-1 of the Code of West Virginia, 1931, as amended; to repeal §18-23-4a of said code; to repeal §18B-8-3a of said code; to repeal §18B-9-2a, §18B-9-5, §18B-9-7, §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code; to amend and reenact §12-1-12d of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-4 and §18B-1B-5 of said code; to amend and reenact §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code; to amend and reenact §18B-2B-3 of said code; to amend and reenact §18B-3-1, §18B-3-3 and §18B-3-4 of said code; to amend and reenact §18B-4-1 of said code; to amend said code by adding thereto a new section, designated §18B-4-2a; to amend and reenact §18B-5-9 of said code; to amend and reenact §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12 of said code; to amend said code by adding thereto four new sections, designated §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; to amend and reenact §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6 of said code; to amend said code by adding thereto a new section, designated §18B-8-2; to amend and reenact §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code; to amend said code by adding thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7
and §18B-9A-8; and to amend and reenact §18B-10-1 of said code, all relating to public higher education personnel generally; state organizations of higher education; public higher education governance; repealing sunset provision for pilot investment program for Marshall University and West Virginia University; extending authority to increase certain types of investment under certain circumstances; specifying and clarifying rule-making procedures; specifying certain powers and duties of certain higher education organizations; requiring certain governing boards to reach certain graduation rates by certain date; establishing classification and compensation for certain employees; providing legislative purposes and intent; providing certain definitions; requiring creation of certain professional staff positions; setting forth minimum qualifications and specifying duties; requiring organization rulemaking; authorizing certain supplemental retirement, health and welfare benefit plans for certain employees; providing for certain employer and employee matches; authorizing employee payroll deductions; requiring establishment of continuing education and professional development programs for certain employees; setting forth certain employment practices; requiring certain periodic reports; specifying data to be included in reports and designating report due dates; providing certain exceptions to report due dates; requiring periodic reviews of human resources functions at certain higher education organizations; setting forth purposes of reviews; specifying review criteria and designating completion dates; requiring prior notice of reviews and setting forth certain exceptions; authorizing compensatory time off for certain employees in certain instances; setting forth conditions; defining “nonclassified” employees; limiting percentage of employees designated nonclassified and providing certain exceptions; establishing formula for calculating percentage; providing effective date for meeting percentage limits and requiring compliance reports; authorizing certain employment by mutual agreement; setting forth terms, conditions and applicability of agreements; requiring probationary period for
certain employees; authorizing catastrophic leave banks and leave transfer for certain employees; setting forth terms and conditions for participation; codifying certain current practices; authorizing merit salary increases for certain employees under certain conditions; requiring study of certain employment practices; requiring report and specifying data and report due date; requiring faculty salary rules and providing for salary increases in certain instances; authorizing sabbatical leaves for certain professional personnel; specifying terms and conditions for participation; maintaining certain rights and benefits during leaves of absence under certain circumstances; requiring definition of certain terms; requiring notice of employment decisions to probationary faculty members by certain date and providing for hearings in certain instances; stating legislative intent regarding funding for certain employee salary schedules; specifying applicability of certain statutes; establishing certain terms and conditions and providing certain exceptions; providing formulas for making certain salary calculations; requiring certification of certain higher education organizations relating to certain salary funding requirements; specifying applicability of certain rules; requiring review and approval process for certain rules and specifying responsibilities of certain professional personnel relating to rulemaking; providing for funding certain salary schedules; specifying certain consequences and sanctions and providing exceptions; providing short title; requiring maintenance of uniform job classification system; establishing job classification committee and specifying organization, powers and duties; assigning certain other powers and duties relating to job classification; establishing compensation planning and review committee and specifying organization, powers and duties; providing for establishment of market salary structures and minimum salary schedules; requiring periodic updates and specifying certain other related powers and duties; providing for periodic market salary studies and specifying application of study findings; requiring certain salary comparisons and establishing limit on variations of average salaries among employee classes;
specifying authority and duty of Higher Education Policy Commission and Council for Community and Technical College Education over classification and compensation system; requiring promulgation of certain personnel rules by certain date; authorizing emergency rules with prior approval; establishing parameters for rules; specifying mechanisms for correcting identified deficiencies and requiring and authorizing certain sanctions in certain instances; providing for hearing employee appeals; requiring performance evaluations for certain employees; requiring certain training for supervisory personnel; establishing terms and conditions for exercising certain operational flexibilities for governing boards; establishing goals for implementing certain statutes and rules; fixing certain implementation responsibilities; providing for review and approval of governing boards’ requests for tuition and fee increases greater than set amounts; removing caps on increases in tuition and fees; making technical corrections; and deleting obsolete language.

Be it enacted by the Legislature of West Virginia:

That §18-13-1 of the Code of West Virginia, 1931, as amended, be repealed; that §18-23-4a of said code be repealed; that §18B-8-3a of said code be repealed; that §18B-9-2a, §18B-9-5, §18B-9-7, §18B-9-8, §18B-9-9, §18B-9-10 and §18B-9-12 of said code be repealed; that §12-1-12d of said code be amended and reenacted; that §18B-1-2 and §18B-1-6 of said code be amended and reenacted; that §18B-1B-4 and §18B-1B-5 of said code be amended and reenacted; that §18B-2A-3, §18B-2A-4 and §18B-2A-8 of said code be amended and reenacted; that §18B-2B-3 of said code be amended and reenacted; that §18B-3-1, §18B-3-3 and §18B-3-4 of said code be amended and reenacted; that §18B-4-1 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-4-2a; that §18B-5-9 of said code be amended and reenacted; that §18B-7-1, §18B-7-2, §18B-7-3, §18B-7-4, §18B-7-5, §18B-7-6, §18B-7-7, §18B-7-8, §18B-7-9, §18B-7-10, §18B-7-11 and §18B-7-12 of said code be amended and
reenacted; that said code be amended by adding thereto four new sections, designated §18B-7-13, §18B-7-14, §18B-7-15 and §18B-7-16; that §18B-8-1, §18B-8-3, §18B-8-4, §18B-8-5 and §18B-8-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-8-2; that §18B-9-1, §18B-9-2, §18B-9-3 and §18B-9-4 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18B-9A-1, §18B-9A-2, §18B-9A-3, §18B-9A-4, §18B-9A-5, §18B-9A-6, §18B-9A-7 and §18B-9A-8; and that §18B-10-1 of said code be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Investments by Marshall University and West Virginia University.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University and West Virginia University each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on January 1, 2005. Any such investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing university.

(c) Moneys of a university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the university that are collected
under an act of the Legislature for specific purposes and do
not include any funds made available to the university from
the state General Revenue Fund or the funds established in
sections eighteen or eighteen-a, article twenty-two, chapter
twenty-nine of this code. Moneys permitted to be invested
under this section may be aggregated in an investment fund
for investment purposes.

(d) Of the moneys authorized for investment by this
section, Marshall University and West Virginia University
each, respectively, may have invested with its foundation at
any time not more than the greater of:

(1) $18 million for Marshall University and $25 million
for West Virginia University; or

(2) Sixty-five percent of its unrestricted net assets as
presented in the statement of net assets for the fiscal year end
audited financial reports.

(3) Notwithstanding subdivisions (1) and (2) of this
subsection, with the approval of the Higher Education Policy
Commission, Marshall University may increase the amount
invested to $30 million and West Virginia University may
increase the amount invested to $40 million.

(e) Investments by foundations that are authorized under
this section shall be made in accordance with and subject to
the provisions of the Uniform Prudent Investor Act codified
as article six-c, chapter forty-four of this code. As part of its
fiduciary responsibilities, each governing board shall
establish 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 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 18B. HIGHER EDUCATION.

ARTICLE 1. GOVERNANCE.

*§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

*CLERK'S NOTE: This section was also amended by Com. Sub. for S. B. 200 (Chapter 82) which passed prior to this act.
(1) "Administratively linked community and technical college" means a state institution of higher education delivering community and technical college education and programs which has maintained a contractual agreement to receive essential services from another accredited state institution of higher education prior to July 1, 2008;

(2) "Advanced technology center" means a facility established under the direction of an independent community and technical college or the council for the purpose of implementing and delivering education and training programs for high-skill, high-performance Twenty-first Century workplaces;

(3) "Board of visitors" means the advisory board previously appointed for the West Virginia Graduate College and the advisory board previously appointed for West Virginia University Institute of Technology, which provide guidance to the Marshall University Graduate College and West Virginia University Institute of Technology, respectively;

(4) "Broker" or "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state;

(5) "Chancellor" means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. "Chancellor" means the Chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;
(6) "Chancellor for Community and Technical College Education" means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to section three, article two-b of this chapter;

(7) "Chancellor for Higher Education" means the chief executive officer of the Higher Education Policy Commission employed pursuant to section five, article one-b of this chapter;

(8) "Collaboration" means entering into an agreement with one or more providers of education services in order to enhance the scope, quality or efficiency of education services;

(9) "Community and technical college", in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College and West Virginia University at Parkersburg;

(10) "Community and technical college education" means the programs, faculty, administration and funding associated with the delivery of community and technical college education programs;

(11) "Community and technical college education program" means any college-level course or program beyond
the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All programs are under the jurisdiction of the council. Any reference to “post-secondary vocational education programs” means community and technical college education programs as defined in this subsection;

(12) “Council” means the West Virginia Council for Community and Technical College Education created by article two-b of this chapter;

(13) “Dual credit course” or “dual enrollment course” means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level.

(14) “Essential conditions” means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(15) “Free-standing community and technical colleges” means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and Eastern West Virginia Community and Technical College, which may not be operated as branches or off-campus locations of any other state institution of higher education;

(16) “Governing boards” or “boards” means the institutional boards of governors created by section one, article two-a of this chapter;
(17) "Higher Education Policy Commission", "Policy Commission" or "Commission" means the commission created by section one, article one-b of this chapter;

(18) "Independent community and technical college" means a state institution of higher education under the jurisdiction of the Council which is independently accredited, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

(19) "Institutional compact" means the compact between the commission or council and a state institution of higher education under its jurisdiction, as described in section seven, article one-d of this chapter;

(20) "Institutional operating budget" or "operating budget" means for any fiscal year an institution's total unrestricted education and general funding from all sources, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(21) "Peer institutions", "peer group" or "peers" means public institutions of higher education used for comparison
purposes and selected by the commission pursuant to section three, article one-a of this chapter;

(22) "Rule" or "rules" means a regulation, standard, policy or interpretation of general application and future effect;

(23) "Sponsoring institution" means a state institution of higher education that maintained an administrative link to a community and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus or a division delivering community and technical college education and programs;

(24) "State college" means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University or West Virginia State University;

(25) "State institution of higher education" means any university, college or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

(26) "Statewide network of independently accredited community and technical colleges" or "community and technical college network" means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and each having a core mission of providing affordable access to and delivering high quality community and technical education in every region of the state;
(27) "Vice Chancellor for Administration" means the person employed in accordance with section two, article four of this chapter. Any reference in this chapter or chapter eighteen-c of this code to "Senior Administrator" means Vice Chancellor for Administration;

(28) "Vice Chancellor for Human Resources" means the person employed by the commission and the council jointly pursuant to section two-a, article four of this chapter. The person employed as senior director of human resources by the commission on January 1, 2011, becomes the Vice Chancellor for Human Resources on the effective date of this section; and

(29) "West Virginia Consortium for Undergraduate Research and Engineering" or "West Virginia CURE" means the collaborative planning group established by article one-c of this chapter.

§18B-1-6. Rulemaking.

(a) The commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article.

(b) The council is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with article three-a, chapter twenty-nine-a of this code, subject to section three of this article. This grant of rule-making power extends only to those areas over which the council has been granted specific authority and jurisdiction by law.

(c) As it relates to the authority granted to governing boards of state institutions of higher education to promulgate, adopt, amend or repeal any rule under this code:
"Rule" means any regulation, guideline, directive, standard, statement of policy or interpretation of general application which has institution-wide effect or which affects the rights, privileges or interests of employees, students or citizens. Any regulation, guideline, directive, standard, statement of policy or interpretation of general application that meets this definition is a rule for the purposes of this section.

Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department or school or with academic curricular policies that do not constitute a mission change for the institution, are excluded from this subsection, except for the requirements relating to posting.

The commission and council each shall promulgate a rule to guide the development and approval of rules made by their respective governing boards, including the governing boards of Marshall University and West Virginia University. The rules promulgated by the commission and council shall include, but are not limited to, the following provisions which shall be included in the rule on rules adopted by each governing board of a state institution of higher education:

(A) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected, including providing for a thirty-day public comment period prior to final adoption of a rule;

(B) Designation of a single location where all proposed and approved rules, guidelines and other policy statements are posted and can be accessed by the public;
(C) A procedure to maximize Internet access to all proposed and approved rules, guidelines and other policy statements to the extent technically and financially feasible; and

(D) A procedure for the governing board to follow in submitting its rules for review and approval to the commission and/or council, as appropriate, except the following conditions apply for the governing boards of Marshall University and West Virginia University:

   (i) The governing boards shall submit rules for review and comment to the commission.

   (ii) The commission shall return to the governing board its comments and suggestions within thirty days of receiving the rule.

   (iii) If a governing board receives comments or suggestions on a rule from the commission, it shall record these as part of the minute record. The rule is not effective and may not be implemented until the governing board holds a meeting and places on the meeting agenda the comments it has received from the commission.

(d) Nothing in this section requires that any rule reclassified or transferred by the commission or the council under this section be promulgated again under the procedures set out in article three-a, chapter twenty-nine-a of this code unless the rule is amended or modified.

(e) The commission and council each shall file with the Legislative Oversight Commission on Education Accountability any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article.

(f) The governing boards shall promulgate and adopt any rule which they are required to adopt by this chapter or
chapter eighteen-c of this code no later than July 1, 2011 unless a later date is specified. On and after this date:

(1) Any rule of a governing board which meets the definition set out in subsection (c) of this section and which has not been promulgated and adopted by formal vote of the appropriate governing board is void and may not be enforced;

(2) Any authority granted by this code which inherently requires the governing board to promulgate and adopt a rule is void until the governing board complies with this section.

(g) Within thirty days of the adoption of a rule, including repeal or amendment of an existing rule, and before the change is implemented, a governing board shall furnish a copy of each rule which it has adopted to the commission or the council, respectively, for review and approval, except the governing boards of Marshall University and West Virginia University are subject to subsection (c) of this section.

(h) Annually, by October 1, each governing board shall file with the commission or the council, as appropriate, a list of all rules that were in effect for that institution on July 1 of that year, including the most recent date on which each rule was considered and adopted, amended or repealed by the governing board. For all rules adopted, amended or repealed after the effective date of this section, the list shall include a statement by the chair of the governing board certifying that the governing board has complied with this section when each listed rule was promulgated and adopted.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.


(a) The primary responsibility of the commission is to develop, establish and implement policy that will achieve the
goals, objectives and priorities found in section one-a, article one and article one-d of this chapter. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop, oversee and advance the public policy agenda pursuant to article one-d of this chapter to address major challenges facing the state, including, but not limited to, the following:

(A) The goals, objectives and priorities established in this chapter including specifically those goals, objectives and priorities pertaining to the compacts created pursuant to section seven, article one-d of this chapter; and

(B) Development and implementation of the master plan described in section five, article one-d of this chapter for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction. The rule shall meet the following criteria:

(A) Provide for an adequate level of educational and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and
(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one and article one-d of this chapter;

(3) In collaboration with the council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature and the Governor and specifically from the state Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the governing boards and the higher education systems as a whole accountable for accomplishing their missions and implementing their compacts;

(4) Develop and adopt each compact for the governing boards under its jurisdiction;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to state policymakers:

(A) The Governor for implementation of the public policy agenda; and
(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(7) Jointly with the council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to section seven, article one-d of this chapter;

(10) Report to the Legislature and to the Legislative Oversight Commission on Education Accountability annually during the January interim meeting period on a date and at a time and location to be determined by the President of the Senate and the Speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting the goals, objectives and priorities set forth in section one-a, article one and article one-d of this chapter and in the commission’s master plan and institutional compacts;

(B) The commission’s priorities for new operating and capital investments and the justification for the priority;
(C) Recommendations of the commission for statutory changes necessary or expedient to achieve state goals, objectives and priorities;

(11) Establish a formal process for identifying capital investment needs and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to article nineteen of this chapter.

(12) Develop standards and evaluate governing board requests for capital project financing in accordance with article nineteen of this chapter;

(13) Ensure that governing boards manage capital projects and facilities needs effectively, including review and approval or disapproval of capital projects, in accordance with article nineteen of this chapter.

(14) Acquire legal services as considered necessary, including representation of the commission, its, governing boards, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(15) Employ a Chancellor for Higher Education pursuant to section five of this article;

(16) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with article four of this chapter;
(17) Provide suitable offices in Kanawha County for the chancellor, vice chancellors and other staff;

(18) Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article. The role of the commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals, objectives and priorities set forth in the compact, in section one-a, article one and article one-d of this chapter;

(19) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;

(20) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(21) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the
state board of education and the state superintendent of Schools;

(22) Jointly with the council, develop and implement an oversight plan to manage systemwide technology including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(23) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a bachelor’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;
(25) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a master’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(26) Establish and implement policies and programs, in cooperation with the council and the governing boards, through which a student who has gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate’s degree or a bachelor’s degree at a state institution of higher education;

(27) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics as, in the commission’s discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives and priorities pursuant to section one-a, article one and article one-d of this chapter;

(28) Promulgate and implement a rule for higher education governing boards and institutions to follow when considering capital projects pursuant to article nineteen of this chapter;

(29) Consider and submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended
appropriations for the commission and the governing boards under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council’s jurisdiction. The commission annually shall submit the proposed allocations based on each institution’s progress toward meeting the goals of its compact;

(30) The commission may assess institutions under its jurisdiction, including Marshall University and West Virginia University, for the payment of expenses of the commission or for the funding of statewide higher education services, obligations or initiatives related to the goals set forth for the provision of public higher education in the state;

(31) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning or severe sensory disabilities;

(32) Make appointments to boards and commissions where this code requires appointments from the State College System Board of Directors or the University of West Virginia System Board of Trustees which were abolished effective June 30, 2000, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the council. Notwithstanding any provisions of this code to the contrary, the commission or the council may appoint one of its own members or any other citizen of the state as its designee. The commission and council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;
(33) Pursuant to article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules necessary or expedient to fulfill the purposes of this chapter. The commission and the council shall promulgate a uniform joint legislative rule for the purposes of standardizing, as much as possible, the administration of personnel matters among the state institutions of higher education and implementing the provisions of articles seven, eight, nine and nine-a of this chapter;

(34) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

(35) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(36) By October 1, 2011, promulgate a rule pursuant to section one, article ten of this chapter, establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, including Marshall University and West Virginia University. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and
(E) Such other policies as the commission and council consider appropriate;

(37) Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it; and

(38) Notwithstanding any other provision of this code to the contrary sell, lease, convey or otherwise dispose of all or part of any real property that it owns, in accordance with article nineteen of this chapter.

(b) In addition to the powers and duties listed in subsection (a) of this section, the commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership, including a distinct and visible role in setting the state’s policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;

(3) Development and implementation of institutional mission definitions, including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;
(4) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission's authority to review and approve academic programs for either Marshall University or West Virginia University is limited to programs that are proposed to be offered at a new location not presently served by that institution;

(B) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable, but in any case not later than six months from the date the governing board makes an official request. The commission may not withhold approval unreasonably.

(5) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Developing, establishing and implementing information, assessment, accountability and personnel systems, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;
(9) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in section two, article one of this chapter.

(10) Developing, implementing and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(11) Quality assurance that intersects with all other duties of the commission particularly in the areas of research, data collection and analysis, personnel administration, planning, policy analysis, program review and approval, budgeting and information and accountability systems; and

(12) Developing budgets and allocating resources for governing boards under its jurisdiction:

(A) For all governing boards under its jurisdiction, except the governing boards of Marshall University and West Virginia University, the commission shall review institutional operating budgets, review and approve capital budgets, and distribute incentive and performance-based funds;

(B) For the governing boards of Marshall University and West Virginia University, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission’s comments, if any, shall be made part of the governing board’s minute record.
(c) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this article.

(d) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that any of the following conditions exist:

(1) The governing board has failed for two consecutive years to develop or implement an institutional compact as required in article one-d of this chapter;

(2) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(3) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors and other staff.

(a) The commission, created by section one of this article, shall employ a Chancellor for Higher Education who is the Chief Executive Officer of the Commission and who serves at its will and pleasure.
(b) The commission shall set the qualifications for the position of Chancellor and, when a vacancy occurs, shall conduct a thorough nationwide search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

1. Possesses an excellent academic and administrative background;
2. Demonstrates strong communication skills;
3. Has significant experience and an established national reputation as a professional in the field of higher education;
4. Is free of institutional or regional biases; and
5. Holds or retains no other administrative position within a system of higher education while employed as chancellor.

(c) The commission shall conduct written performance evaluations of the chancellor annually and may offer the chancellor a contract not to exceed three years. At the end of each contract period, the commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level.

(d) When filling a vacancy in the position of chancellor, the commission shall enter into an initial employment contract for one year with the candidate selected. At the end of the initial contract period, and each contract period thereafter, the commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level for the chancellor.

(e) The commission sets the chancellor’s salary. The salary may not exceed by more than twenty percent the
average annual salary of chief executive officers of state
systems of higher education in the states that comprise the
membership of the Southern Regional Education Board.

(f) The commission may employ a Vice Chancellor for
Health Sciences who serves at the will and pleasure of the
commission. The Vice Chancellor for Health Sciences shall
coordinate the West Virginia University School of Medicine,
the Marshall University School of Medicine and the West
Virginia School of Osteopathic Medicine and also shall
provide assistance to the governing boards on matters related
to medical education and health sciences. The Vice
Chancellor for Health Sciences shall perform all duties
assigned by the chancellor, the commission and state law. In
the case of a vacancy in the office of Vice Chancellor of
Health Sciences, the duties assigned to this office by law are
the responsibility of the chancellor or a designee.

(g) The commission shall employ a Vice Chancellor for
Administration pursuant to section two, article four of this
chapter.

(h) The commission shall employ a Vice Chancellor for
Human Resources pursuant to section two-a, article four of
this chapter. The person serving as senior director of human
resources by the commission on January 1, 2011, is Vice
Chancellor for Human Resources on the effective date of this
section. Additionally, the commission shall employ a
qualified generalist in the field of human resources pursuant
to section two-a, article four of this chapter. The human
resources generalist shall report to the Vice Chancellor for
Human Resources.

(i) The commission may employ a Vice Chancellor for
State Colleges who serves at the will and pleasure of the
commission. At a minimum, the Vice Chancellor for State
Colleges shall perform the following duties:
(1) Provide assistance to the commission, the chancellor and the state colleges on matters related to or of interest and concern to these institutions;

(2) Advise, assist and consult regularly with the presidents and governing boards of each state college;

(3) Serve as an advocate and spokesperson for the state colleges to represent them and to make their interests, views and issues known to the chancellor, the commission and governmental agencies;

(4) Perform all duties assigned by the chancellor, the commission and state law.

In addition, the vice chancellor for state colleges shall provide staff assistance to the presidents and governing boards to the extent practicable.

(j) On behalf of the commission, the chancellor may enter into agreements with any state agency or political subdivision of the state, any state institution of higher education or any other person or entity to enlist staff assistance to implement the powers and duties assigned by the commission or by state law.

(k) The chancellor is responsible for the daily operations of the commission and has the following responsibilities relating to the commission and the governing boards under its jurisdiction:

(1) To carry out policy and program directives of the commission;

(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a, article one and article one-d of this chapter, and in the compacts;
(3) To prepare and submit to the commission for its approval the proposed budget of the commission including the offices of the chancellor and the vice chancellors;

(4) To assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-a of this code. The commission and the council, either separately or jointly as appropriate, are responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

(5) To perform all other duties and responsibilities assigned by the commission or by state law.

(l) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

(m) The chancellor, with the commission, advises the Legislature on matters of higher education in West Virginia. The chancellor shall work closely with the Legislative Oversight Commission on Education Accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals, objectives and priorities for higher education that the Legislature has established by law.

(n) The chancellor may design and develop for consideration by the commission new statewide or region-wide initiatives in accordance with the goals set forth in section one-a, article one and article one-d of this chapter, and the public policy agenda articulated by the commission. In those instances where the initiatives to be proposed have
129 a direct and specific impact or connection to community and
130 technical college education as well as to baccalaureate and
131 graduate education, the Chancellor for Higher Education and
132 the Chancellor for Community and Technical College
133 Education shall design and develop the initiatives jointly for
134 consideration by the commission and the council.

135 (o) To further the goals of cooperation and coordination
136 between the commission and the state Board of Education,
137 the chancellor serves as an ex officio, nonvoting member of
138 the state board. The chancellor shall work closely with
139 members of the state Board of Education and with the State
140 Superintendent of Schools to assure that the following goals
141 are met:

142 (1) Development and implementation of a seamless
143 kindergarten-through-college system of education; and

144 (2) Appropriate coordination of missions and programs.

ARTICLE 2A. INSTITUTIONAL BOARDS OF
GOVERNORS.

§18B-2A-3. Supervision of governing boards; promulgation of
rules.

1 (a) The governing boards are subject to the supervision
2 of the commission or the council, as appropriate, except in
3 those instances where specific statutory exceptions are
4 granted by law to the governing boards of Marshall
5 University and West Virginia University.

6 (b) The governing boards of all state institutions of higher
7 education are subject to the provisions of law that relate to
8 the administration of personnel matters including,
9 specifically, articles seven, eight, nine and nine-a of this
10 chapter and to rules promulgated and adopted in accordance
11 with these provisions.
(c) The Chancellor for Higher Education and the Chancellor for Community and Technical College Education, under the supervision of their respective boards, are responsible for the coordination of policies, purposes and rules of the governing boards and shall provide for and facilitate sufficient interaction among the governing boards and between the governing boards and the state Board of Education to meet the goals and objectives provided in the compacts and in section one-a, article one and article one-d of this chapter.

(d) The governing boards and the state Board of Education shall provide all information requested by the commission and the council, whether the request is made separately or jointly, in an appropriate format and in a timely manner.


Each governing board separately has the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institution of higher education under its jurisdiction;

(b) Develop a master plan for the institution under its jurisdiction.

(1) The ultimate responsibility for developing and updating each master plan at the institution resides with the governing board, but the ultimate responsibility for approving the final version of each master plan, including periodic updates, resides with the commission or council, as appropriate.

(2) Each master plan shall include, but is not limited to, the following:
(A) A detailed demonstration of how the master plan will be used to meet the goals, objectives and priorities of the compact;

(B) A well-developed set of goals, objectives and priorities outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in a plan to assure that the needs of the institution’s area of responsibility for a quality system of higher education are addressed;

(C) Documentation showing how the governing board involved the commission or council, as appropriate, constituency groups, clientele of the institution and the general public in the development of all segments of the master plan.

(3) The plan shall be established for periods of not fewer than three nor more than five years and shall be revised periodically as necessary, including adding or deleting bachelor’s, master’s and doctoral degree programs for all governing boards as approved by the commission or council, respectively, except for the governing boards of Marshall University and West Virginia University only, the commission may review, but may not approve or disapprove, additions or deletions of degree programs.

(c) Develop a ten-year campus development plan in accordance with article nineteen of this chapter;

(d) Prescribe for the institution, under its jurisdiction, in accordance with its master plan and compact, specific functions and responsibilities to achieve the goals, objectives and priorities established in articles one and one-d of this chapter to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;
(e) Direct the preparation of an appropriation request for the institution under its jurisdiction, which relates directly to missions, goals and projections found in the master plan and the compact;

(f) Consider, revise and submit for review and approval to the commission or council, as appropriate, an appropriation request on behalf of the institution under its jurisdiction;

(g) Review, at least every five years, all academic programs offered at the institution under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to established state goals, objectives and priorities, the master plan, the compact and the education and workforce needs of its responsibility district. As a part of the review, each governing board shall require the institution under its jurisdiction to conduct periodic studies of its graduates and their employers to determine placement patterns and the effectiveness of the education experience. Where appropriate, these studies should coincide with the studies required of many academic disciplines by their accrediting bodies;

(h) Ensure that the sequence and availability of academic programs and courses offered by the institution under its jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at the institution is transferable to any other state institution of higher education for credit with the grade earned;

(i) Subject to article one-b of this chapter, approve the teacher education programs offered in the institution under its
control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the commission may select and use one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(j) Involve faculty, students and classified employees in institution-level planning and decisionmaking when those groups are affected;

(k) Subject to federal law and pursuant to articles seven, eight, nine and nine-a of this chapter and to rules adopted by the commission and the council, administer a system for the management of personnel matters, including, but not limited to, discipline for employees at the institution under its jurisdiction;

(l) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article two, chapter six-c of this code is the exclusive mechanism for hearing prospective employee grievances and appeals;

(m) Solicit and use or expend voluntary support, including financial contributions and support services, for the institution under its jurisdiction;

(n) Appoint a president for the institution under its jurisdiction subject to section six, article one-b of this chapter;

(o) Conduct written performance evaluations of the president pursuant to section six, article one-b of this chapter;
(p) Employ all faculty and staff at the institution under its jurisdiction. The employees operate under the supervision of the president, but are employees of the governing board;

(q) Submit to the commission or council, as appropriate, any data or reports requested by the commission or council within the time frame set by the commission or council;

(r) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the state institutions of higher education or at off-campus locations in the institution’s responsibility district. To accomplish this goal, the boards may share resources among the various groups in the community;

(s) Provide and transfer funds and property to certain corporations pursuant to section ten, article twelve of this chapter;

(t) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its master plan and compact. If a governing board elects to delegate any of its power and control under this subsection, it shall enter the delegation in the minutes of the meeting when the decision was made and shall notify the commission or council, as appropriate. Any delegation of power and control may be rescinded by the appropriate governing board, the commission or council, as appropriate, at any time, in whole or in part, except that the commission may not revoke delegations of authority made by the governing board of Marshall University or West Virginia University;
(u) Unless changed by the commission or the council, as appropriate, continue to abide by existing rules setting forth standards for accepting advanced placement credit for the institution under its jurisdiction. Individual departments at a state institution of higher education, with approval of the faculty senate, may require higher scores on the advanced placement test than scores designated by the governing board when the credit is to be used toward meeting a requirement of the core curriculum for a major in that department;

(v) Consult, cooperate and coordinate with the State Treasurer and the State Auditor to update as necessary and maintain an efficient and cost-effective system for the financial management and expenditure of appropriated and nonappropriated revenue at the institution under its jurisdiction. The system shall ensure that properly submitted requests for payment are paid on or before the due date but, in any event, within fifteen days of receipt in the State Auditor’s office;

(w) In consultation with the appropriate chancellor and the Secretary of the Department of Administration, develop, update as necessary and maintain a plan to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions, changes in salary or compensation and transfers at the institution under its jurisdiction. Each personnel transaction shall be accompanied by the appropriate standardized system or forms, as appropriate, which shall be submitted to the respective governing board and the Department of Administration:

(1) Not later than July 1, 2012, the Department of Administration shall make available to each governing board the option of using a standardized electronic system for these personnel transactions.
(2) The Secretary of the Department of Administration may suspend a governing board’s participation in the standardized electronic system if he or she certifies to the Governor that the governing board has failed repeatedly and substantially to comply with the department’s policies for administering the electronic system;

(x) Notwithstanding any other provision of this code to the contrary, transfer funds from any account specifically appropriated for its use to any corresponding line item in a general revenue account at any agency or institution under its jurisdiction as long as the transferred funds are used for the purposes appropriated;

(y) Transfer funds from appropriated special revenue accounts for capital improvements under its jurisdiction to special revenue accounts at agencies or institutions under its jurisdiction as long as the transferred funds are used for the purposes appropriated in accordance with article nineteen of this chapter;

(z) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the governing board, its institution, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing board may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law; and

(aa) Contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.

(a) The governing board of a state institution of higher education is granted the additional powers and assigned the associated duties pursuant to this section previously granted and assigned to the governing boards of Marshall University and West Virginia University, if the commission or council, as appropriate, approves granting the powers and assigning the duties to that governing board.

(b) The powers and duties that may be granted and assigned pursuant to this section are the following:

(1) Sections five, six and seven, article three, chapter twelve of this code;

(2) Section two, article three of this chapter;

(3) Sections five, six and seven, article four of this chapter;

(4) Section seven, article five of this chapter; and

(5) Section six-a, article ten of this chapter.

(c) Additional powers and duties related to purchasing -- The powers and duties granted and assigned to the governing boards of Marshall University and West Virginia University by section four, article five of this chapter are extended to the governing boards of all other state institutions of higher education under the following conditions:

(1) The commission and council shall conduct a study to determine the capacity of each governing board under their respective jurisdictions to implement the additional powers and carry out the additional assigned duties related to purchasing;

(2) Based upon the findings of the study, the commission and council shall approve the governing boards under their
30 respective jurisdictions that they determine have the capacity
to exercise the powers and carry out the assigned duties
pursuant to section four, article five of this chapter; and

33 (3) The commission and council shall report their
findings together with a list of the governing boards they
each have approved to the Legislative Oversight Commission
on Education Accountability by December 1, 2011.

37 (d) The commission and council have the power and the
duty to monitor participation and provide technical
assistance, as requested or required, to governing boards
under their respective jurisdictions and to limit or rescind
exercise of the powers, in whole or in part, granted by this
section to a governing board if, in the sole determination of
the commission or council, as appropriate, that action is
warranted.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR
COMMUNITY AND TECHNICAL
COLLEGE EDUCATION.

§18B-2B-3. West Virginia Council for Community and
Technical College Education; supervision of
chancellor; chief executive officer.

1 (a) There is continued the West Virginia Council for
2 Community and Technical College Education. The council
3 has all the powers and duties assigned by law to the joint
4 commission for vocational--technical-occupational education
5 prior to July 1, 2001, and all other powers and duties
6 assigned by law.

7 (b) The council shall employ a chancellor for community
8 and technical college education. The chancellor serves as
9 chief executive officer of the council at the will and pleasure
10 of the council. The chancellor shall be compensated at a
11 level set by the council not to exceed eighty percent of the
average annual salary of chief executive officers of the state systems of community and technical colleges in the states that comprise the membership of the Southern Regional Education Board.

(c) The council shall conduct written performance evaluations of the chancellor annually and may offer the chancellor a contract not to exceed three years. At the end of each contract period, the council shall review the evaluations and make a determination by vote of its members on continuing employment and level of compensation.

(d) When a vacancy occurs in the position of chancellor, the council shall enter into an initial employment contract for one year with the candidate selected to fill the vacancy. At the end of the initial period, and each contract period thereafter, the council shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level for the chancellor.

(e) The individual who was serving as Vice Chancellor for Community and Technical College Education and Workforce Development and who became chancellor effective March 13, 2004, maintains all benefits of employment held, accrued and afforded as the Vice Chancellor for Community and Technical College Education and Workforce Development prior to March 13, 2004. These benefits include, but are not limited to, retirement benefits, continued membership in the same retirement system, insurance coverage and sick and annual leave. For the purposes of leave conversion established in section thirteen, article sixteen, chapter five of this code, the chancellor is not a new employee and the prohibition on conversion does not apply if the chancellor was eligible for leave conversion while serving as vice chancellor.
ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF GOVERNING BOARDS.

§18B-3-1. Legislative findings, purpose; intent; definition.

(a) The Legislature finds that an effective and efficient system of doctoral-level education is vital to providing for the economic well-being of the citizens of West Virginia and for accomplishing established state goals and objectives. As the only research and doctoral-granting public universities in the state, Marshall University and West Virginia University are major assets to the citizens of West Virginia and must be an integral part of any plan to strengthen and expand the economy.

(b) The Legislature further finds that these two institutions must compete in both a national and global environment that is rapidly changing, while they continue to provide high quality education that is both affordable and accessible and remain accountable to the people of West Virginia for the most efficient and effective use of scarce resources.

(c) The Legislature further finds that Marshall University and West Virginia University, under the direction of their respective governing boards, may manage operational governance of their institutions in an efficient and accountable manner and may best fulfill their public missions when their governing boards are given flexibility and autonomy sufficient to meet state goals, objectives and priorities established in this article, and in section one-a, article one and article one-d of this chapter.

(d) Therefore, the purposes of this article include, but are not limited to, the following:

(1) Enhancing the competitive position of Marshall University and West Virginia University in the current environment for research and development;
(2) Providing the governing boards of these institutions with operational flexibility and autonomy in certain areas, including tools to promote economic development in West Virginia;

(3) Encouraging the development of research expertise in areas directly beneficial to the state;

(4) Focusing the attention and resources of the governing boards on state goals, objectives and priorities to enhance the competitive position of the state and the economic, social and cultural well-being of its citizens; and

(5) Providing additional autonomy and operational flexibility and assigning certain additional responsibilities to governing boards of other state institutions of higher education.

(e) The governing boards of Marshall University and West Virginia University each have the power and the obligation to perform functions, tasks and duties as prescribed by law and to exercise their authority and carry out their responsibilities in a manner that is consistent with and not in conflict with the powers and duties assigned by law to the council and the commission.

(f) While the governing boards may choose to delegate powers and duties to their respective presidents pursuant to subsection (s), section four, article two-a of this chapter, ultimately, it is they who are accountable to the Legislature, the Governor and the citizens of West Virginia for meeting the established state goals, objectives and priorities set forth in this article, and in section one-a, article one and article one-d of this chapter. Therefore, grants of operational flexibility and autonomy are made directly to the governing boards and are not grants of operational flexibility and autonomy to the president of an institution.
§18B-3-3. Relationship of governing boards to the commission and the council.

(a) Relationship between the commission and the governing boards. --

(1) The commission functions as a state-level coordinating board exercising its powers and duties in relation to the governing boards as prescribed by law;

(2) The primary responsibility of the commission is to work collaboratively with the governing boards to research, develop and propose policy that will achieve the established goals, objectives, and priorities set forth in this chapter and chapter eighteen-c of this code; and

(3) The commission has specific powers and duties which include, but are not limited to, the following:

(A) Advocating for public higher education at the state level;

(B) Jointly with the council, implementing the classification and compensation system established by articles seven, eight, nine and nine-a of this chapter; and

(C) Collecting and analyzing data, researching, developing recommendations, and advising the Legislature and the Governor on broad policy initiatives, use of incentive funding, national and regional trends in higher education and issues of resource allocation involving multiple governing boards.

(b) Relationship between the council and the governing boards. -- (1) The council maintains all powers and duties assigned to it by law or rule relating to community and technical colleges as defined in section two, article one of this chapter;
(2) The council functions as a coordinating board for the institutions under its jurisdiction which make up the statewide network of independently-accredited community and technical colleges. In addition to recognizing the authority assigned by law to the council and abiding by rules duly promulgated by the council relating to the community and technical colleges, the governing boards shall exercise their authority and carry out their responsibilities in a manner that is consistent with and complementary to the powers and duties assigned by law or rule to the community and technical colleges or to the council;

(c) The governing boards shall work collaboratively with the commission, the council and their staff to provide all information requested by the commission or the council in an appropriate format and in a timely manner.

§18B-3-4. Duty of governing boards to address state priorities.

The expertise of faculty and graduate students at state institutions of higher education is important to every citizen of this state. It is the responsibility of the governing boards to channel this expertise into research and analysis that will yield measurable benefits to the citizens of West Virginia. Therefore, in addition to the goals, objectives and priorities established in section one-a, article one and article one-d of this chapter and goals established elsewhere in this code, it is the responsibility of the governing boards to concentrate attention and resources on certain specific state priorities that have a direct, positive impact on the economic, social and cultural well-being of the people of West Virginia.

(a) Priorities for Marshall University and West Virginia University in collaboration:

(1) Developing Regional Brownfield Assistance Centers pursuant to section seven, article eleven of this chapter;
(2) Performing professional development-related research and coordinating the delivery of professional development to educators in the public schools of the state pursuant to article two, chapter eighteen of this code; and

(3) Building subject matter expertise in public education finance, including mastery of the theories and concepts used in developing formulas to provide state-level financial support to public education.

(b) The Legislature may, but is not required to, make additional appropriations for the benefit of Marshall University and West Virginia University to assist them in fulfilling the purposes set forth in subsection (a) of this section.

(c) Additional priorities for governing boards:

(d) In addition to the priorities established in subsection (a) of this section, each governing board under the jurisdiction of the commission shall focus resources and attention on improving its graduation rate for full-time undergraduate students as a specific institutional priority. The graduation rate is measured as a percentage of the number of undergraduate students who obtain a degree within six years of the date of enrollment as full-time freshmen.

(1) By July 1, 2015, the governing board of each state institution of higher education under the jurisdiction of the commission, including the governing boards of Marshall University and West Virginia University, shall attain a graduation rate for full-time undergraduate students that equals or exceeds the graduation rate of its peers established pursuant to section three, article one-a of this chapter.

(2) The commission shall monitor and report annually by December 1, to the Legislative Oversight Commission on
Education Accountability on the progress of the governing boards toward meeting the goals set forth in this subsection.

ARTICLE 4. GENERAL ADMINISTRATION.

§ 18B-4-1. Employment of chancellors; designation of staff; offices.

(a) The council and commission each shall employ a chancellor to assist in the performance of their respective duties and responsibilities subject to the following conditions:

(1) Each chancellor serves at the will and pleasure of the hiring body.

(2) Neither chancellor may hold or retain any other administrative position within the system of higher education while employed as chancellor.

(3) Each chancellor shall carry out the directives of the body by whom employed and shall collaborate with that body in developing policy options.

(4) The commission is responsible to the council and the Chancellor for Community and Technical College Education for providing services in areas essential to exercising the powers and duties assigned to the council by law. The commission may not charge the council any fee for the provision of these essential services. The service areas include, but are not limited to, legal services, research, technology, computing, finance and facilities, academic affairs, telecommunications, human resources, student services and any other general areas the council considers to be essential to the exercise of its legal authority. The services are provided under the general supervision of the Vice Chancellor for Administration.
For the purpose of developing or evaluating policy options, the chancellors may request the assistance of the presidents and staff employed by the governing boards under their respective jurisdictions.

(b) In addition to the staff positions designated in subdivision (4), subsection (a) of this section, and section five, article one-b of this chapter, the Vice Chancellor for Administration, employed pursuant to section two of this article, serves the offices of the chancellors to discharge jointly the duties and responsibilities of the council and commission.

(c) Suitable offices for the Vice Chancellor of Administration, the Vice Chancellor for Human Resources and other staff shall be provided in Kanawha County.

§18B-4-2a. Employment of vice chancellor for human resources; powers and duties generally; staff; office.

(a) By and with the advice and consent of the council for community and technical college education, the commission shall employ a Vice Chancellor for Human Resources who may not be dismissed without the consent of the council. The person employed as senior director of human resources by the commission on January 1, 2011, becomes the Vice Chancellor for Human Resources on the effective date of this section. Thereafter, any vacancy occurring in this position shall be filled in accordance with this section.

(b) The successful candidate for the position of vice chancellor provides vision, leadership and direction to ensure the human resources system for employees of the commission, council and governing boards is effective, efficient and aligned with industry best practices. The successful candidate possesses the following minimum qualifications:
(1) A master’s degree in human resources or a related field; and

(2) Thorough knowledge of and experience administering employment laws and regulations, recruiting and selection techniques, employee relations techniques and methodologies, legal reporting and compliance requirements.

(c) The Vice Chancellor, in consultation with the chancellors, performs functions, tasks and responsibilities necessary to carry out the policy directives of the council and commission and any other duties prescribed by law. The Vice Chancellor oversees and monitors all issues related to the personnel system for higher education employees and provides technical support to organizations as directed or requested on all issues related to the design, development, implementation and administration of the personnel system established by this chapter and by duly promulgated rules.

(d) The Vice Chancellor supervises employees at the commission offices involved in human resources functions, including the professional, administrative, clerical and other employees necessary to carry out assigned powers and duties. In consultation with the Vice Chancellor for Administration and the chancellors, the Vice Chancellor shall delineate staff responsibilities as considered desirable and appropriate.

(e) The Vice Chancellor provides support to the chancellors and organizations on a highly diverse range of issues including assisting them to develop a culture of constant improvement in a rapidly changing, complex market. Duties of the position include, but are not limited to, the following:

(1) Developing and implementing business-related initiatives involving organizational design, labor cost management, executive recruitment and compensation,
leadership and management development, human resources
data and technology, and compensation and benefits
programs;

(2) Chairing the Job Classification Committee and the
Compensation Planning and Review Committee established
by sections four, and five, article nine-a of this chapter.

(3) Assuming responsibility for coordinating
compensation and benefits programs for all employees,
including designing these programs, and for supporting each
higher education organization in implementing the programs;

(4) Maintaining consistent human resources information
systems and selecting and supervising benefits consultants,
brokers, trustees and necessary legal assistants;

(5) Maintaining the classification system by providing for
regular review of jobs to determine whether the current job
description accurately reflects the duties and responsibilities
and whether the job is properly classified or needs to be
modified or deleted. Every job shall be reviewed at least
once within each five-year period;

(6) Ensuring that market comparison studies are
conducted for each class of employees and providing a report
annually to each organization on the status of relative market
equity among the employee classifications.

(7) Carrying out the following duties related to training
and development:

(A) Analyzing and determining training needs of
organization employees and formulating and developing
plans, procedures and programs to meet specific training
needs and problems. Successful completion of these tasks
requires the vice chancellor to work closely with and
communicate regularly with the training and development coordinators employed by each organization;

(B) Developing, constructing, maintaining and revising training manuals and training aids or supervising development of these materials by outside suppliers;

(C) Planning, conducting, and coordinating management inventories, appraisals, placement, counseling and training;

(D) Coordinating participation by all employees in training programs developed internally or provided by outside contractors; and

(E) Administering and analyzing an annual training and development needs survey. The survey may coincide with the completion of the annual performance review process.

(8) Conducting performance reviews of personnel who administer human resources functions at each organization in relation to best practices pursuant to articles seven, eight, nine and nine-a of this chapter and rules of the commission and council. Human resources personnel at each organization shall be evaluated at least once within each three-year period. The vice chancellor shall analyze the results of these evaluations and target training and professional development to identified areas of deficiency.

(f) To assist in performing the duties of vice chancellor, the commission, with the consent of the council, shall employ a generalist/manager who is well qualified in the field of human resources. The position reports to the vice chancellor for Human resources and shall be filled on a permanent basis by September 1, 2011. The successful candidate is responsible for a wide range of human resources management, reporting and development activities and works collaboratively with governing boards and their employees at all levels.
ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.


(a) The governing boards shall ensure the fiscal integrity of their operations using best business and management practices.

(1) The practices include at least the following:

(A) Complying with Generally Accepted Accounting Principles of the Governmental Accounting Standards Board (GAAP); and the Generally Accepted Government Auditing Standards of the Government Accountability Office (GAGAS);

(B) Operating without material weakness in internal controls as defined by GAAP, GAGAS and, where applicable, the Office of Management and Budget (OMB) Circular A-133;

(C) Maintaining annual audited financial statements with an unqualified opinion;

(D) Preparing annual audited financial statements as coordinated and directed by the commission and council, respectively, and as the commission requires to complete the higher education fund audit;

(E) Maintaining quarterly financial statements certified by the chief financial officer of the institution; and

(F) Implementing best practices from Sarbanes-Oxley, or adopting the applicable tenets of Sarbanes-Oxley as best practices.
(2) Each governing board and any affiliated research corporation shall comply with the OMB Circular A-133 annual grant award audit requirements and are exempt from section fourteen, article four, chapter twelve of this code.

(3) Within thirty days of the completion of the financial audit report, the governing boards shall furnish to the commission or council, respectively, copies of the annual audited financial statements.

(b) The commission and council, each, shall ensure the fiscal integrity of any electronic process conducted at its offices and by the governing boards under its respective jurisdiction by applying best business and management practices.

(c) To the maximum extent practicable, each higher education organization shall provide for its employees to receive their wages via electronic transfer or direct deposit.

(d) Notwithstanding any other provision of this code to the contrary, a purchasing card may be used by the council, the commission or a governing board of a state institution of higher education to make any payment authorized by the Auditor, including regular routine payments and travel and emergency payments. Payments are set at an amount to be determined by the Auditor.

(1) Subject to approval of the auditor, an emergency payment and a routine, regularly scheduled payment, including, but not limited to, utility payments, contracts and real property rental fees, may exceed this limit by an amount to be determined by the auditor.

(2) The council, commission and a governing board of a state institution of higher education may use a purchasing card for travel expenses directly related to the job duties of
the traveling employee. Where approved by the auditor, the
expenses may exceed $5000 by an amount to be determined
by the auditor. Traveling expenses may include registration
fees and airline and other transportation reservations, if
approved by the president of the institution. Traveling
expenses may include purchases of fuel and food.

(3) The commission, council, and governing boards each
shall maintain one purchasing card for use only in a situation
declared an emergency by the appropriate chancellor or the
institution's president. Emergencies may include, but are not
limited to, partial or total destruction of a facility; loss of a
critical component of utility infrastructure; heating,
ventilation or air condition failure in an essential academic
building; loss of campus road, parking lot or campus
entrance; or a local, regional, or national emergency situation
that has a direct impact on the campus.

e) Notwithstanding section ten-f, article three, chapter
twelve of this code, or any other provision of this code or law
to the contrary, the auditor shall accept any receiving report
submitted in a format utilizing electronic media. The auditor
shall conduct any audit or investigation of the council,
commission or governing board at its own expense and at no
cost to the council, commission or governing board.

(f) The council and the commission each shall maintain
a rule in accordance with article three-a, chapter twenty-nine-
a of this code. The rule shall provide for governing boards
individually or cooperatively to maximize their use of any of
the following purchasing practices that are determined to
provide a financial advantage:

(1) Bulk purchasing;

(2) Reverse bidding;
(3) Electronic marketplaces; and

(4) Electronic remitting.

(g) Each governing board may establish a consortium with at least one other governing board, in the most cost-efficient manner feasible, to consolidate the following operations and student services:

(1) Payroll operations;

(2) Human resources operations;

(3) Warehousing operations;

(4) Financial transactions;

(5) Student financial aid application, processing and disbursement;

(6) Standard and bulk purchasing; and

(7) Any other operation or service appropriate for consolidation as determined by the council or commission.

(h) A governing board may charge a fee to the governing board of each institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the governing board providing the service.

(i) A governing board may provide the services authorized by this section for the benefit of any governmental body or public or private institution.

(j) Each governing board shall strive to minimize its number of low-enrollment sections of introductory courses.
To the maximum extent practicable, governing boards shall use distance learning to consolidate the course sections. The council and commission shall report the progress of reductions as requested by the Legislative Oversight Commission on Education Accountability.

(k) A governing board shall use its natural resources and alternative fuel resources to the maximum extent feasible. The governing board:

(1) May supply the resources for its own use and for use by the governing board of any other institution;

(2) May supply the resources to the general public at fair market value;

(3) Shall maximize all federal or grant funds available for research regarding alternative energy sources; and

(4) May develop research parks to further the purpose of this section and to expand the economic development opportunities in the state.

(1) Any cost-savings realized or fee procured or retained by a governing board pursuant to this section is retained by the governing board.

(m) Each governing board is authorized, but not required, to implement subsections (f), (g) and (h) of this section.

If a governing board elects to implement subsection (g) of this section, the following conditions apply:

(1) The governing board makes the determination regarding any additional operation or service which is appropriate for consolidation without input from the council or commission;
(2) The governing board sets the fee charged to the
  governing board of the institution for which it provides a
  service or performs an operation. The fee rate shall be in the
  best interest of both the institution being served and the
  governing board providing the service and is not subject to
  approval by the council or commission; and

(3) The governing board may not implement this
  subdivision in a manner which supercedes the requirements
  established in section twelve, article three-c of this chapter.

(n) The governing boards of Marshall University and
  West Virginia University, respectively, each shall promulgate
  a rule on purchasing procedures in accordance with section
  six, article one of this chapter.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-1. Legislative intent and purpose.

(a) The intent of the Legislature in enacting this article
  and articles eight, nine and nine-a of this chapter is to
  establish a state-wide, integrated human resources structure
  capable of, but not limited to, meeting the following
  objectives:

(1) Providing benefits to the citizens of the State of West
  Virginia by supporting the public policy agenda as articulated
  by state policymakers;

(2) Assuring fiscal responsibility by making the best use
  of scarce resources;

(3) Promoting fairness, accountability, credibility,
  transparency and a systematic approach to progress (FACTS)
  in personnel decision-making;
(4) Reducing, or, wherever possible, eliminating arbitrary and capricious decisions affecting employees of higher education organizations as defined in section two, article nine-a of this chapter;

(5) Creating a stable, self-regulating human resources system capable of evolving to meet changing needs;

(6) Providing for institutional flexibility with meaningful accountability;

(7) Adhering to federal and state laws;

(8) Adhering to duly promulgated and adopted rules; and

(9) Implementing best practices throughout the state higher education system.

(b) To accomplish these goals, the Legislature encourages organizations to pursue a human resources strategy which provides monetary and nonmonetary returns to employees in exchange for their time, talents and efforts to meet articulated goals, objectives and priorities of the state, the commission and council, and the organization. The system should maximize the recruitment, motivation and retention of highly qualified employees, ensure satisfaction and engagement of employees with their jobs, ensure job performance and achieve desired results.

§18B-7-2. Definitions.

For the purposes of this article and articles eight, nine and nine-a of this chapter, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) "Benefits" means programs that an employer uses to supplement the cash compensation of employees and
includes health and welfare plans, retirement plans, pay for
time not worked and other employee perquisites.

(b) “Compensation” means cash provided by an employer
to an employee for services rendered.

c) “Compensatory time” and “compensatory time off”
mean hours during which the employee is not working, which
are not counted as hours worked during the applicable work
week or other work period for purposes of overtime
compensation and for which the employee is compensated at
the employee’s regular rate of pay.

d) “Employee classification” or “employee class” means
those employees designated as classified employees;
nonclassified employees, including presidents, chief
executives and top level administrators and faculty as these
terms are defined in this article and articles eight, nine and
nine-a of this chapter.

e) “Health and welfare benefit plan” means an
arrangement which provides any of the following: Medical,
dental, visual, psychiatric or long-term health care, life
insurance, accidental death or dismemberment benefits,
disability benefits or comparable benefits.

(f) “Relative market equity” means the relative market
status of each employee classification at an organization falls
within five percent of all other employee classifications
within the organization for the preceding three-year period.

g) “Relative market status” means the calculated
relationship between the average salary of each employee
classification and its peer group.
§18B-7-3. Seniority for full-time classified personnel; seniority to be observed in reducing workforce; preferred recall list; renewal of listing; notice of vacancies.

(a) Definitions for terms used in this section have the meanings ascribed to them in section two, article one of this chapter and section two, article nine of this chapter, except that, unless clearly noted otherwise, this section applies only to an employee:

(1) Who is classified and whose employment, if continued, accumulates to a minimum total of one thousand forty hours during a calendar year and extends over at least nine months of a calendar year; or

(2) Who is transferred involuntarily to a position in nonclassified status for which he or she did not apply. Any classified employee involuntarily transferred to a position in nonclassified status may exercise the rights set out in this section only for positions equivalent to or lower than the last job class the employee held.

(b) All decisions by an organization or its agents concerning reductions in workforce of full-time classified employees, whether by temporary furlough or permanent termination, shall be made in accordance with this section.

(1) For layoffs by classification for reason of lack of funds or work, or abolition of position or material changes in duties or organization and for recall of employees laid off, consideration shall be given to an employee's seniority as measured by permanent employment in the service of the state system of higher education.

(2) If the organization desires to lay off a more senior employee, it shall demonstrate that the senior employee cannot perform any other job duties held by less senior employees of that organization in the same job class or any other equivalent or lower job class for which the senior
employee is qualified. If an employee refuses to accept a position in a lower job class, the employee retains all rights of recall provided in this section.

(3) If two or more employees accumulate identical seniority, the priority is determined by a random selection system established by the employees and approved by the organization.

(c) Each employee laid off during a furlough or reduction in workforce is placed upon a preferred recall list and is recalled to employment by the organization on the basis of seniority.

(1) An employee’s listing with an organization remains active for a period of one calendar year from the date of termination or furlough or from the date of the most recent renewal. If an employee fails to renew the listing with the organization, the employee’s name may be removed from the list.

(2) An employee placed upon the preferred recall list shall be recalled to any position opening by the organization within the classifications in which the employee had previously been employed or to any lateral position for which the employee is qualified.

(3) An employee on the preferred recall list does not forfeit the right to recall by the organization if compelling reasons require the employee to refuse an offer of reemployment by the organization.

(d) The organization shall notify all employees maintaining active listings on the preferred recall list of all position openings that periodically exist.

(1) The notice shall be sent by certified mail to the last known address of the employee. It is the duty of each employee listed to notify the organization of any change in address and to keep the listing with the organization current.
(2) A position opening may not be filled by the organization, whether temporary or permanent, until all employees on the preferred recall list have been properly notified of existing vacancies and have been given an opportunity to accept reemployment.

(e) A nonexempt classified employee is one to whom the provisions of the federal Fair Labor Standards Act, as amended, apply. A nonexempt classified employee, who applies and meets the minimum qualifications for a nonexempt job opening at the organization where currently employed, whether the job is a lateral transfer or a promotion, shall be transferred or promoted before a new person is hired.

(1) This subsection does not apply if the hiring is affected by mandates in affirmative action plans or the requirements of Public Law 101-336, the Americans with Disabilities Act.

(2) This subsection applies to any nonexempt classified employee, including one who has not accumulated a minimum total of one thousand forty hours during the calendar year and one whose contract does not extend over at least nine months of a calendar year.

(3) If more than one qualified, nonexempt classified employee applies, the best-qualified nonexempt classified employee is awarded the position. In instances where the classified employees are equally qualified, the nonexempt classified employee with the greatest amount of continuous seniority at that organization is awarded the position.

(f) In addition to any other information required, applications for employment by personnel governed by this section shall include each applicant’s social security number.

(g) Regardless of the level of seniority for an employee, for the purposes of this section in the case of a reduction in force:
(1) An employee at an organization under the jurisdiction of the council may not displace an employee of an organization under the jurisdiction of the commission.

(2) An employee at an organization under the jurisdiction of the commission may not displace an employee of an organization under the jurisdiction of the council.

(3) An employee performing a dual service for a formerly administratively linked community and technical college and a former sponsoring institution under the jurisdiction of the commission is an employee of the institution under the jurisdiction of the commission if that institution receives a fee from the community and technical college for the service performed by the employee.

§18B-7-4. Supplemental health and welfare benefit plans.

(a) An organization may contract for supplemental health and welfare benefit plans for any or all of its employees in addition to the benefits the employees otherwise receive.

(b) An organization may make additional periodic deductions from the salary payments due employees in the amount they are required to contribute for any supplemental health and welfare plan.

§18B-7-5. Supplemental and additional retirement plans for employees; payroll deductions; authority to match employee contributions; retroactive curative and technical corrective action.

(a) Any reference in this code to the “additional retirement plan” relating to state higher education employees, means the “higher education retirement plan” provided in this section. Any state higher education employee participating in a retirement plan upon the effective date of this section
continues to participate in that plan and may not elect to participate in any other state retirement plan. Any retirement plan continues to be governed by the provisions of law applicable on the effective date of this section.

(b) The commission, on behalf of the council, governing boards and itself, shall contract for a retirement plan for their employees, to be known as the “Higher Education Retirement Plan”. The commission, council and governing boards shall make periodic deductions from the salary payments due employees in the amount they are required to contribute to the Higher Education Retirement Plan, which deductions shall be six percent.

(c) The commission, council and governing boards may contract for supplemental retirement plans for any or all of their employees to supplement the benefits employees otherwise receive. The commission, council and governing boards may make additional periodic deductions from the salary payments due the employees in the amount they are required to contribute for the supplemental retirement plan.

(d) An organization, by way of additional compensation to their employees, shall pay an amount, which, at a minimum, equals the contributions of the employees into the higher education retirement plan from funds appropriated to the commission, council or governing board for personal services.

(e) As part of an overall compensation plan, the commission, council or a governing board, each at its sole discretion, may increase its contributions to any employee retirement plan to an amount that exceeds the contributions of employees.

(f) Each participating employee has a full and immediate vested interest in the retirement and death benefits accrued
from all the moneys paid into the Higher Education Retirement Plan or a supplemental retirement plan for his or her benefit. Upon proper requisition of a governing board, the commission or council, the Auditor periodically shall issue a warrant, payable as specified in the requisition, for the total contributions so withheld from the salaries of all participating employees and for the matching funds of the commission, council or governing board.

(g) Any person whose employment commences on or after July 1, 1991, and who is eligible to participate in the Higher Education Retirement Plan, shall participate in that plan and is not eligible to participate in any other state retirement system: Provided, That the foregoing provision does not apply to a person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code. The additional retirement plan contracted for by the governing boards prior to July 1, 1991, remains in effect unless changed by the commission. Nothing in this section considers employees of the council or governing boards as employees of the commission, nor is the commission responsible or liable for retirement benefits contracted by, or on behalf of, the council or governing boards.

§18B-7-6. Continuing education and professional development.

(a) Each higher education organization shall establish and operate an employee continuing education and development program under a joint rule or rules promulgated by the commission and council in accordance with article three-a, chapter twenty-nine-a of this code. Funds allocated or made available for employee continuing education and development may be used to compensate and pay expenses for faculty or classified employees pursuing additional academic study or training to equip themselves better for their duties.
The rules shall encourage continuing education and staff
development and shall require that employees be selected on
a nonpartisan basis using fair and meaningful criteria which
afford all employees opportunities to enhance their skills.
These rules also may include reasonable provisions for the
continuation or return of any faculty or classified employee
receiving the benefits of the education or training, or for
reimbursement by the state for expenditures incurred on
behalf of the faculty member or classified employee.

(b) Subject to legislative appropriation therefor, the
commission and council shall provide additional, regular,
training and professional development for employees
engaged in human resources-related activities at all
organizations. The training and professional development:

(1) Shall be mandatory with appropriate consideration
given to limiting travel demands on employees; and

(2) Shall be in addition to and may not supplant the
training and professional development regularly provided to
any class of employees by each organization prior to the
effective date of this section.

§18B-7-7. Employment practices.

(a) Each governing board, with the advice and assistance
of the staff council, shall promulgate and adopt a rule
regarding the role of part-time classified employees. The rule
shall discourage the hiring of part-time employees solely to
avoid the payment of benefits or in lieu of full-time
employees and shall provide all qualified classified
employees who hold nine-month or ten-month contracts with
the opportunity to accept part-time or full-time summer
employment before new persons are hired for the part-time
or full-time employment.
(b) Each governing board, with the advice and assistance of the staff councils and other groups representing classified employees, shall promulgate and adopt a rule in accordance with section six, article one of this chapter that discourages temporary, nonemergency, institutionally-imposed changes in an employee’s work schedule; that maintains reasonable continuity in working schedules and conditions for employees; and that requires institutions to consider feasible and innovative ways to use the institution’s classified employees most efficiently. These innovations may include, but are not limited to, flexibility in employee scheduling, job-sharing and four-day work weeks.

§18B-7-8. Reporting.

(a) Implementation reports. --

For the fiscal years commencing on July 1, 2011, and July 1, 2012, the commission and council jointly shall report to the Legislative Oversight Commission on Education Accountability once during each six-month period on their progress in designing, developing, implementing and administering the personnel classification and compensation system established by this article and articles eight, nine and nine-a of this chapter. The initial report is due December 1, 2011, and shall include, but is not limited to, the following information:

(1) A summary of findings generated by the human resources review conducted pursuant to section nine of this article;

(2) Documentation of professional staffing changes made in compliance with section two-a, article four of this chapter;

(3) A systematic plan, including a time line, for designing, developing, and implementing the classification
and compensation system contained in this article and articles eight, nine and nine-a of this chapter;

(4) An explanation of the research design and time line for completing studies identified in section sixteen of this article;

(5) An assessment of progress made by the governing boards toward achieving full funding of the temporary classified employees' salary schedule pursuant to section three, article nine of this chapter;

(6) Detailed data disaggregated by organization and employee category or classification, comparing funding for salaries of faculty, classified employees and nonclassified employees as a percentage of the average funding for each of these classes or categories of employees among the organization's peers, in regional or national markets, as appropriate, and among similar organizations within the state systems of public higher education; and

(7) Other data requested by the Legislature or considered appropriate by the commission or council.

(b) Annual personnel reports. --

(1) No later than December 1, 2013, and annually thereafter, the commission and council shall report to the Legislative Oversight Commission on Education Accountability addressing the following issues:

(A) Progress made by organizations toward achieving full funding of the temporary classified employees' salary schedule pursuant to section three, article nine of this chapter; and

(B) Detailed data disaggregated by organization and employee category or classification, comparing funding for
salaries of faculty, classified employees and nonclassified employees as a percentage of the average funding for each of these classes or categories of employees among the organization's peers, in the state, region or national markets, as appropriate, and among similar organizations within the state systems of public higher education.

(2) The commission and council shall prepare a human resources report card summarizing the performance of organizations on key human resources measures. The report card shall be presented to the Legislative Oversight Commission on Education Accountability no later than December 1, 2012, and annually thereafter, and shall be made available to the general public. At a minimum, the human resources report card shall contain the following data:

(A) Human resources department metrics by organization:

(i) Number of human resources staff;

(ii) Ratio of human resources staff to total number of full-time equivalent employees;

(iii) Percentage of human resources staff functioning in supervisory roles and percentage in administrative roles;

(iv) Number of positions reporting to the head of human resources;

(v) Areas of human resources functions outsourced to external entities;

(vi) Total expenses per full-time equivalent employee;

(vii) Tuition revenue per full-time equivalent employee.

(B) Human resources expense data:
(i) Ratio of human resources expenses to operating expenses;

(ii) Ratio of human resources expenses to number of full-time equivalent employees; and

(iii) Total human resources expense per organization employee.

(C) Compensation data:

(i) Average amount of annual salary increase per full-time equivalent organization employee;

(ii) Total amount of organization employee salaries as a percent of operating expenses;

(iii) Total amount of organization employee benefit costs as a percent of cash compensation.

(D) System metrics:

(i) Comparisons of faculty salaries at each organization to market averages;

(ii) Comparisons of classified and nonclassified employee salaries at each organization to current market averages;

(E) An account of the total amount, type of training or professional development provided, the number of employees who participated and the overall cost of the training and professional development provided to employees pursuant to section six of this article; and

(F) Other measures the commission or council considers appropriate to assist policymakers in evaluating the degree of
success in implementing best human resources practices by higher education organizations.

(c) Job classification system report. --

By July 1, 2014, and at least once within each five-year period thereafter, the commission and council jointly shall review the effectiveness of the system for classifying jobs and submit an in-depth report to the Legislative Oversight Commission on Education Accountability. The report shall include, but is not limited to, findings, recommendations and supporting documentation regarding the following job classification issues:

(A) The effectiveness of the point factor methodology and a determination of whether it should be maintained; and

(B) The status of the job evaluation plan, including the factors used to classify jobs or their relative values, and a determination of whether the plan should be adjusted.

(d) It is the responsibility of the head of human resources for each organization to prepare and submit to the president or chief executive officer all human resources data requested by the commission and council. The president or executive officer of each organization shall submit the requested data at times established by the commission and council.

(e) In meeting reporting requirements established by this article and articles eight, nine and nine-a of this chapter:

(1) The commission and council shall use the most recent data available and, as appropriate, shall benchmark it against national and regional markets or peer data; and

(2) With the exception of the semiannual implementation reports, the annual human resources report card and any other
report designated as due no later than a date certain, the
commission and council may combine two or more personnel
reports if the dates on which they are due to the Legislature
fall within a sixty-day period.

§18B-7-9. Human resources reviews.

(a) The commission and council jointly shall conduct an
initial human resources review of each organization to be
carried out, subject to legislative appropriation, by an
external vendor possessing experience and expertise in
conducting these reviews. The initial review shall be
completed by October 1, 2011, and shall be designed to
compare current human resources practices at each
organization to best practices, to identify areas of strength or
deficiency, to identify functions that should be the
responsibility of the human resources department, but are
incorrectly assigned or carried out by other offices within
each organization, to assist in targeting employee training
and development, to determine the degree to which
organizations are adhering to state and federal laws related to
human resources administration and to provide data
necessary to guide policymakers in developing personnel
rules and implementing the classification and compensation
system.

(b) Following completion of the initial human resources
review, the commission and council jointly shall conduct a
systematic human resources review of each organization at
least once within each five-year period.

(1) The review shall focus on correcting areas of
deficiency identified by previous reviews, on compliance
with statutory mandates contained in this article and articles
eight, nine and nine-a of this chapter and on adherence to
personnel rules of the commission and council.
(2) In the absence of special circumstances, the commission and council shall provide organizations with reasonable notice prior to conducting a human resources review and shall identify the subjects to be examined in the review.

§18B-7-10. Compensatory time off in lieu of overtime; written agreement; other conditions.

(a) Notwithstanding any provision of this code to the contrary, in lieu of overtime compensation, employees of higher education organizations may receive compensatory time off at a rate not less than one and one-half hours for each hour of employment. Employees may receive compensatory time only under the following conditions:

1. The time is awarded pursuant to a written agreement between the employer and the employee arrived at before the work is performed. A written agreement may be modified at the request of the employer or employee, but under no circumstances may changes in the agreement deny an employee compensatory time already acquired;

2. The time is recorded in the employer’s record of hours worked; and

3. The employee has not accrued compensatory time in excess of the prescribed limits.

(b) An employee may accrue up to four hundred eighty hours of compensatory time if the employee’s work is a public safety activity, an emergency response activity or a seasonal activity. An employee engaged in other work may accrue up to two hundred forty hours of compensatory time. An employee who has accrued four hundred eighty or two hundred forty hours of compensatory time, as the case may be, shall be paid overtime compensation for additional hours.
of work. If compensation is paid to an employee for accrued compensatory time, the compensation shall be paid at the regular rate earned by the employee at the time the employee received the payment.

(c) If employment is terminated, an employee who has accrued compensatory time pursuant to this section, shall be paid for the unused compensatory time at a rate of compensation not less than the higher amount calculated using one of the following formulas:

(1) The average regular rate received by the employee during the first three years of the employee’s employment; or

(2) The final regular rate received by the employee.

(d) An employee who has accrued compensatory time as authorized by this section, and who has requested the use of compensatory time, shall be permitted by the employer to use this time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operation of the employing agency. Compensatory time must be used within one year from the time it is accrued.

§18B-7-11. Employees designated as nonclassified; limits; exceptions; reports required.

(a) Notwithstanding any provision of this code to the contrary, by July 1, 2015, the percentage of personnel placed in the category of “nonclassified” at a higher education organization may not exceed twenty percent of the total number of classified and nonclassified employees of that organization as those terms are defined in section two, article nine-a of this chapter and who are eligible for membership in a state retirement system of the State of West Virginia or other retirement plan authorized by the state.
A higher education organization which has more than twenty percent of its employees placed in the nonclassified category as defined by this subsection on July 1, 2011, shall reduce the number of nonclassified employees to no more than twenty-five percent by July 1, 2013, and to no more than twenty percent by July 1, 2015, except as set forth in subsections (b) and (c) of this section.

(b) For the purpose of determining the ratio of nonclassified employees pursuant to this section, the following conditions apply:

(1) Employees of the commission and the chancellor for higher education and employees of the council and the chancellor for community and technical college education are considered as one organization;

(2) Organizations may count as faculty or classified employees, respectively, administrators who retain the right to return to faculty or classified employee positions; and

(3) Athletic coaches are excluded from calculation of the ratio. The commission and the council shall include consideration of this employee category in each review required by section nine of this article and shall monitor organizations’ use of this category and include this information in the reports required by subsections (a) and (b), section eight of this article.

(c) An organization may place up to twenty-five percent of the total number of classified and nonclassified employees of that organization as defined by this section in the nonclassified category under the following conditions:

(1) The governing board of an institution votes to approve any percentage or fraction of a percentage number above twenty percent and seeks and receives the approval of the commission or council, as appropriate, before increasing the total above twenty percent.
(2) In the case of personnel employed by the commission and the council, the chancellors jointly shall agree to increase the percentage number or fraction of a number of nonclassified employees beyond twenty percent and shall recommend this action to their respective boards for approval.

(A) The commission and council each shall approve or disapprove the increase and shall include the vote, as well as details of the position and justification for placing the position in the nonclassified category, in its minute record.

(B) The number of nonclassified personnel may not be increased above twenty percent unless the increase is approved by both the commission and the council.

(3) Powers and duties of Commission and Council regarding nonclassified staff ratios.

(A) It is the duty of the commission and council jointly to establish criteria for the purpose of making decisions on approving or disapproving requests by organizations to exceed the twenty percent limit for personnel placed in the nonclassified category;

(B) The commission and council shall provide technical assistance to organizations under their respective jurisdictions in collecting and interpreting data to ensure that they fulfill the requirements established by this section. Consideration of these issues shall be made part of each review required by section nine of this article and information from the review included in the reports required by subsections (a) and (b), section eight of this article;

(C) The chancellors shall monitor the progress of the organizations in meeting the deadlines established in this section and shall report periodically to the council and
commission. The commission and council shall make a preliminary compliance report to the Legislative Oversight Commission on Education Accountability by September 1, 2013, and a final report on organization compliance to that body by September 1, 2015.

(D) Subject to a joint recommendation by the commission and the council and subsequent affirmative action by the Legislature to extend the authority beyond the specified date of termination, the authority of an organization to place more than twenty percent of its personnel in the nonclassified category pursuant to this section expires on July 1, 2016.

(d) The current annual salary of a nonclassified employee may not be reduced if his or her position is redefined as a classified position solely to meet the requirements of this section. If such a nonclassified employee is reclassified, his or her salary does not constitute evidence of inequitable compensation in comparison to other employees in the same paygrade.

§18B-7-12. Additional employment by mutual agreement; agreement to be filed with governing board.

In accordance with duly promulgated rules of the governing board and the commission or council, as appropriate, the president of an organization, or his or her designated representative, and a classified employee at the organization may agree mutually on duties to be performed by the employee in addition to those duties listed in the job description. The written agreement shall describe the additional duties to be performed, the length of time the agreement shall be in force and the additional compensation to be paid. These terms and conditions shall be agreed upon by the president and the classified employee and shall be signed by both parties to the agreement and filed with the appropriate governing board.
§18B-7-13. Probationary employment period; evaluation.

1. Each full-time classified employee hired by an organization shall serve an initial probationary period of six months. At the end of the probationary period, the employee shall receive a written evaluation of his or her performance. The employee's supervisor shall meet with the employee and explain the contents of the evaluation and whether the employee is being offered regular employment.

§18B-7-14. Higher education employees' catastrophic leave bank and leave transfer.

(a) For the purposes of this section, “employee” means either of the following:

(1) A classified or nonclassified employee who is employed by a higher education governing board, by the commission or by the council; or

(2) A faculty member, as defined in section one, article eight of this chapter, who is eligible to accrue sick leave.

(b) An employee may donate sick and annual leave to a leave bank established and operated in accordance with subsection (d) of this section or directly to another employee in accordance with subsection (e) of this section. No employee may be compelled to donate sick or annual leave. Any leave donated by an employee pursuant to this section shall be used only for the purpose of catastrophic illness or injury as defined in subsection (c) of this section and shall reduce, to the extent of such donation, the number of days of annual or sick leave to which the employee is entitled.

(c) For the purpose of this section, a catastrophic illness or injury is one that is expected to incapacitate the employee and create a financial hardship because the employee has
exhausted all sick and annual leave and other paid time off. Catastrophic illness or injury also includes an incapacitated
immediate family member as defined by a governing board, the commission or the council, as appropriate, if this results
in the employee being required to take time off from work for an extended period of time to care for the family member and if the employee has exhausted all sick and annual leave and other paid time off.

(d) A leave bank or banks may be established at each state institution of higher education, the commission or the council to which employees may donate either sick or annual leave. The bank or banks may be established jointly by the policy commission and the governing boards or may be established for the commission, the council, and each of the governing boards. Sick or annual leave may be deposited in the leave bank, and shall be reflected as a day-for-day deduction from the sick or annual leave balance of the depositing employee.

Donated leave may be withdrawn by any employee experiencing a catastrophic illness or injury when the following conditions are met:

(1) The president of the institution or the chancellor of the commission or the council, as appropriate, verifies that the employee is unable to work due to the catastrophic illness or injury; and

(2) The president of the institution or a chancellor, as appropriate, approves the withdrawal and provides written notice to the personnel office.

The withdrawal shall be reflected as a day-for-day addition to the leave balance of the withdrawing employee.

(e) Sick or annual leave may be donated to an employee experiencing a catastrophic illness or injury. The leave shall
be donated at the request of the employee after appropriate verification that the employee is unable to work due to the catastrophic illness or injury as determined by the president of the institution or the appropriate chancellor. When transfer of sick or annual leave is approved by the president of the institution or the appropriate chancellor, any employee may donate sick or annual leave in one-day increments by providing written notice to the personnel office. Donations shall be reflected as a day-for-day deduction from the sick or annual leave balance of the donating employee. An employee receiving the donated sick or annual leave shall have any time which is donated credited to his or her account in one-day increments and reflected as a day-for-day addition to the leave balance of the receiving employee.

(f) Use of donated credits may not exceed a maximum of twelve continuous calendar months for any one catastrophic illness or injury.

(1) The total amount of sick or annual leave withdrawn or received may not exceed an amount sufficient to ensure the continuance of regular compensation and may not be used to extend insurance coverage pursuant to section thirteen, article sixteen, chapter five of this code.

(2) An employee withdrawing or receiving donations of sick or annual leave pursuant to this section shall use any leave personally accrued on a monthly basis prior to receiving additional donated sick or annual leave.

(g) Donated sick or annual leave deposited in an institutional leave bank or transferred under subsection (d) of this section may be inter-institutional in accordance with the policies of the appropriate governing board. Each institution, the commission or the council is responsible for the administration of the sick or annual leave deposits, withdrawals and transfers of its employees. Rules
implementing the provisions of this section may be adopted jointly or separately by the governing boards, the commission or the council in accordance with section six, article one of this chapter and, in the case of the commission and council, in accordance with article three-a, chapter twenty-nine-a of this code.

§18B-7-15. Merit increases.

Higher education organizations may grant merit increases which are in accordance with this article and articles eight, nine and nine-a of this chapter and with duly promulgated rules of the commission and council.

§18B-7-16. Study of employment practices.

(a) The commission and council shall study the following issues relating to employment practices:

(1) Developing a fair and rational policy based upon best human resources practices for covering reductions in force, furloughs and other issues relating to seniority including determining how employees shall be treated whose salaries are derived from funds other than state appropriations;

(2) Determining the advantages and disadvantages of maintaining the internal preferences for hiring, promoting and transferring classified employees;

(3) Collecting and analyzing data and developing recommendations on the advantages and disadvantages of outsourcing certain functions at the organization level. The data shall include, but are not limited to, the following items:

(A) A current database of outsourcing practices followed by each organization including procedures or rules developed to inform policy decisions;
(B) The total number, disaggregated by organization, of positions or services being outsourced or filled by temporary employees;

(C) The amount of actual cost savings, if any, that are realized or may be realized as a direct result of organizations’ outsourcing decisions;

(4) Recommending a rational, uniform policy to determine the status of employees whose positions are funded, in whole or in part, by an external grant or contract from a federal, state or local government or a private entity.

(b) The commission and council shall complete the work and report their findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate the recommendations, to the Legislative Oversight Commission on Education Accountability no later than January 1, 2012.

ARTICLE 8. HIGHER EDUCATION FACULTY.

§18B-8-1. Definitions.

As used in this article:

(a) “Academic rank”, “rank” or “faculty rank” means the position held by a faculty member as determined by the president, consistent with a rule promulgated and adopted by the governing board, and includes the positions of professor, associate professor, assistant professor and instructor. All other ranks are excluded from the provisions of this article.

(b) “Salary” means the total nine-month or ten-month salary paid from state funds to a full-time faculty member, or if the employment period is other than nine or ten months, the total salary adjusted to a nine-month base salary;
(c) "Full-time faculty" means a faculty member so designated by the president, consistent with the duly promulgated and adopted rule of the appropriate governing board, and those persons with faculty rank who have research or administrative responsibilities.

§18B-8-2. Faculty salary rules; salary increase upon promotion in rank.

(a) Each governing board shall promulgate and adopt a faculty salary rule in accordance with section six, article one of this chapter which furthers the goals of attracting, retaining and rewarding high quality faculty. Faculty salary increases shall be distributed within each organization in accordance with the faculty salary rule.

(b) The salary of a full-time faculty member may not be reduced by the provisions of this article.

(c) The faculty salary rule shall pursue the following goals:

(1) The salary of each full-time faculty member within a discipline group is competitive with those in similar disciplines at peer institutions;

(2) Faculty are recognized for outstanding performance;

(3) Equity among salaries is maintained; and

(4) The faculty at each institution are involved effectively in the administration of the faculty salary rule.

(d) Each faculty member shall receive a salary increase of at least ten percent when he or she is promoted in rank.
§18B-8-3. Authority to grant sabbatical leave.

A governing board may grant sabbatical leave to a faculty member at the state institution of higher education under its jurisdiction for the purpose of permitting him or her to engage in graduate study, research or other activities calculated to improve teaching ability. A governing board may grant a request for sabbatical leave only in accordance with the uniform rule it has promulgated and adopted. A governing board may not adopt a rule which provides for granting sabbatical leave to a faculty member who has served fewer than six years at the institution where presently employed, nor which provides for leave for more than one half the contract period at full pay or for a full contract period at half pay. A faculty member receiving a sabbatical leave is required to return and serve the institution granting the leave for at least one year or to repay to the institution the compensation received during leave. A faculty member returning from leave shall be reinstated at the academic rank held immediately prior to taking sabbatical leave unless he or she is promoted to a higher rank and is entitled to the salary and any salary increases appropriate to his or her rank and years of experience. The compensation for a faculty member on sabbatical leave is paid by the institution where employed from its regular personal services appropriations.

§18B-8-4. Effect of leave of absence on academic tenure, rank, etc.

(a) Notwithstanding any provision of law to the contrary, a tenured professional at a state institution of higher education who is absent from duties at the institution to accept employment in a nonelected governmental capacity is afforded the benefits of academic tenure, rank and position as if he or she had remained continuously in the position retained and held at the institution immediately preceding the absence if the following conditions are met:
(1) The absence is approved by the president of the state institution of higher education by which the professional is employed;

(2) The leave of absence does not exceed two years; or

(3) If the leave of absence extends for more than two years, the president requests approval from the governing board for the absence in writing each year and the board approves each request up to eight full years.

(b) An individual who remains in governmental employment with leave granted in accordance with this section forfeits all rights to academic tenure, rank and position formerly held at the employing institution at the end of the eighth year of government employment.

§18B-8-5. Notice to probationary faculty members of retention or nonretention; hearing.

(a) For the purposes of this section, “Probationary faculty member” means the definition adopted in a joint rule promulgated by the commission and council. The rights provided to probationary faculty members by this section are in addition to, and not in lieu of, other rights afforded to them by other rules and other provisions of law.

(b) The president of each state institution of higher education shall give written notice concerning retention or nonretention for the ensuing academic year to a probationary faculty member not later than March 1.

(c) If a probationary faculty member who is not retained so requests, the president or his or her designee shall inform the probationary faculty member by certified mail within ten days of the reasons for nonretention. A probationary faculty member who desires to appeal the decision may proceed to
level three of the grievance procedure established in article
two, chapter six-c of this code. If the administrative law
judge decides that the reasons for nonretention are arbitrary,
capricious or without a factual basis, the faculty member
shall be retained for the ensuing academic year.

§18B-8-6. Faculty employment practices; campus
administrators required to teach or perform research.

Each governing board, with the advice and assistance of
the faculty senate, shall promulgate and adopt a rule in
accordance with section six, article one of this chapter
addressing the following issues:

(a) Defining an appropriate balance between full-time
and adjunct faculty members and the appropriate role of
adjunct faculty; and

(b) Requiring each administrator on each campus who
holds faculty rank to teach at least one course during each
eighteen-month employment period or to perform on-going
research in lieu of teaching.

ARTICLE 9. TEMPORARY CLASSIFIED EMPLOYEE
SALARY SCHEDULE; CLASSIFICATION
AND COMPENSATION SYSTEM.

§18B-9-1. Legislative purpose and intent.

(a) The purpose of the Legislature in enacting this article
is to require the commission and council jointly to
implement, control, supervise and manage a complete,
uniform system of personnel classification and compensation
in accordance with the provisions of this article for classified
employees at higher education organizations.
(b) It is the intent of the Legislature to require each higher education organization to achieve full funding of the salary schedule established in section three of this article. A higher education organization, as defined in section two, article nine-a of this chapter, is subject to the provisions of this article until full funding is reached.

(c) It is further the intent of the Legislature to encourage strongly that each organization dedicate a portion of future tuition increases to fund the classified salary schedule and, after full funding of the salary schedule is achieved, to move toward meeting salary goals for faculty, classified and nonclassified employees.


The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) “Classified employee” or “employee” means a regular full-time or regular part-time employee of an organization who holds a position that is assigned a particular job title and pay grade in accordance with the personnel classification and compensation system established by this article or by the commission and council;

(b) “Job description” means the specific listing of duties and responsibilities as determined by the appropriate governing board, the commission or council and associated with a particular job title;

(c) “Job title” means the name of the position or job as defined by the commission and council;

(d) “Pay grade” means the number assigned by the commission and council to a particular job title and refers to the vertical column heading of the salary schedule established in section three of this article;
(e) "Personnel classification system" means the process of job categorization adopted by the commission and council jointly by which job title, job description, pay grade and placement on the salary schedule are determined;

(f) "Salary" means the amount of compensation paid through the State Treasury per annum, excluding those payments made pursuant to section two, article five, chapter five of this code, to an organization employee;

(g) "Schedule" or "salary schedule" means the grid of annual salary figures established in section three of this article; and

(h) "Years of experience" means the number of years a person has been an employee of the State of West Virginia and refers to the horizontal column heading of the salary schedule established in section three of this article. For the purpose of placement on the salary schedule, employment for nine months or more equals one year of experience, but a classified employee may not accrue more than one year of experience during any given fiscal year. Employment for less than full time or for fewer than nine months during any fiscal year shall be prorated. In accordance with rules established by the commission and council jointly, a classified employee may be granted additional years of experience not to exceed the actual number of years of prior, relevant work or experience at accredited institutions of higher education other than state institutions of higher education.

§18B-9-3. Temporary higher education classified employee annual salary schedule.

(a) There is hereby continued a temporary state annual salary schedule for classified employees consisting of a minimum annual salary for each pay grade in accordance with years of experience. Nothing in this article guarantees
payment to a classified employee of the salary indicated on
the schedule at the actual years of experience. The minimum
salary herein indicated shall be prorated for classified
employees working fewer than thirty-seven and one-half
hours per week. For the purposes of this article and article
nine-a, despite any differences in salaries that may occur, a
classified employee is equitably compensated in relation to
other classified employees in the same pay grade if the
following conditions exist:

(1) His or her annual salary is at least the minimum salary
that was required for his or her pay grade and years of
experience on July 1, 2001, on the salary schedule included
in this section; and

(2) Progress is being made by the institution in meeting
the salary goals set out in this article and article nine-a.

(b) Nothing in this section requires an appropriation by
the Legislature in excess of the legislative funding priorities
as set forth in this chapter.

(c) For purposes of this article, an organization has
achieved full funding of the temporary salary schedule
established by this section when it provides, in total, one
hundred percent of the funds needed to meet the salary
funding target as calculated in October, 2010, in a report,
required by a prior enactment of this section, and presented
to the Legislative Oversight Commission on Education
Accountability. Until an organization has achieved full
funding as described and has received certification to this
effect from the commission or council, as appropriate, the
following requirements apply:

(1) Classified salary increases distributed within the
organization shall be provided in accordance with the
uniform classification and compensation system established
by this article and rules of the commission and council and shall be applied toward achieving full funding of the temporary salary schedule; and

(2) An organization may not provide discretionary salary increases, including merit or performance-based increases, to the president or chief executive officer of an organization or to any group or class of employees within the organization, other than classified employees, unless the organization has achieved full funding of the salary schedule established in this section or is making appropriate progress toward achieving full funding of the salary schedule.

(A) This prohibition does not apply to salary increases mandated by law or funded by the Legislature.

(B) For the purposes of subdivision (2) of this subsection, "appropriate progress" has the following meanings:

(i) For governing boards under the jurisdiction of the commission, appropriate progress means an organization has funded at least twenty-five percent of the amount needed to reach full funding of the salary schedule by July 1, 2012 as calculated pursuant to this subsection; has funded at least fifty percent of the calculated amount by July 1, 2013; has funded at least seventy-five percent of the calculated amount by July 1, 2014 and has funded one hundred percent of the calculated amount by July 1, 2015; and

(ii) For governing boards under the jurisdiction of the council, appropriate progress means an organization has funded at least twenty-five percent of the amount needed to reach full funding of the salary schedule by July 1, 2013 as calculated pursuant to this subsection; has funded at least fifty percent of the calculated amount by July 1, 2014; has funded at least seventy-five percent of the calculated amount
by July 1, 2015 and has funded one hundred percent of the calculated amount by July 1, 2016.

## TEMPORARY HIGHER EDUCATION CLASSIFIED EMPLOYEE ANNUAL SALARY SCHEDULE YEARS OF EXPERIENCE

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§18B-9-4. Classified employee salary; payment beyond salary schedule; conditions.

(a) The current annual salary of a classified employee may not be reduced by the provisions of this article nor by any other action inconsistent with the provisions of this article.

(b) Nothing in this article prohibits promotion of a classified employee to a job title carrying a higher pay grade if the promotion is in accordance with the provisions of this article, the personnel classification and compensation system and personnel rules of the commission and council.

(c) An organization may pay classified employees in excess of the salary established for their pay grade and years of experience indicated on the salary schedule established by section three of this article under the following conditions:

(1) The commission or council, as appropriate, certifies that the organization has achieved full funding; and

(2) The governing board has promulgated and adopted a salary rule in accordance with section six, article one of this chapter and the rules of the commission and council establishing a procedure to ensure that salary increases above the temporary salary schedule are distributed equitably and in a manner that is consistent with the uniform classification and compensation system.
ARTICLE 9A. CLASSIFICATION AND COMPENSATION SYSTEM.

§18B-9A-1. Legislative intent and purpose.

(a) The intent of the Legislature in enacting this article is to establish the classification and compensation system for certain employees of higher education organizations and apply recognized best human resources practices in order to use available resources in the most effective and efficient manner for the benefit of the citizens of West Virginia.

It is further the intent of the Legislature to establish a plan that is fair, accountable, credible, transparent and systematic. In recognition of the importance of these qualities, this article, together with articles seven, eight and nine of this chapter, is designated and may be cited as "FACTs for Higher Education".

(b) In furtherance of the principles described in subsection (a) of this section, the chief purposes of the classification and compensation system are to accomplish the following objectives:

(1) Develop and implement a classification and compensation system that is fair, transparent, understandable, simple to administer, self-regulating and adaptable to meet future goals and priorities;

(2) Provide current, reliable data to governing boards, the commission, the council, the Governor and the Legislature to inform the decision-making process of these policymakers;

(3) Attract well-qualified and diverse job applicants and retain and motivate employees to accomplish the goals, objectives and priorities identified in state law, rules of the commission and council, the statewide master plans for higher education and the institutions' compacts;
(4) Retain and reward employees who make valuable contributions to state and organization goals, objectives and priorities;

(5) Compensate employees within an organization fairly in relation to one another;

(6) Compensate employees across organizations who are performing similar work at similar wage rates;

(7) Compensate employees at levels that are competitive with appropriate external markets and are fiscally responsible;

(8) Improve the process for evaluating jobs, including, but not limited to, mandating training and development in best human resources practices and directing that key terms, job titles and evaluation forms are consistent across organizations; and

(9) Ensure that regular market salary analyses are performed to determine how organization compensation for all classes of employees compares to compensation in relevant external markets.


As used in this article and articles seven, eight and nine of this chapter, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) “Classification system” means the process by which jobs, job titles, career ladders and assignment to pay grades are determined.

(b) “Classified employee” or “employee” means any regular employee of an organization who holds a position
that is assigned a particular job and job title within the
classification system established by this article, article nine
and by duly promulgated and adopted rules of the
commission and council.

(c) "Job" means the total collection of tasks, duties and
responsibilities assigned to one or more individuals whose
work is of the same nature and level.

(d) "Job description" means a summary of the most
important features of a job, including the general nature and
level of the work performed.

(e) "Job evaluation" means a formal process used to
create a job worth hierarchy.

(f) "Job family" means a group of jobs having the same
nature of work, but requiring different levels of skill, effort,
responsibility or working conditions.

(g) "Job title" means the descriptive name for the total
collection of tasks, duties and responsibilities assigned to one
or more individuals whose positions have the same nature of
work performed at the same level.

(h) "Job worth hierarchy" means the perceived internal
value of jobs in relation to each other within an organization.

(i) "Nonclassified employee" means an employee of an
organization who holds a position that is not assigned a
particular job and job title within the classification system
established by this article, article nine, and by duly
promulgated and adopted rules of the commission and
council and who meets one or more of the following criteria:

(1) Holds a direct policy-making position at the
department or organization level; or
(2) Reports directly to the president or chief executive officer of the organization.

(j) "Organization" means the commission, the council, an agency or entity under the respective jurisdiction of the commission or the council or a state institution of higher education as defined in section two, article one of this chapter.

(k) "Pay grade" means the level to which a job is assigned within a job worth hierarchy.

(l) "Point factor methodology" means a quantitative job evaluation process in which elements of a job are given a factor value and each factor is weighted according to its importance.

(m) "Position description" means a summary of the total duties and responsibilities of a position based on factors provided in the position information questionnaire (PIQ).

(n) "Position information questionnaire" or "PIQ" means a tool used in the creation and evaluation of position descriptions and includes the factors of knowledge, experience, complexity and problem solving, freedom of action, scope and effect, breadth of responsibility, intra-systems contacts, external contacts, direct supervision of personnel, indirect supervision of personnel and health, safety and physical considerations.

(o) "Step" means a standard progression in pay rate that is established within a pay grade.


(a) The provisions of this article apply to employees whose employment, if continued, accumulates to a minimum
(b) Until the commission or council, as appropriate, has certified that an organization has achieved full funding of the temporary classified employee annual salary schedule or is making appropriate progress toward attaining full funding as defined by section three, article nine of this chapter, the organization is subject to article nine of this chapter and may not exercise flexibility provisions in any area of human resources identified in this chapter or in commission and council rule.

§18B-9A-4. Job classification system; job classification committee established; membership; meetings; powers and duties.

(a) The commission and council jointly shall maintain a uniform system for classifying jobs and positions of organization employees.

(b) Pursuant to the rule authorized in section seven of this article, the commission and council jointly shall establish and maintain a job classification committee.

The rule shall contain the following provisions related to the job classification committee:

(A) A systematic method for appointing committee members who are representative of all the higher education organizations and affected constituent groups including specifically providing for membership selections to be made from nominations from these higher education organizations and affected constituent groups;

(B) A requirement that members be approved by the commission and council before beginning service on the committee;
(C) A requirement that an organization may have no more than two members serving on the committee at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership; and

(D) A requirement that committee members serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.

(c) Powers and duties of the committee include, but are not limited to, the following:

1. Modifying and deleting jobs and assigning job titles;

2. Reviewing and revising job titles to make them consistent among organizations, including adopting consistent title abbreviations;

3. Establishing job worth hierarchies and data lines for each job title;

4. Classifying jobs, establishing proper pay grades and placing jobs in pay grades consistent with the job evaluation plan;

5. Determining when new job titles are needed and creating new job titles within the system;

6. Recommending base pay enhancements for jobs for which the application of point factor methodology produces significantly lower salaries than external market pricing. The committee may exercise this authority only if it reevaluates each job annually to make a determination whether the enhancement should be continued;
47 (7) Recommending a procedure for performing job family reviews;

48 (8) Determining appropriate career ladders within the classification system and establishing criteria for career progression; and

49 (9) Hearing job classification appeals prior to commencement of the formal grievance process pursuant to commission and council rule.

50 (d) The committee shall meet monthly if there is business to conduct and also may meet more frequently at the call of the chair. A majority of the voting members serving on the committee at a given time constitutes a quorum for the purpose of conducting business.

51 (e) When evaluating jobs, the committee shall use the following procedure:

52 (1) Each committee member shall classify each job individually, independently of other members;

53 (2) The chair shall compile and share the individual evaluations with the whole committee; and

54 (3) After discussing the issues and resolving differences, the committee shall make a determination of the appropriate classification for each job.

55 (f) The commission and council shall use a point factor methodology to classify jobs. The commission and council jointly may adjust the job evaluation plan, including the factors used to classify jobs and their relative values, at any time.

56 (g) No later than July 1, 2012, the commission and council shall have in place an up-to-date job description for every classified job.
(h) The commission and council shall develop a position information questionnaire to be used by all organizations to gather data necessary for classification of positions within the job worth hierarchy.

§18B-9A-5. Compensation planning and review committee established; membership; meetings; powers and duties.

(a) Pursuant to the rule authorized in section seven of this article, the commission and council jointly shall establish and maintain a compensation planning and review committee.

(b) Within the guidelines established in this article and articles seven, eight and nine of this chapter, the committee shall manage all aspects of compensation planning and review that the commission and council jointly delegate to it.

The rule shall contain the following requirements related to the compensation planning and review committee:

(1) A systematic method for appointing committee members who are representative of all the higher education organizations and affected constituent groups including specifically providing for membership selections to be made from nominations from these higher education organizations and affected constituent groups; and

(2) A requirement that members be approved by the commission and council before beginning service on the committee;

(3) A requirement that an organization may have no more than two members serving on the committee at any time and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership; and
(4) A requirement that committee members serve staggered terms. One third of the initial appointments shall be for two years, one third for three years and one third for four years. Thereafter, the term is four years. A member may not serve more than four years consecutively.

(c) The committee shall meet at least quarterly and at other times at the call of the chair. A majority of the voting members serving on the committee at a given time constitutes a quorum for the purpose of conducting business.

(d) An institution may not have a majority of the committee members and the combined membership representing various groups or divisions within or affiliated with an organization in total may not constitute a majority of the membership.

(e) The Compensation Planning and Review Committee has powers and duties which include, but are not limited to, the following:

(1) Making annual recommendations for revisions in the system compensation plan, based on existing economic, budgetary and fiscal conditions or on market study data.

(2) Overseeing the five-year external market salary study;

(3) Overseeing the annual internal market review;

(4) Meeting at least annually with the Job Classification Committee to discuss benchmark jobs to be included in salary surveys, market “hot jobs” that may require a temporary salary adjustment, results of job family reviews, and assessment of current job titles within the classification system for market matches and other issues as the Vice Chancellor for Human Resources, in consultation with the chancellors, determines to be appropriate; and
Performing other duties as assigned by the commission and council or as necessary or expedient to maintain an effective classification and compensation system.

The commission and council may allow the committee to collapse the three lowest pay grades into a single pay grade and provide for employees to be paid at rates appropriate to the highest of the three lowest pay grades.


(a) The commission and council shall develop and maintain a market salary structure and minimum salary schedules and ensure that all organizations under their respective jurisdictions adhere to state and federal laws and duly promulgated and adopted organization rules.

(b) The commission and council may not delegate any of the following duties to the Compensation Planning and Review Committee or the Job Classification Committee:

(1) Approval of a classification and compensation rule;

(2) Approval of the job evaluation plan;

(3) Approval of the annual market salary schedule; and

(4) Approval of the annual minimum salary schedule.

(c) The market salary structure serves as the basis for the following activities:

(1) Evaluating compensation of classified employees in relation to appropriate external markets; and

(2) Developing the minimum salary schedules to be adopted by the commission and council.
(d) The market salary structure shall meet the following criteria:

1. Sets forth the number of pay grades and steps to be included in the structure;

2. Includes a midpoint value for each pay grade which represents the average salary of jobs in that pay grade. The commission and council may choose a midpoint value that is not based exclusively on market salary data; and

3. Includes minimum and maximum step values based on an established range spread, as well as values for other steps in the salary structure.

(e) The commission and council jointly shall contract with an external vendor to conduct a classified employee market salary study at least once within each five-year period. At the conclusion of the study, the commission and council, in consultation with the Compensation Planning and Review Committee, may take any combination of the following actions:

1. Adjust the number of pay grades and the point values necessary for a job to be assigned to a particular pay grade;

2. Adjust the midpoint differentials between pay grades better to reflect market conditions; or

3. Adjust the range spread for any pay grade.

(f) The commission and council jointly may perform an annual review of market salary data to determine how salaries have changed in the external market. Based on data collected, the commission and council jointly in consultation with the Compensation Planning and Review Committee, shall adjust the market salary structure, if changes are
supported by the data. In the absence of a market salary
study conducted by an external vendor, the commission and
council may not adjust the midpoint differentials between pay
grades unless required to do so by a change in minimum
wage or other laws and may not adjust the range spread for
any pay grade.

(g) Annually, the commission and council may approve
a minimum salary schedule that sets forth a compensation
level for each step and pay grade below which no
organization employee may be paid.

(1) The minimum salary floor for each pay grade and step
on the minimum salary schedule is determined by applying
the percentage fixed by commission and council rule
promulgated pursuant to section seven of this article to the
annual market salary data. The commission and council also
shall consider the minimum wage and other laws that ensure
that employees earn a living wage and shall maintain a salary
structure which ensures that the average salary of each class
of employees meets relative market equity among employee
classes. The commission and council may take into
consideration other factors they consider appropriate.

(2) The salary of an employee working fewer than thirty-
seven and one-half hours per week shall be prorated.

(h) The organization rule promulgated pursuant to (d),
section seven of this article may provide for differential pay
for certain employees who work different shifts, weekends or
holidays.

§18B-9A-7. Classification and compensation rules required;
emergency rule authorized.

(a) Notwithstanding any provision of law or rule to the
contrary, the commission and council jointly shall design,
develop, implement and administer the personnel system of
classification and compensation pursuant to this article and
articles seven, eight and nine of this chapter. In developing
and designing the system, they shall give careful
consideration to the recommendations and supporting
documentation contained in the Final Report to the Select
Committee on Higher Education Personnel, prepared
pursuant to section thirteen, article one-b of this chapter,
which was received and approved by the Select Committee
on January 11, 2010.

(b) Classification and compensation system rule. --

By November 1, 2011, the commission and council shall
propose a joint rule or rules for legislative approval in
accordance with article three-a, chapter twenty-nine-a of this
code to implement the provisions of this article and articles
seven, eight and nine of this chapter. The rule shall establish
a classification and compensation system that incorporates
best human resources practices and takes into consideration
the recommendations of the Legislative Select Committee on
Higher Education Personnel. At a minimum, the system rule
shall address the areas of organization accountability,
employee classification and compensation, performance
evaluation and development of organization rules.

(1) Organization accountability. --

The system rule shall provide a procedure for correcting
deficiencies identified in the human resources reviews
conducted pursuant to section nine, article seven of this
chapter. The procedure shall include, but is not limited to,
the following components:

(A) Specifying a reasonable time for organizations to
correct deficiencies uncovered by a review;
(B) Applying sanctions when major deficiencies are not corrected within the allotted time:

(i) For purposes of this subsection, a major deficiency means an organization has failed to comply with federal or state law or with personnel rules of the commission and council.

(ii) When a major deficiency is identified, the commission or council, as appropriate, shall notify the governing board of the institution in writing, giving particulars of the deficiency and outlining steps the governing board is required to take to correct the deficiency.

(iii) The governing board shall correct the major deficiency within four months and shall notify the commission or council, as appropriate, when the deficiency has been corrected.

(iv) If the governing boards fail to correct the major deficiency or fails to notify the commission or council, as appropriate, that the deficiency has been corrected within a period of four months from the time the governing board receives notification, the commission or council shall apply sanctions as specified:

(I) A formal reprimand shall be placed in the personnel file of each key administrator who shares responsibility and has operational authority in the area of the identified deficiency; and

(II) Other sanctions may include, but are not limited to, suspending new hiring by the organization and prohibiting compensation increases for key administrators who have authority over the areas of major deficiency until the identified deficiencies are corrected.
(C) Certifying that an organization has achieved full funding of the temporary annual classified employee salary schedule or is making appropriate progress toward achieving full funding pursuant to section three, article nine of this chapter.

(2) Employee classification and compensation. -- The system rule shall establish a classification and compensation system to accomplish the following objectives:

(A) Moving classified employees through the classification system based on performance and other objective, measurable factors including education, years of experience in higher education and experience above position requirements;

(B) Achieving and maintaining appropriate levels of employee dispersion across steps;

(C) Assigning each current employee to an initial step for his or her pay grade that is closest to and exceeds his or her current salary regardless of previous education, experience or performance. The rule shall provide that the salary of a current employee may not be reduced by a job reclassification, a modification of the market salary schedule, or other conditions that the commission and the council consider appropriate and reasonable;

(D) Establishing a job worth hierarchy and identifying the factors to be used to classify jobs and their relative values and determining the number of points that are necessary to assign a job to a particular pay grade;

(E) Establishing an objective standard to be used in determining when a job description or a position description is up-to-date;
(F) Providing a procedure whereby a classified employee or a supervisor who believes that changes in the job duties and responsibilities of the employee justify a position review may request that a review be done at any time;

(G) Specifying that the acceptable period that may elapse between the time when an employee files a formal request for a position review and the time when the review is completed may not exceed forty-five days. An organization that fails to complete a review within the specified time shall provide the employee back pay from the date the request for review was received if the review, when completed, produces a reclassification of the position into a job in a higher pay grade;

(H) Providing a procedure by which employees may file appeals of job classification decisions for review by the Job Classification Committee prior to filing a formal grievance. The committee shall render a decision within sixty days of the date the appeal is filed with the commission or the council;

(I) Providing for recommendations from the Compensation Planning and Review Committee and the Job Classification Committee to be considered by the commission and the council and to be included in the legislative reporting process pursuant to section eight, article seven of this chapter; and

(J) Establishing and maintaining the job classification committee mandated in section four of this article.

(3) Performance evaluations. -- The system rule shall provide for developing and implementing a consistent, objective performance evaluation model and shall mandate that training in conducting performance evaluations be provided for all organization personnel who hold supervisory positions.
(c) Emergency rule. --

(1) The Legislature hereby finds that an emergency exists and, therefore, the commission and council shall propose a joint emergency rule or rules by November 1, 2011, in accordance with article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and articles seven, eight and nine of this chapter.

(2) The commission and council shall file the emergency rule or rules with the Legislative Oversight Commission on Education Accountability by the date specified in subdivision (1) of this subsection and may not implement the emergency rule or rules without prior approval.

(d) Organization rules. --

(1) Each organization shall promulgate and adopt a rule or rules in accordance with the provisions of section six, article one of this chapter to implement requirements contained in the classification and compensation system rule or rules of the commission and council. The commission and council shall provide a model personnel rule for the organizations under their jurisdiction and shall provide technical assistance in rulemaking as requested.

(2) The initial organization rule shall be adopted not later than six months following the date on which the commission and council receive approval to implement the emergency rule promulgated pursuant to this section. Additionally, each organization shall amend its rule to comply with mandated changes not later than six months after the effective date of any change in statute or rules, unless a different compliance date is specified within the statute or rule containing the requirements or mandate.
(3) An organization may not adopt a rule under this section until it has consulted with the appropriate employee class affected by the rule’s provisions.

(4) If an organization fails to adopt a rule or rules as mandated by this subsection, the commission and council may prohibit it from exercising any flexibility or implementing any discretionary provision relating to human resources contained in statute or in a commission or council rule until the organization’s rule requirements have been met.

(5) Additional flexibility or areas of operational discretion identified in the system rule or rules may be exercised only by an organization which meets the following requirements:

(A) Receives certification from the commission or council, as appropriate, that the organization has achieved full funding of the temporary salary schedule or is making appropriate progress toward achieving full funding pursuant to section three, article nine of this chapter;

(B) Promulgates a comprehensive classification and compensation rule as required by this section;

(C) Receives approval for the classification and compensation rule from the appropriate chancellor in accordance with this section; and

(D) Adopts the rule by vote of the organization’s governing board.

(6) Notwithstanding any provision of this code to the contrary, each chancellor, or his or her designee, has the authority and the duty to review each classification and compensation rule promulgated by an organization under his or her jurisdiction and to recommend changes to the rule to
bring it into compliance with state and federal law, 
commission and council rules or legislative, commission and 
council intent. Each chancellor may reject or disapprove any 
rule, in whole or in part, if he or she determines that it is not 
in compliance with law or rule or if it is inconsistent with 
legislative, commission and council intent.

§18B-9A-8. Implementation of classification and compensation 

 system.

(a) Sweeping cultural changes are needed to implement 
the recommendations of the Select Committee on Higher 
Education Personnel and the provisions of this article and 
articles seven, eight and nine of this code. These kinds of 
changes require dedication and cooperation from all 
employee classes across the two systems of public higher 
education, the commission, council and state policymakers. 
The primary responsibility for implementation, however, 
rests with the commission and the council who shall provide 
leadership and assistance to the human resources 
professionals within each organization to bring about the 
changes successfully.

(b) The implementation process shall be carried out in 
incremental steps, some of which may occur simultaneously. 
The steps include the following:

(1) Communicating with organization employees and 
administrators to acquaint them with the guiding principles 
of the classification and compensation system. The 
principles which undergird the policy changes are designed 
to promote fairness, accountability, credibility, transparency 
and a systematic approach to progress (FACTS for Higher 
Education). The discussion shall explain the origin of 
changes in law and policy and show how these are the result 
of four years of study culminating in the findings and 
recommendations contained in the Final Report to the Select
(2) Seeking out credentialed, experienced human resources professionals to provide staff support to the commission, council and organizations, pursuant to section two-a, article four of this chapter, who are committed to creating a culture of constant improvement in a complex and rapidly changing environment. These professionals are catalysts to promote the Fair, Accountable, Credible, Transparent, and Systematic (FACTs) principles and to serve the organizations by assisting them in developing and maintaining best human resources practices.

(3) Conducting a review of the human resources function at each organization pursuant to section nine, article seven of this chapter to identify best practices and areas of deficiency.

(4) Developing and implementing employee training and professional development pursuant to section six, article seven of this chapter to assist organization professionals in applying the Fair, Accountable, Credible, Transparent, and Systematic principles to all human resources functions.

(5) Given that the state is considering a unified enterprise resource program, the commission and council shall conduct a study to determine whether a human resources information system capable of meeting a wide range of data requirements to support personnel and policy initiatives is necessary. The findings of the study, along with any recommendations, shall be reported to the Legislative Oversight Commission on Education Accountability by December 1, 2011.

(6) Establishing the Compensation Planning and Review Committee pursuant to section five of this article and the Job Classification Committee pursuant to section four of this article whose members participate and represent a broad
range of higher education interests in the decision and policy-
making process.

(7) Providing data throughout the implementation process
to the Legislative Oversight Commission on Education
Accountability to inform state policymakers of progress and
to provide a forum for further discussion of higher education
personnel issues and employee concerns.

ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER
EDUCATION.

§18B-10-1. Enrollment, tuition and other fees at education
institutions; refund of fees.

(a) Each governing board shall fix tuition and other fees
for each academic term for the different classes or categories
of students enrolling at the state institution of higher
education under its jurisdiction and may include among the
tuition and fees any one or more of the following as defined
in section one-b of this article:

(1) Tuition and required educational and general fees;

(2) Auxiliary and auxiliary capital fees; and

(3) Required educational and general capital fees.

(b) A governing board may establish a single special
revenue account for each of the following classifications of
fees:

(1) All tuition and required educational and general fees
collected;

(2) All auxiliary and auxiliary capital fees collected; and
(3) All required educational and general capital fees collected to support existing systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.

(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from the accounts, a governing board may expend funds from each special revenue account for any purpose for which funds were collected within that account regardless of the original purpose for which the funds were collected.

(c) The purposes for which tuition and fees may be expended include, but are not limited to, health services, student activities, recreational, athletic and extracurricular activities. Additionally, tuition and fees may be used to finance a students' attorney to perform legal services for students in civil matters at the institutions. The legal services are limited to those types of cases, programs or services approved by the president of the institution where the legal services are to be performed.

(d) By October 1, 2011, the commission and council each shall propose a rule for legislative approval in accordance with article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees by the governing boards under their respective jurisdictions.

(e) The schedule of all tuition and fees, and any changes in the schedule, shall be entered in the minutes of the meeting of the appropriate governing board and the board shall file with the commission or council, or both, as appropriate, and the Legislative Auditor a certified copy of the schedule and changes.
(f) The governing boards shall establish the rates to be charged full-time students, as defined in section one-b of this article, who are enrolled during a regular academic term.

(1) Undergraduate students taking fewer than twelve credit hours in a regular term shall have their fees reduced pro rata based upon one twelfth of the full-time rate per credit hour and graduate students taking fewer than nine credit hours in a regular term shall have their fees reduced pro rata based upon one ninth of the full-time rate per credit hour.

(2) Fees for students enrolled in summer terms or other nontraditional time periods shall be prorated based upon the number of credit hours for which the student enrolls in accordance with this subsection.

(g) All fees are due and payable by the student upon enrollment and registration for classes except as provided in this subsection:

(1) The governing boards shall permit fee payments to be made in installments over the course of the academic term. All fees shall be paid prior to awarding course credit at the end of the academic term.

(2) The governing boards also shall authorize the acceptance of credit cards or other payment methods which may be generally available to students for the payment of fees. The governing boards may charge the students for the reasonable and customary charges incurred in accepting credit cards and other methods of payment.

(3) If a governing board determines that a student’s finances are affected adversely by a legal work stoppage, it may allow the student an additional six months to pay the fees for any academic term. The governing board shall determine on a case-by-case basis whether the finances of a student are affected adversely.
(4) The commission and council jointly shall propose a rule in accordance with article three-a, chapter twenty-nine-a of this code defining conditions under which a governing board may offer tuition and fee deferred payment plans itself or through third parties.

(5) A governing board may charge interest or fees for any deferred or installment payment plans.

(h) In addition to the other fees provided in this section, each governing board may impose, collect and distribute a fee to be used to finance a nonprofit, student-controlled public interest research group if the students at the institution demonstrate support for the increased fee in a manner and method established by that institution’s elected student government. The fee may not be used to finance litigation against the institution.

(i) Governing boards shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rules proposed by the commission and council pursuant to this section. The tuition rules shall address the following areas:

(1) Providing a basis for establishing nonresident tuition and fees;

(2) Allowing governing boards to charge different tuition and fees for different programs;

(3) Authorizing a governing board to propose to the commission, council or both, as appropriate, a mandatory auxiliary fee under the following conditions:

(A) The fee shall be approved by the commission, council or both, as appropriate, and either the students below
the senior level at the institution or the Legislature before
becoming effective;

(B) Increases may not exceed previous state subsidies by
more than ten percent;

(C) The fee may be used only to replace existing state
funds subsidizing auxiliary services such as athletics or
bookstores;

(D) If the fee is approved, the amount of the state subsidy
shall be reduced annually by the amount of money generated
for the institution by the fees. All state subsidies for the
auxiliary services shall cease five years from the date the
mandatory auxiliary fee is implemented;

(E) The commission or council or both, as appropriate,
shall certify to the Legislature annually by October 1 the
amount of fees collected for each of the five years;

(4) Establishing methodology, where applicable, to
ensure that, within the appropriate time period under the
compact, community and technical college tuition rates for
students in all community and technical colleges will be
commensurate with the tuition and fees charged by their peer
institutions.

(j) A penalty may not be imposed by the commission or
council upon any governing board based upon the number of
nonresidents who attend the institution unless the
commission or council determines that admission of
nonresidents to any institution or program of study within the
institution is impeding unreasonably the ability of resident
students to attend the institution or participate in the
programs of the institution. The governing boards shall
report annually to the commission or council on the numbers
of nonresidents and any other enrollment information the
commission or council may request.

(k) Tuition and fee increases of the governing boards,
including the governing boards of Marshall University and
West Virginia University, are subject to rules adopted by the
commission and council pursuant to this section and in
accordance with article three-a, chapter twenty-nine-a of this
code. The commission or council, as appropriate, shall
examine individually each request from a governing board
for an increase and make its determinations as follows:

(1) A tuition and fee increase greater than five percent for
resident students proposed by a governing board requires the
approval of the commission or council, as appropriate.

(2) A fee used solely for the purpose of complying with the
athletic provisions of 20 U.S.C. 1681, et seq., known as Title
IX of the Education Amendment of 1972, is exempt from the
limitations on fee increases set forth in this subsection for three
years from the effective date of the section.

(3) In determining whether to approve or deny a
governing board’s request for a tuition and/or fee increase for
resident students greater than the increases granted pursuant
to subdivision (1) of this subsection, the commission or
council shall determine the progress the governing board has
made toward meeting the conditions outlined in this
subsection and shall make this determination the predominate
factor in its decision. The commission or council shall
consider the degree to which each governing board has met
the following conditions:

(A) Maximizes resources available through nonresident
tuition and fee charges to the satisfaction of the commission
or council;
(B) Consistently achieves the benchmarks established in the compact pursuant to article one-d of this chapter;

(C) Continuously pursues the statewide goals for post-secondary education and the statewide compact established in this chapter;

(D) Demonstrates to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(E) Demonstrates to the satisfaction of the commission or council that the governing board is making adequate progress toward achieving the goals for education established by the southern regional education board;

(F) Demonstrates to the satisfaction of the commission or council that the governing board has considered the average per capita income of West Virginia families and their ability to pay for any increases; and

(G) Demonstrates to the satisfaction of the commission or council that base appropriation increases have not kept pace with recognized nation-wide inflationary benchmarks;

(4) This section does not require equal increases among governing boards nor does it require any level of increase by a governing board.

(5) The commission and council shall report to the Legislative Oversight Commission on Education Accountability regarding the basis for approving or denying each request as determined using the criteria established in this subsection.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-1E-1, §18B-1E-2, §18B-1E-3 and §18B-1E-4, all relating to West Virginia University Institute of Technology, West Virginia University and the Higher Education Policy Commission; defining certain terms; establishing a revitalization project and plan; stating legislative findings, purpose and intent; and requiring certain reports.

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 §18B-1E-1, §18B-1E-2, §18B-1E-3 and §18B-1E-4, all to read as follows:

ARTICLE 1E. WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY REVITALIZATION PROJECT.

§18B-1E-1. Definitions.

1 When used in this article the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:
(a) “Center of excellence” means an academic program or group of programs located within a particular state institution, division or branch campus that is addressed in the institution’s compact and recognized by the institution, its governing board, administrators, faculty and staff as having gained a significant degree of regional or national acclaim for high quality and public service.

(b) “Chancellor” means the chief executive officer employed by the commission.

c) “Governing board” means the board of governors for West Virginia University established pursuant to section one, article two-a of this chapter.

(d) “LOCEA” means the Legislative Oversight Commission on Education Accountability established pursuant to section eleven, article three-a, chapter twenty-nine-a of this code.

(e) “Revitalization plan” means the implementation process developed pursuant to section three of this article.

(f) “Revitalization project” means the entire process undertaken to further the goals of this article including the research, study, revitalization plan development and implementation designed to assist WVU-Tech to reach its full potential as a center of excellence and positive force for economic development and cultural enrichment in the state.

(g) “STEM” mean areas of study in science, technology, engineering and mathematics.

(h) “WV-CURE” means the task force created pursuant to section three, article one-c of this chapter.
§18B-1E-2. Legislative purpose, findings and intent.

(a) The purpose of this article is to focus attention on West Virginia University Institute of Technology to honor the institution’s history of excellence and service to the region and the state, to identify its unique role and contributions to higher education and to create and implement the revitalization plan that not only will be used to assist this institution to reach its full potential of service to the citizens of West Virginia, but also may serve as a model that can be replicated at other state institutions of higher education.

(b) Findings.--

(1) WVU-Tech has a distinguished history of more than a hundred years of service, growth and change, but, in addition to the positive advancements, the institution also has dealt with internal conflict and external controversy initiated by multiple changes in policy direction, governance structure and mission. It was founded in 1895 as a preparatory school of West Virginia University and since that time, has functioned as a trade school, a junior college, a free-standing baccalaureate institution and a regional campus of West Virginia University. In 2007, it became a fully-integrated division of West Virginia University.
(2) The many changes of name, mission, governance structure and affiliation, together with its location in the heart of the southern coal fields, assure the institution a unique place in the state system of higher education. The institution continues to provide vital education opportunities to the mostly-rural population which comprise its primary service clientele.

(3) Both its traditional strength and its unique opportunity for future growth and service lie in its focus on STEM education, particularly in undergraduate engineering and technology, in which it has been a leader for nearly sixty years.

(4) The student-centered programs, combined with small classes and individualized instruction, provide undergraduates with opportunities for hands-on research and cooperative work experiences that usually are available only to graduate students.

(5) The Legislature further finds the following regarding the state system of higher education:

(A) Retention and graduation rates at the state institutions of higher education are a major source of concern for state policymakers.

(i) The average retention rate for the state system as a whole, calculated from the fall semester in 2008 to the fall semester of 2009, the most recent period for which data are available, is seventy-three percent. Twenty-seven students out of every one hundred who were enrolled in a state institution of higher education in 2008 did not return for the fall semester in 2009.

(ii) On average, of the students who entered four-year state institutions of higher education as first-time freshmen in 2004, only forty percent had graduated six years later.
Within these statewide averages there are significant variations among both institutions and disciplines, particularly in the disciplines emphasizing STEM education. Retention rates range from a high of eighty-two percent to a low of fifty-five percent. Six-year graduation rates fall between a high of fifty-nine percent and a low of fifteen percent.

According to the WV-CURE report submitted by WV-CURE in 2008, West Virginia faces many of the same challenges in preparing and recruiting STEM professionals as the rest of the country, but in addition has unique challenges related to its population demographics and geography.

Due to its unique history and geographical location, WVU-Tech provides the ideal laboratory in which to develop a successful model to address these challenges through the revitalization plan created pursuant to section three of this article.

(c) Legislative intent. --

It is the intent of the Legislature in establishing the revitalization project to encourage WVU-Tech to build upon its tradition of high-quality, student-centered STEM education, to assist the institution to reach its full potential as a center of excellence and a positive force for economic development and cultural enrichment within the community and state, to implement certain recommendations from the WV-CURE report and to create a successful policy model that state decision makers may employ in other areas where state institutions of higher education struggle to overcome similar problems. The revitalization project shall serve as a laboratory in which to identify problems, research solutions and implement those programs and procedures that best meet the intent of this article.
(2) It is further the intent of the Legislature to promote institutional stability at WVU-Tech by keeping the governance structure of the institution unchanged until the report required in section four of this article is received in 2014. Throughout the WVU-Tech revitalization process, the governing board retains statutory control of the institution. Except for authority otherwise granted by statute, this article extends the commission’s authority only to those items identified in the revitalization plan and funded by legislative appropriation therefor.

§18B-1E-3. Revitalization Project and Plan; Plan approval required.

(a) There is hereby created the Revitalization Project for WVU-Tech under the direction of the commission. The project includes a study and development of a revitalization plan designed to meet the goals and intent of this article.

(b) On the effective date of this section, the commission shall initiate a study and draw upon the expertise of groups both internal and external to West Virginia to take advantage of the services of national organizations specializing in institutional renewal. The commission shall bear the costs of the study.

(c) The study shall include, but is not limited to, the following thematic areas:

(1) Exploring new academic programs that meet emerging industry needs in West Virginia;

(2) Developing distance education and adult-targeted degree and programmatic offerings, with particular attention to avoiding costly program duplication;
(3) Examining marketing and recruiting strategies at the institution;

(4) Reviewing nonacademic programs and auxiliary operations, focused upon efficiencies and strategic development;

(5) Reviewing fiscal and operating procedures, emphasizing initiatives through which the institution can reduce annual operating costs and maximize all available revenues;

(6) Evaluating all institutionally-affiliated groups, including the alumni association, the WVU-Tech Foundation and all other institutionally-affiliated organizations which are exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, stressing revitalization of these entities; and

(7) Reviewing and assessing the capital infrastructure of the institution.

(d) The study also shall include consideration of the following recommendations drawn from the WV-CURE report:

(1) Creating and maintaining a forum for meaningful interaction between and among the K-12 and professional communities to define better the needs of the STEM stakeholders at each level of the education and early career process. The forum may help to ensure smoother transitions for students at each step and thereby increase student retention and graduation rates. A cooperative approach with the public schools in the institution’s service area may serve as means to increase students’ interest and familiarize them with the STEM programs WVU-Tech offers;
(2) Preparing students for the future by enhancing student design/capstone experiences to include undergraduate research at an earlier point in the baccalaureate curriculum thereby expanding the focus on opportunities for advanced studies and providing students with enhanced critical thinking and learning skills to adapt to an environment of rapidly changing technologies;

(3) Stimulating interest of young people in training and careers in engineering and related disciplines by involving the professional and business communities in a more visible and engaged manner;

(4) Diversifying the types of students who pursue STEM education and careers by developing strategic initiatives focused on recruiting and retaining traditionally under-represented groups;

(5) Pursuing the goals set forth in section three, article one-c of this chapter to increase West Virginia’s capacity for high quality engineering instruction and research; increase access to high quality instruction and research opportunities in STEM disciplines; and stimulate economic development by increasing the number of professional engineers available to business and industry;

(6) Exploring opportunities for collaborations between institutions to increase the access to high quality programs while reducing the overall expenditure per student in high cost disciplines; and

(7) Developing more electronic classrooms, online programs, and other technology-driven teaching/learning facilities in order to pool resources among the engineering institutions, reach students who are place-bound or who live in rural areas distant from the institution’s campus and avoid expensive program duplication.
Based upon the research and findings of the study, the Chancellor shall coordinate the development of a revitalization plan to implement the purpose and intent of this article. The revitalization plan shall serve to guide the distribution of all funds appropriated by the Legislature and targeted to the Revitalization Project. The revitalization plan shall include, but is not limited to, the following elements:

1. Providing clear and guiding recommendations for the revitalization of WVU-Tech;

2. Recommending a process for establishing WVU-Tech as a center of excellence in STEM education with particular emphasis on undergraduate engineering and technology, areas in which the institution has earned a high degree of regional and national recognition for excellence. The purpose of the center of excellence is to enable the institution to concentrate its resources on providing state-of-the-art post-secondary education opportunities in a limited number of areas in which the institution excels. The center of excellence approach promotes effective teaching and learning through education, training, research and information dissemination. All parties involved in identifying and developing the center of excellence bring to the partnership their special expertise of strategic importance to the program and, ultimately, to the citizens of West Virginia;

3. Benchmarks in the following areas:

   A. Enrollment;

   B. Retention and graduation;

   C. Capital improvements and building renovations/demolitions;

   D. Athletics, auxiliaries, and other nonacademic units;
(E) Fundraising and alumni development;

(F) Academic restructure and program development;

(G) Marketing and outreach;

(H) Remedial and developmental education;

(I) Innovative academic initiatives that can be piloted at WVU-Tech with the opportunity for diffusion across the systems of higher education;

(J) Transfer and articulation partnerships with other institutions in the state systems of higher education; and

(K) Grants, contracts, and externally sponsored research; and

(4) A process whereby WVU-Tech may request and receive moneys from the pool of appropriated funds.

(f) The findings, conclusions and recommendations of the study, together with the revitalization plan for implementation, shall be reported to the commission and the governing board by September 1, 2011. The revitalization plan shall be delivered to LOCEA no later than September 1, 2011, and LOCEA shall consider the proposed plan and approve or disapprove by September 30, 2011.

§18B-1E-4. Plan implementation; legislative intent; oversight; reporting.

(a) The legislative findings set forth in section two of this article demonstrate the unique historical role that WVU-Tech has played as a vital component of the state’s higher education system. In order for the institution to move forward and realize its full potential, its future must be
supported by a financial commitment from the state. Therefore, as funds are available, it is the intent of the Legislature to make appropriations to the commission to support the revitalization project at WVU-Tech.

(b) Appropriated funds may be expended under the direction of the chancellor for the purposes set forth in this article and in the revitalization plan approved by LOCEA.

(c) The purposes for which the moneys may be used include, but are not limited to, development costs for new programs, student outreach initiatives, demolition of certain facilities, and renovation of campus infrastructure or other items designed to support existing students and attract new students.

(d) By December 1, 2012, and annually thereafter until all appropriated funds have been expended, the chancellor shall report to LOCEA on the allocation of funds. Additionally, the chancellor shall provide regular updates to LOCEA, as necessary or requested, to keep members informed of the progress made in implementing the purposes and intent of this article and the components of the revitalization plan.

(e) By May 1, 2014, the commission and governing board shall provide to LOCEA a detailed summary of all revitalization project activities undertaken to date. This report also shall include recommendations for alterations to the revitalization plan and the goals of the revitalization project and may include recommended options for governance changes including independent status for the institution.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-1F-1, §18B-1F-2, §18B-1F-3, §18B-1F-4, §18B-1F-5, §18B-1F-6, §18B-1F-7, §18B-1F-8 and §18B-1F-9, all relating to powers and duties of the policy commission; authorizing creation of certain corporations; authorizing policy commission to enter into certain agreements and contractual arrangements; terms and conditions; legislative findings, purpose and intent; definitions; establishing essential criteria for certain corporations; specifying corporation membership, organization and financial requirements; providing for appointment of and specifying qualifications for executive director; requiring annual audit of corporation operations; clarifying issues of conflicts of interest; prohibiting waiver of sovereign immunity; clarifying issues of debt obligations; requiring memorandum of agreement on research collaboration and cooperation; specifying parties to agreement and setting forth certain conditions; specifying certain deadlines; and requiring certain reports.

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 §18B-1F-1, §18B-1F-2,
§18B-1F-1. Legislative findings and purpose.

(a) The Legislature finds that economic development in West Virginia depends in part on collaborations developed between higher education and businesses and industry, particularly in the advancement of new and emerging technologies. It is in the best interests of the citizens of the state to implement programs which promote this research and contribute to the general economic welfare.

(b) The Legislature further finds that the transfer of property to the Commission to establish the West Virginia Education, Research and Technology Park created a new and unprecedented opportunity to promote research and development in the state. An efficiently managed Technology Park will encourage private sector participation in and support for research and economic development and will facilitate collaboration among the commission, the doctoral institutions and their research corporations.

(c) It is the responsibility of the commission to ensure that the day to day operations of the Technology Park are carried out effectively and efficiently in order to provide the greatest investment return to the people of West Virginia. To this end the Legislature finds that a mechanism is needed to simplify and expedite property management and purchasing of equipment, material and personal services.

(d) Therefore, the purpose of this article is to provide the commission with the authority necessary to carry out its
responsibilities related to the operation of the Technology
Park. The commission is authorized to enter into agreements
and other contractual relationships with an affiliated
corporation in order to achieve maximum efficiency in
managing the Technology Park.

§18B-1F-2. Definitions.

The following words used in this article have the
meanings ascribed to them in this section unless the context
clearly indicates a different meaning:

(a) “Affiliated corporation” or “corporation” means a
corporation which meets the essential criteria prescribed in
section three of this article and whose purpose is to provide
management services to the commission in carrying out the
day to day operations of the Technology Park;

(b) “Agreement” means an agreement or contractual
relationship entered into between the commission and an
affiliated corporation pursuant to the provisions of this
article;

(c) “Board of directors” means the governing body of a
corporation created pursuant to section three of this article;

(d) “Doctoral institution” means Marshall University or
West Virginia University;

(e) “Executive director” means the chief executive officer
of an affiliated corporation employed pursuant to section five
of this article;

(f) “Potential membership” means the total number of
members who comprise the board of directors when all
membership seats are filled;
(g) "Private sector member" means a director of an affiliated corporation who is not an employee of the commission nor of any entity bearing a direct or indirect relationship to the commission;

(h) "Research corporation" means a corporation established with respect to Marshall University or West Virginia University pursuant to section three, article twelve of this chapter; and

(i) "Technology Park" means the state-owned West Virginia Education, Research and Technology Park affiliated with the commission.

§18B-1F-3. Commission authorized to contract with corporation; corporation to meet essential criteria; corporation membership and organization; financial requirements.

(a) The commission is authorized to enter into agreements and any other contractual relationships with an affiliated corporation formed as set forth in this article.

(b) The affiliated corporation shall meet the following essential criteria:

(1) Corporation status. -- The corporation is organized as a non-profit, non-stock corporation under the general corporation laws of the state exclusively for charitable, educational or scientific purposes within the meaning of section 501(c) of the Internal Revenue Code of 1986, as amended.

(2) Corporation membership, meetings, officers. --

(A) Members of the board of directors of the affiliated corporation serve terms as prescribed in the bylaws of the
corporation and are selected by the commission in consultation with the chancellor. The commission shall make all appointments to the board of directors by majority vote of its members and shall include the individual votes as a part of the minute record.

(B) Private sector members shall constitute a majority of the potential membership of the board of directors. Vacancies shall be filled in such a way that the majority status of private sector membership is maintained.

(C) By July 1, 2011, and at least biennially thereafter, the board of directors shall elect a chair from among its members.

§18B-1F-4. Powers and duties of board of directors and corporation.

(a) The primary responsibility of the corporation is to manage the day to day operations of the Technology Park through collaboration agreements with the commission. To that end, the board of directors has the following powers and duties:

(1) To employ an executive director subject to the provisions of section five of this article;

(2) To approve employment of other staff recommended by the executive director as being necessary and appropriate to carry out the purposes of this article and subject to agreements with the commission;

(3) To serve as fiscal agent and provide additional services, including, but not limited to, property management, human resources management, and purchasing;

(4) To meet as a governing body. A corporation created under this article is exempt from the provisions of section
three, article nine-a, chapter six of this code and from the provisions of article one, chapter twenty-nine-b of this code;

(5) To receive, purchase, hold, lease, use, sell and dispose of real and personal property of all classes, subject to the provisions of subdivision (8) of this subsection and section eight of this article;

(6) To receive from any source whatsoever grants to be expended in accomplishing the objectives of this article;

(7) To receive from any source whatsoever aid or contributions of money, property or other things of value to be held, used and applied only for the purposes for which the aid or contributions may be made;

(8) To accept and expend any gift, grant, contribution, bequest, endowment or other money for the purposes of this article. Any transfer of endowment or other assets by the commission to the corporation or by the corporation to the commission for management shall be formalized in a memorandum of agreement to assure, at a minimum, that any restrictions governing the future disposition of funds are preserved. The commission may not transfer ownership of the Technology Park property to the corporation;

(9) To make, amend and repeal bylaws, rules and its governing documents consistent with the provisions of this article to effectuate the purpose and scope of the corporation;

(10) To alter the purpose or scope of the corporation; and

(11) To delegate the exercise of any of its powers except for the power to approve budgets to the executive director, subject to the directions and limitations contained in its governing documents.
(b) In addition to the powers and duties provided for in this section and any other powers and duties that may be assigned to it by law or agreement, the corporation has other powers and duties necessary to accomplish the objectives of this article or as provided by law.

§18B-1F-5. Appointment of executive director; qualifications.

(a) The commission shall set the qualifications for the position of executive director and shall conduct a thorough search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

1. Possesses a broad understanding of the relationship between public and private sector research and the need for cooperation and collaboration among the commission and the research corporations;

2. Holds at least a bachelor’s degree in a field related to the duties and responsibilities of the position of executive director;

3. Demonstrates strong communication skills and the ability to work with all types of businesses and industry, government agencies and higher education institutions; and

4. Possesses other skills, qualifications or attributes as the commission considers appropriate or desirable.

(b) The commission shall select the executive director for the corporation and may not delegate this duty to the chancellor. The executive director may have dual appointment with the commission, but may not be a corporation director.

1. The commission shall appoint the executive director by majority vote of its members and shall include the vote as a part of the minute record.
(2) The executive director shall inform the board of directors and the commission annually of his or her employment status with any other institution, agency or organization.

(c) The day to day operations of the corporation are under the control and supervision of the executive director. With the approval of the board of directors the executive director may employ staff as necessary to carry out the corporation’s purposes as set forth in this article.

§18B-1F-6. Agreements; required provisions.

(a) The commission may enter into agreements or other contractual relationships with a corporation that meets the conditions set forth in section three of this article. Any agreement shall specify that the corporation is accountable to the commission for the efficient operations of the Technology Park.

(b) On the effective date of the agreement, the corporation becomes the fiscal agent for operations of the Technology Park on behalf of the commission pursuant to terms of the agreement.

(c) If an agreement is terminated, the funds, contributions or grants paid or held by the corporation and not encumbered or committed prior to termination shall be distributed as provided for in the agreement.

(d) If made part of the agreement, the corporation may use services of both corporation employees and personnel of the commission. The corporation may pay the costs incurred by the commission, including personnel funded on grants and contracts, fringe benefits of personnel funded on grants and contracts, administrative support costs and other costs which may require reimbursement. The corporation may include as
costs any applicable overhead and fringe benefit assessments necessary to recover the costs expended by the commission, pursuant to the terms of the agreement, and the commission may be reimbursed for expenses incurred by it pursuant to the agreement.

§18B-1F-7. Audits required; financial reports; conflicts of interest.

(a) The financial statements of the corporation shall be audited annually by an independent certified public accountant or firm. Within thirty days of completion, the financial audit report shall be presented to the corporation's board of directors for approval, after which a copy of the financial audit and required statements shall be submitted to the commission.

(b) Notwithstanding any other provision of this code to the contrary, any officer or employee of the commission, who is not the executive director of the corporation, may hold an appointment as a member and as an officer of the corporation board of directors.

§18B-1F-8. No waiver of sovereign immunity; not obligation of the state.

(a) Nothing contained in this article waives or abrogates in any way the sovereign immunity of the state or deprives the commission or any officer or employee of the commission of sovereign immunity.

(b) Obligations of the board of directors or the corporation do not constitute debts or obligations of the commission or the state.
§18B-1F-9. Legislative findings and intent; memorandum of agreement required; terms and conditions; reports.

(a) The Legislature finds that the Technology Park is a diversified, multi-tenant research, development and commercialization park focused on energy, chemicals and other sciences and technologies for the advancement of education and economic development in West Virginia. The areas of primary research and development include energy, chemicals and materials, and biotechnology. It is the intent of the Legislature to provide the commission with the tools needed to manage the Technology Park and facilitate the translation of state investment dollars in higher education and research into business and economic growth that will provide tangible benefits for the citizens of the state.

(b) To achieve the goals set forth in this section, it is essential that the commission include in its research and development efforts the talents and expertise available at the doctoral institutions and their research corporations. Therefore, by July 1, 2011, the commission shall enter into a memorandum of agreement with the research corporations to delineate the role each party will play in furthering the goals of research and economic development as set forth in this article. The agreement shall focus on collaboration and cooperation among the commission and the two research corporations.

(1) The agreement is not effective until all parties have agreed to the included terms and conditions.

(2) The commission shall file a report, including a copy of the completed agreement and any relevant documents, with the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability by July 15, 2011.

(3) The agreement may be amended by mutual consent of the parties. Within fifteen days of the date a new agreement is signed, the commission shall file a report as provided in subdivision (2) of this subsection.
AN ACT to amend and reenact §18B-1-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-2A-1 of said code, all relating to correcting names of certain state institutions of higher education.

Be it enacted by the Legislature of West Virginia:

That §18B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18B-2A-1 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. GOVERNANCE.

*§18B-1-2. Definitions.

The following words when used in this chapter and chapter eighteen-c of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

(a) "Governing boards" or "boards" means the institutional boards of governors created pursuant to section one, article two-a of this chapter;

*CLERK'S NOTE: This section was also amended by Com. Sub. for S. B. 330 (Chapter 79) which passed subsequent to this act.
(b) "Free-standing community and technical colleges" means Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and Eastern West Virginia Community and Technical College, which may not be operated as branches or off-campus locations of any other state institution of higher education;

(c) "Community and technical college", in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

(d) "Community and technical college education" means the programs, faculty, administration and funding associated with the delivery of community and technical college education programs;

(e) "Essential conditions" means those conditions which shall be met by community and technical colleges as provided in section three, article three-c of this chapter;

(f) "Higher education institution" means any institution as defined by Sections 401(f), (g) and (h) of the federal Higher Education Facilities Act of 1963, as amended;
(g) "Higher Education Policy Commission", "Policy Commission" or "Commission" means the commission created pursuant to section one, article one-b of this chapter;

(h) "Chancellor for Higher Education" means the chief executive officer of the Higher Education Policy Commission employed pursuant to section five, article one-b of this chapter;

(i) "Chancellor for Community and Technical College Education" means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to section three, article two-b of this chapter;

(j) "Chancellor" means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. "Chancellor" means Chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

(k) "Institutional operating budget" or "operating budget" means for any fiscal year an institution’s total unrestricted education and general funding from all sources in the prior fiscal year, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

(l) "Community and technical college education program" means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science and an associate of applied science; certificate programs and skill sets; developmental education;
continuing education; collegiate credit and noncredit
workforce development programs; and transfer and
baccalaureate parallel programs. All programs are under the
jurisdiction of the council. Any reference to “post-secondary
vocational education programs” means community and
technical college education programs as defined in this
subsection;

(m) “Rule” or “rules” means a regulation, standard,
policy or interpretation of general application and future
effect;

(n) “Vice Chancellor for Administration” means the
person employed in accordance with section two, article four
of this chapter. Any reference in this chapter or chapter
eighteen-c of this code to “Senior Administrator” means Vice
Chancellor for Administration;

(o) “State college” means Bluefield State College,
Concord University, Fairmont State University, Glenville
State College, Shepherd University, West Liberty University
or West Virginia State University;

(p) “State institution of higher education” means any
university, college or community and technical college under
the jurisdiction of a governing board as that term is defined
in this section;

(q) “Board of visitors” means the advisory board
previously appointed for the West Virginia Graduate College
and the advisory board previously appointed for West
Virginia University Institute of Technology, which provide
guidance to the Marshall University Graduate College and
West Virginia University Institute of Technology,
respectively;

(r) “Institutional compact” means the compact between
the Commission or Council and a state institution of higher
education under its jurisdiction, as described in section six, article one-d of this chapter;

(s) "Peer institutions", "peer group" or "peers" means public institutions of higher education used for comparison purposes and selected by the commission pursuant to section three, article one-a of this chapter;

(t) "Administratively linked community and technical college" means a state institution of higher education delivering community and technical college education and programs which has maintained a contractual agreement to receive essential services from another accredited state institution of higher education prior to July 1, 2008;

(u) "Sponsoring institution" means a state institution of higher education that maintained an administrative link to a community and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus or a division delivering community and technical college education and programs;

(v) "Collaboration" means entering into an agreement with one or more providers of education services in order to enhance the scope, quality or efficiency of education services;

(w) "Broker" or "brokering" means serving as an agent on behalf of students, employers, communities or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs or other services contracted through an agreement with a provider of education services either in-state or out-of-state;
(x) "Council" means the West Virginia Council for Community and Technical College Education created pursuant to article two-b of this chapter;

(y) "West Virginia Consortium for Undergraduate Research and Engineering" or "West Virginia CURE" means the collaborative planning group established pursuant to article one-c of this chapter;

(z) "Advanced technology center" means a facility established under the direction of an independent community and technical college for the purpose of implementing and delivering education and training programs for high-skill, high-performance Twenty-first Century workplaces;

(aa) "Statewide network of independently accredited community and technical colleges" or "community and technical college network" means the state institutions of higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and each having a core mission of providing affordable access to and delivering high quality community and technical education in every region of the state;

(bb) "Independent community and technical college" means a state institution of higher education under the jurisdiction of the council which is independently accredited, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Eastern West Virginia Community and Technical College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, New River
Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg; and

(cc) “Dual credit course” or “dual enrollment course” means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-1. Findings; composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.

(a) Findings. --

The Legislature finds that the State of West Virginia is served best when the membership of each governing board includes the following:

(1) The academic expertise and institutional experience of faculty members and a student of the institution governed by the board;

(2) The technical or professional expertise and institutional experience of a classified employee of the institution governed by the board;

(3) An awareness and understanding of the issues facing the institution governed by the board; and

(4) The diverse perspectives that arise from a membership that is balanced in terms of gender and varied in terms of race and ethnic heritage.
(b) **Boards of Governors established.** --

A Board of Governors is continued at each of the following institutions: Bluefield State College, Blue Ridge Community and Technical College, Bridgemont Community and Technical College, Concord University, Eastern West Virginia Community and Technical College, Fairmont State University, Glenville State College, Kanawha Valley Community and Technical College, Mountwest Community and Technical College, Marshall University, New River Community and Technical College, Pierpont Community and Technical College, Shepherd University, Southern West Virginia Community and Technical College, West Liberty University, West Virginia Northern Community and Technical College, the West Virginia School of Osteopathic Medicine, West Virginia State University, West Virginia University and West Virginia University at Parkersburg.

(c) **Board Membership.** --

(1) An appointment to fill a vacancy on the board or reappointment of a member who is eligible to serve an additional term is made in accordance with the provisions of this section.

(2) The board of governors for Marshall University consists of sixteen persons. The board of governors for West Virginia University consists of seventeen persons. The boards of governors of the other state institutions of higher education consist of twelve persons.

(3) Each board of governors includes the following members:

(A) A full-time member of the faculty with the rank of instructor or above duly elected by the faculty of the respective institution;
(B) A member of the student body in good academic standing, enrolled for college credit work and duly elected by the student body of the respective institution; and

(C) A member from the institutional classified employees duly elected by the classified employees of the respective institution;

(4) For the board of governors at Marshall University, thirteen lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section;

(5) For the board of governors at West Virginia University, twelve lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section, and additionally:

(A) The chairperson of the board of visitors of West Virginia University Institute of Technology;

(B) A full-time faculty member representing the extension service at the institution or a full-time faculty member representing the health sciences, selected by the faculty senate.

(6) For each board of governors of the other state institutions of higher education, nine lay members appointed by the Governor, by and with the advice and consent of the Senate, pursuant to this section.

(A) Of the nine members appointed by the Governor, no more than five may be of the same political party. Of the thirteen members appointed by the Governor to the governing board of Marshall University, no more than eight may be of the same political party. Of the twelve members appointed by the Governor to the governing board of West Virginia University, no more than seven may be of the same political party.
(B) Of the nine members appointed by the Governor, at least five shall be residents of the state. Of the thirteen members appointed by the Governor to the governing board of Marshall University, at least eight shall be residents of the state. Of the twelve members appointed by the Governor to the governing board of West Virginia University, at least seven shall be residents of the state.

(7) In making lay appointments, the Governor shall consider the institutional mission and membership characteristics including the following:

(A) The need for individual skills, knowledge and experience relevant to governing the institution;

(B) The need for awareness and understanding of institutional problems and priorities, including those related to research, teaching and outreach;

(C) The value of gender, racial and ethnic diversity; and

(D) The value of achieving balance in gender and diversity in the racial and ethnic characteristics of the lay membership of each board.

(d) Board member terms. --

(1) The student member serves for a term of one year. Each term begins on July 1.

(2) The faculty member serves for a term of two years. Each term begins on July 1. Faculty members are eligible to succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(3) The member representing classified employees serves for a term of two years. Each term begins on July 1. Members representing classified employees are eligible to
succeed themselves for three additional terms, not to exceed a total of eight consecutive years.

(4) The appointed lay citizen members serve terms of up to four years each and are eligible to succeed themselves for no more than one additional term.

(5) A vacancy in an unexpired term of a member shall be filled for the unexpired term within thirty days of the occurrence of the vacancy in the same manner as the original appointment or election. Except in the case of a vacancy, all elections are held and all appointments are made no later than June 30 preceding the commencement of the term. Each board of governors shall elect one of its appointed lay members to be chairperson in June of each year. A member may not serve as chairperson for more than four consecutive years.

(6) The appointed members of the boards of governors serve staggered terms of up to four years except that four of the initial appointments to the governing boards of community and technical colleges that became independent July 1, 2008, are for terms of two years and five of the initial appointments are for terms of four years.

(e) Board member eligibility, expenses. --

(1) A person is ineligible for appointment to membership on a board of governors of a state institution of higher education under the following conditions:

(A) For a baccalaureate institution or university, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office or public employment under the government of
this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees, students or the superintendent of a county board of education from being members of the governing boards.

(B) For a community and technical college, a person is ineligible for appointment who is an officer, employee or member of any other board of governors; a member of a board of visitors of any public institution of higher education; an employee of any institution of higher education; an officer or member of any political party executive committee; the holder of any other public office, other than an elected county office, or public employment, other than employment by the county board of education, under the government of this state or any of its political subdivisions; an employee of any affiliated research corporation created pursuant to article twelve of this chapter; an employee of any affiliated foundation organized and operated in support of one or more state institutions of higher education; or a member of the council or commission. This subsection does not prevent the representative from the faculty, classified employees or students from being members of the governing boards.

(2) Before exercising any authority or performing any duties as a member of a governing board, each member shall qualify as such by taking and subscribing to the oath of office prescribed by section five, article IV of the Constitution of West Virginia and the certificate thereof shall be filed with the Secretary of State.
(3) A member of a governing board appointed by the Governor may not be removed from office by the Governor except for official misconduct, incompetence, neglect of duty or gross immorality and then only in the manner prescribed by law for the removal of the state elective officers by the Governor.

(4) The members of the board of governors serve without compensation, but are reimbursed for all reasonable and necessary expenses actually incurred in the performance of official duties under this article upon presentation of an itemized sworn statement of expenses.

(5) The president of the institution shall make available resources of the institution for conducting the business of its board of governors. All expenses incurred by the board of governors and the institution under this section are paid from funds allocated to the institution for that purpose.

CHAPTER 83

(S. B. 538 - By Senators Plymale, Jenkins, Foster and Browning)

[Passed March 9, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2011.]

AN ACT to amend and reenact §18B-3D-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18B-3D-6, all relating to establishing the Learn and Earn Cooperative Education Program; authorizing expenditure of certain funds; defining eligibility to receive funding; setting terms for required cash match; and requiring legislative and emergency rules.
Be it enacted by the Legislature of West Virginia:

That §18B-3D-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18B-3D-6, all to read as follows:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-5. Legislative and emergency rules.

(a) The council shall propose a legislative rule pursuant to article three-a, chapter twenty-nine-a of this code to implement the provisions of this article and shall file the rule with the Legislative Oversight Commission on Education Accountability no later than October 1, 2011.

(b) The Legislature finds that an emergency exists and, therefore, the council shall propose an emergency rule to implement the provisions of this article in accordance with section six, article one of this chapter and article three-a, chapter twenty-nine-a of this code by October 1, 2011.

(c) Any rule promulgated by the council pursuant to previous enactments of this section and in effect on the effective date of the amendment and reenactment of this section in the year 2011 remains in effect until amended, modified, repealed or replaced by the council.

§18B-3D-6. Learn and Earn Cooperative Education Program established.

(a) Legislative findings.

(1) The Legislature finds that many West Virginians, particularly young adults, cannot enroll full-time in a community and technical college technical program because
circumstances require them to maintain full-time employment. It is critically important that technical programs leading to high-wage occupations be more accessible and affordable for all West Virginians.

(2) The Legislature further finds that cooperative education programs are successful in providing access to these technical programs while providing students enrolled full-time in a community and technical college with the financial benefits they need to continue their education. These cooperative education programs provide opportunities for students to work with West Virginia companies while in college, thus increasing the likelihood that they will complete the program, find gainful employment and choose to remain in West Virginia upon graduation. They provide students with hands-on, real world work experience with a salary while they complete a technical program of study and, at the same time, provide employers with a cost-effective tool for recruiting and training.

(b) The purpose of this section is to establish a cooperative education program, under the jurisdiction of the council, as a component of the Workforce Development Initiative Program established pursuant to this article. The program shall be known and may be cited as the “Learn and Earn Program”.

(c) The program requires a dollar-for-dollar cash match from participating employers or groups of employers from which the student receives a salary from the employer or employers while participating in the program. Participants may not substitute a match in-kind for the cash match required by this section.

(d) An institution is eligible to apply for a program grant in cooperation with one or more employer partners if it meets the definition of a community and technical college provided
in section two, article one of this chapter. The council shall
define the application process in the rules required in section
five of this article.

(e) The council may expend funds available through the
Workforce Development Initiative program to implement the
provisions of this section.

CHAPTER 84

(S. B. 375 - By Senators Wells,
Plymale, Chafin and Stollings)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18B-4-7 of the Code of West
Virginia, 1931, as amended, relating to authority of institutions
of higher education to confer degrees; applicability of
provisions; minimum standards; requiring collection and
dissemination of certain information; authorizing certain
reviews and audits; and providing for revocation of degree-
granting authority under certain conditions.

Be it enacted by the Legislature of West Virginia:

That §18B-4-7 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:
ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

(a) The council shall make rules for the accreditation of community and technical colleges in this state and shall determine the minimum standards for conferring degrees. The commission shall make rules for the accreditation of colleges and universities in this state except the governing boards of Marshall University and West Virginia University shall make rules for their respective institutions, and each shall determine the minimum standards for conferring degrees. The governing boards of Marshall University and West Virginia University shall promulgate rules pursuant to the provisions of section six, article one of this chapter for the accreditation of their respective institutions.

(b) An institution of higher education may not confer a degree on any basis of work or merit below the minimum standards prescribed by the council or commission.

(c) With the approval of the commission and subject to subsections (e), (f) and (g) of this section, governing boards of institutions which currently offer substantial undergraduate course offerings and a master’s degree in a discipline are authorized to grant baccalaureate degrees in that discipline.

(d) Except as otherwise provided in this section, a charter or other instrument containing the right to confer degrees of higher education status may not be granted by the State of West Virginia to an institution, association or organization within the state, nor may a degree be awarded, until the condition of conferring the degree first has been approved in writing by the council or commission, as appropriate, or by the institution’s governing board in the case of Marshall University or West Virginia University.

(e) To retain the authority to confer degrees pursuant to this section, each institution shall provide annually to the
commission or council, as requested, all information the commission or council considers necessary to assess the performance of the institution and to determine whether the institution continues to meet the minimum standards for conferring degrees. This information includes, but is not limited to, the following data:

(1) All information current and future federal or state laws and regulations require the institution to report to the public, to students, to employees or to federal or state agencies;

(2) Other consumer information the commission or council considers necessary, including, but not limited to, graduation and retention rates, transfers, post-graduation placements, loan defaults and numbers and types of student complaints;

(3) A detailed explanation of financial operations including, but not limited to, policies, formulas and procedures related to calculation, payment and refund for all tuition and fees; and

(4) An assessment of the adequacy of the institution’s curriculum, personnel, facilities, materials and equipment to meet the minimum standards for conferring degrees.

(f) The commission and council may conduct on-site reviews to evaluate an institution’s academic standards, may conduct financial audits, or may require the institution to perform these audits and provide detailed data to the commission or council.

(g) The commission or council shall revoke an institution’s authority to confer degrees when the institution’s governing body, chief executive officer, or both, have done any one or more of the following:

(1) Failed to maintain the minimum standards for conferring degrees;
(2) Refused or willfully failed to provide information to the commission or council pursuant to this subsection in a manner and within a reasonable time frame as established by the commission or council, as appropriate; or

(3) Willfully provided false, misleading or incomplete information to the commission or council.

(h) The commission and council each shall compile the information collected pursuant to subdivisions (e), (f) and (g) of this section and submit a report on the information to the Legislative Oversight Commission on Education Accountability annually beginning December 1, 2012. The commission and council each shall make the information and report available to the public in a form and manner that is accessible to the general public, including, but not limited to, posting on its website.

CHAPTER 85

(S. B. 514 - By Senators Plymale and Miller)

[Passed March 10, 2011; in effect from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §18B-17-2 of the Code of West Virginia, 1931, as amended, relating to higher education; legislative rules; and authorizing a rule for the Higher Education Policy Commission regarding authorization of degree-granting institutions.

Be it enacted by the Legislature of West Virginia:
That §18B-17-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 17. LEGISLATIVE RULES.**


(a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule) is authorized.

(b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (West Virginia Engineering, Science and Technology Scholarship Program rule) is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule) is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (Authorization of degree-granting institutions) is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.
(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program) is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents) is authorized.

(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program) is authorized, with the following amendment:

On page two, subsection 5.1, following the words "financial aid office" by inserting a new subdivision 5.1.3 to read as follows: "United States citizenship or legal immigrant status while actively pursuing United States citizenship."

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program) is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System) is authorized.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program) is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE) is authorized.
(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (Authorization of Degree Granting Institutions) is authorized, with the following amendment:

On page twenty-eight, subsection 9.1.b, following the words “Good cause shall consist of” by inserting the words “any one or more of the following”.

CHAPTER 86

(S. B. 239 - By Senators Kessler (Acting President), and Hall) [By Request of the Executive]

[Passed March 12, 2011; in effect from passage.] [Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §18B-18A-9 of the Code of West Virginia, 1931, as amended, relating to higher education-directed research endowments; extending the date upon which moneys must be deposited into research endowments operated by participating institutions; and altering the time period for reallocation of matching moneys.

Be it enacted by the Legislature of West Virginia:

That §18B-18A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 18A. DIRECTED RESEARCH ENDOWMENTS.


(a) No later than seven years from the effective date of this article, each participating institution shall have deposited into its research endowments an amount of qualified donations equal to or greater than the total amount of moneys allocated for distribution to the institution pursuant to the provisions of subsection (c), section three of this article.

(1) If one of the participating institutions fails to have deposited into its research endowments the requisite amount of qualified donations by the end of this seven-year period, then any portion of the moneys allocated to the institution that has not been distributed shall be reallocated for distribution to the other participating institution pursuant to the terms of this article.

(2) To be eligible to receive a distribution of reallocated moneys pursuant to this subsection, the other participating institution shall have qualified donations in excess of the amount required by subsection (a) of this section deposited into its research endowment(s) in an amount equal to or greater than the amount of reallocated moneys.

(3) If the other participating institution does not have excess qualified donations on deposit, the reallocated moneys shall be made available for distribution by the commission to state colleges in accordance with the provisions of section ten of this article.

(b) If any pledge previously used by a participating institution to obtain a distribution of matching moneys from the trust fund has not been paid in full within seven years from the effective date of this article, then the institution shall return the unmatched portion of state moneys to the trust fund. These moneys shall be reallocated for distribution to the other participating institution or to the state colleges pursuant to the terms of this section and section ten of this article as applicable.
(c) If both participating institutions fail to have deposited into their respective research endowments the requisite amount of qualified donations within seven years from the effective date of this article, then any moneys remaining in the trust fund that have not been distributed shall be made available for distribution by the commission to state colleges in accordance with the provisions of this article.

CHAPTER 87

(Com. Sub. for S. B. 488 - By Senators Stollings, Foster, Hall, Wills, Snyder, Kessler (Acting President), Jenkins, Plymale and Miller)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to repeal §16-3C-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-3C-1, §16-3C-2 and §16-3C-3 of said code, all relating to HIV testing generally; repealing the authority of the Department of Corrections to conduct AIDS-related study; providing for AIDS-related testing and confidentiality of records; providing definitions; providing who may request testing; providing when testing may be mandated; providing for confidentiality of records; providing enforcement mechanism for orders of the Commissioner of the Bureau of Public Health; eliminating requirements for counseling in certain circumstances; eliminating requirement for information regarding HIV and AIDS be provided to persons applying for marriage licenses; and providing when disclosure is permitted.

Be it enacted by the Legislature of West Virginia:
That §16-3C-7 of the Code of West Virginia, 1931, as amended, be repealed; and that §16-3C-1, §16-3C-2 and §16-3C-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

1 When used in this article:

2 (a) “AIDS” means acquired immunodeficiency syndrome.

3 (b) “Bureau” means the Bureau for Public Health.

4 (c) “Commissioner” means the commissioner of the Bureau for Public Health.

6 (d) “Convicted” includes pleas of guilty and pleas of nolo contendere accepted by the court having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial or a trial to a court and an adjudicated juvenile offender as defined in sections two and four, article one, chapter forty-nine of this code.

12 (e) “Department” means the State Department of Health and Human Resources.

14 (f) “Funeral director” has the same meaning ascribed to such term in section three, article six, chapter thirty of this code.

17 (g) “Funeral establishment” has the same meaning ascribed to that term in section three, article six, chapter thirty of this code.
(h) "HIV" means the human immunodeficiency virus identified as the causative agent of AIDS.

(i) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test approved by the bureau, the federal drug administration or the Centers for Disease Control and Prevention.

(j) "Health facility" means a hospital, nursing home, physician’s office, clinic, blood bank, blood center, sperm bank, laboratory or other health care institution.

(k) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist or other person providing medical, dental, nursing, psychological or other health care services of any kind.

(l) "Health Information Exchange" means the electronic movement of health-related information in accord with law and nationally recognized standards.

(m) "High risk behavior" means behavior by a person including, but not limited to: (i) Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money or drugs; (iii) unprotected sex with multiple partners; (iv) anonymous unprotected sex; (v) or needle sharing; (vi) diagnosis of a sexually transmitted disease; or (vii) unprotected sex or sharing injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.

(n) "Medical or emergency responders" means paid or volunteer firefighters, law-enforcement officers, emergency medical technicians, paramedics, or other emergency service personnel, providers or entities acting within the usual course of their duties; good samaritans and other nonmedical and nonemergency personnel providing assistance in
emergencies; funeral directors; health care providers; commissioner of the Bureau for Public Health; and all employees thereof and volunteers associated therewith.

(o) “Patient” or “test subject” or “subject of the test” means the person upon whom a HIV test is performed, or the person who has legal authority to make health care decisions for the test subject.

(p) “Permitted purpose” is a disclosure permitted by the Health Insurance Portability and Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a patient or test subject.

(q) “Person” includes any natural person, partnership, association, joint venture, trust, public or private corporation or health facility.

(r) “Release of test results” means a permitted or authorized disclosure of HIV-related test results.

(s) “Significant exposure” means:

(1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery or traumatic events; or

(2) Exposure of mucous membranes to visible blood or body fluids, to which universal precautions apply according to the national Centers for Disease Control and Prevention, and laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or

(3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped, abraded or afflicted with dermatitis or the contact is prolonged or involving an extensive area.
(t) "Source patient" means any person whose body fluids have been the source of a significant exposure to a medical or emergency responder.

(u) "Targeted testing" means performing an HIV-related test for sub-populations at higher risk, typically defined on the basis of behavior, clinical or demographic characteristics.

(v) "Victim" means the person or persons to whom transmission of bodily fluids from the perpetrator of the crimes of sexual abuse, sexual assault, incest or sexual molestation occurred or was likely to have occurred in the commission of such crimes.

§16-3C-2. Testing.

(a) HIV-related testing on a voluntary basis should be recommended by any healthcare provider in a health facility as part of a routine screening for treatable conditions and as part of routine prenatal and perinatal care. A physician, dentist, nurse practitioner, nurse midwife, physician assistant or the commissioner may also request targeted testing for any of the following:

(1) When there is cause to believe that the test could be positive. Persons who engage in high risk behavior should be encouraged to be screened for HIV at least annually;

(2) When there is cause to believe that the test could provide information important in the care of the patient; or

(3) When there is cause to believe that the results of HIV-testing of samples of blood or body fluids from a source patient could provide information important in the care of medical or emergency responders or other persons identified in regulations proposed by the department for approval by the Legislature in accordance with the provisions of article three,
 Provided, That the source patient whose blood or body fluids is being tested pursuant to this section must have come into contact with a medical or emergency responder or other person in such a way that a significant exposure has occurred;

(4) When there is no record of any HIV-related testing during pregnancy and the woman presents for labor and delivery.

(b) A patient voluntarily consents to the test as follows:

(1) The patient is informed either orally or in writing that HIV-related testing will be performed as part of his or her routine care, that HIV-related testing is voluntary and that the patient may decline HIV-related testing (opt-out); or

(2) The patient is informed that the patient’s general consent for medical care includes consent for HIV-related testing.

(c) A patient refuses to consent to the test if a patient opts-out of HIV-related testing, the patient is informed when the health care provider in the provider’s professional opinion believes HIV-related testing is recommended, and that HIV-related testing may be obtained anonymously at a local or county health department.

(d) Any person seeking an HIV-related test in a local or county health department or other HIV test setting provided by the commissioner who wishes to remain anonymous has the right to do so, and to be provided written informed consent through use of a coded system with no linking of individual identity to the test request or results.

(e) No option to opt-out of HIV-related testing is required and the provisions of subsection (a) and (b) of this section do not apply for the following:
(1) A health care provider or health facility performing an HIV-related test on the donor or recipient when the health care provider or health facility procures, processes, distributes or uses a human body part (including tissue and blood or blood products) donated for a purpose specified under the uniform anatomical gift act, or for transplant recipients, or semen provided for the purpose of artificial insemination and such test is necessary to assure medical acceptability of a recipient or such gift or semen for the purposes intended;

(2) The performance of an HIV-related test in documented bona fide medical emergencies, as determined by a treating physician taking into account the nature and extent of the exposure to another person, when the subject of the test is unable or unwilling to grant or withhold consent, and the test results are necessary for medical diagnostic purposes to provide appropriate emergency care or treatment to a medical or emergency responder, or any other person who has come into contact with a source patient in such a way that a significant exposure necessitates HIV-testing or to a source patient who is unable to consent in accordance with rules proposed by the department for approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code: Provided, That necessary treatment may not be withheld pending HIV test results: Provided, however, That all sampling and HIV-testing of samples of blood and body fluids, without the opportunity for the source patient or patient’s representative to opt-out of the testing, shall be through the use of a pseudonym and in accordance with rules proposed by the department for approval by the Legislature in accordance with article three, chapter twenty-nine-a of this code; or

(3) The performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.
(f) Mandated testing:

(1) The performance of any HIV-related testing that is or becomes mandatory by court order or other legal process described herein does not require consent of the subject but will include counseling.

(2) The court having jurisdiction of the criminal prosecution shall order that an HIV-related test be performed on any persons charged with any of the following crimes or offenses:

(i) Prostitution; or

(ii) Sexual abuse, sexual assault, incest or sexual molestation.

(3) HIV-related tests performed on persons charged with prostitution, sexual abuse, sexual assault, incest or sexual molestation shall be confidentially administered by a designee of the bureau or the local or county health department having proper jurisdiction. The commissioner may designate health care providers in regional jail facilities to administer HIV-related tests on such persons if he or she determines it necessary and expedient.

(4) When the Commissioner of the Bureau of Public Health knows or has reason to believe, because of medical or epidemiological information, that a person, including, but not limited to, a person such as an IV drug abuser, or a person who may have a sexually transmitted disease, or a person who has sexually molested, abused or assaulted another, has HIV infection and is or may be a danger to the public health, he or she may issue an order to:

(i) Require a person to be examined and tested to determine whether the person has HIV infection;
(ii) Require a person with HIV infection to report to a qualified physician or health worker for counseling; and

(iii) Direct a person with HIV infection to cease and desist from specified conduct which endangers the health of others.

(5) If any person violates a cease and desist order issued pursuant to this section and, by virtue of that violation, the person presents a danger to the health of others, the commissioner shall apply to the circuit court of Kanawha County to enforce the cease and desist order by imposing any restrictions upon the person that are necessary to prevent the specific conduct that endangers the health of others.

(6) A person convicted of the offenses described in this section shall be required to undergo HIV-related testing and counseling immediately upon conviction and the court having jurisdiction of the criminal prosecution may not release the convicted person from custody and shall revoke any order admitting the defendant to bail until HIV-related testing and counseling have been performed and the result is known. The HIV-related test result obtained from the convicted person is to be transmitted to the court and, after the convicted person is sentenced, made part of the court record. If the convicted person is placed in the custody of the Division of Corrections, the court shall transmit a copy of the convicted person’s HIV-related test results to the Division of Corrections. The HIV-related test results shall be closed and confidential and disclosed by the court and the bureau only in accordance with the provisions of section three of this article.

(7) The prosecuting attorney shall inform the victim, or parent or guardian of the victim, at the earliest stage of the proceedings of the availability of voluntary HIV-related testing and counseling conducted by the bureau and that his
or her best health interest would be served by submitting to HIV-related testing and counseling. HIV-related testing for the victim shall be administered at his or her request on a confidential basis and shall be administered in accordance with the Centers for Disease Control and Prevention guidelines of the United States Public Health Service in effect at the time of such request. The victim who obtains an HIV-related test shall be provided with pre and post-test counseling regarding the nature, reliability and significance of the HIV-related test and the confidential nature of the test. HIV-related testing and counseling conducted pursuant to this subsection shall be performed by the designee of the commissioner of the bureau or by any local or county health department having proper jurisdiction.

(8) If a person receives counseling or is tested under this subsection and is found to be HIV infected and the person is not incarcerated, the person shall be referred by the health care provider performing the counseling or testing for appropriate medical care and support services. The local or county health departments or any other agency under this subsection may not be financially responsible for medical care and support services.

(9) The commissioner of the bureau or his or her designees may require an HIV test for the protection of a person who was possibly exposed to HIV infected blood or other body fluids as a result of receiving or rendering emergency medical aid or who possibly received such exposure as a funeral director. Results of such a test of the person causing exposure may be used by the requesting physician for the purpose of determining appropriate therapy, counseling and psychological support for the person rendering emergency medical aid including good Samaritans, as well as for the patient, or individual receiving the emergency medical aid.
(10) If an HIV-related test required on persons convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation results in a negative reaction, upon motion of the state, the court having jurisdiction over the criminal prosecution may require the subject of the test to submit to further HIV-related tests performed under the direction of the bureau in accordance with the Centers for Disease Control and Prevention guidelines of the United States Public Health Service in effect at the time of the motion of the state.

(11) The costs of mandated testing and counseling provided under this subsection and pre and postconviction HIV-related testing and counseling provided the victim under the direction of the bureau pursuant to this subsection shall be paid by the bureau.

(12) The court having jurisdiction of the criminal prosecution shall order a person convicted of prostitution, sexual abuse, sexual assault, incest or sexual molestation to pay restitution to the state for the costs of any HIV-related testing and counseling provided the convicted person and the victim, unless the court has determined the convicted person to be indigent.

(13) Any funds recovered by the state as a result of an award of restitution under this subsection shall be paid into the State Treasury to the credit of a special revenue fund to be known as the “HIV-testing fund” which is hereby created. The moneys so credited to the fund may be used solely by the bureau for the purposes of facilitating the performance of HIV-related testing and counseling under the provisions of this article.

(g) Nothing in this section is applicable to any insurer regulated under chapter thirty-three of this code: Provided, That the commissioner of insurance shall develop standards regarding consent for use by insurers which test for the presence of the HIV antibody.
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§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.

(a) No person may disclose or be compelled to disclose

the identity of any person upon whom an HIV-related test is

performed, or the results of such a test in a manner which
permits identification of the subject of the test, except to the
following persons:

(1) The subject of the test;

(2) The victim of the crimes of sexual abuse, sexual

assault, incest or sexual molestation at the request of the
victim or the victim's legal guardian, or of the parent or legal

guardian of the victim if the victim is a minor where
disclosure of the HIV-related test results of the convicted sex
offender are requested;

(3) Any person who secures a specific release of test
results executed by the subject of the test;

(4) A funeral director or an authorized agent or employee
of a health facility or health care provider if the funeral
establishment, health facility or health care provider itself is
authorized to obtain the test results, the agent or employee

provides patient care or handles or processes specimens of
body fluids or tissues and the agent or employee has a need
to know that information: Provided, That the funeral director,
agent or employee shall maintain the confidentiality of this
information;
(5) Licensed health care providers or appropriate health facility personnel providing care to the subject of the test: Provided, That such personnel shall maintain the confidentiality of the test results and may redisclose the results only for a permitted purpose or as permitted by law. The entry on a patient's chart of an HIV-related illness by the attending or other treating physician or other health care provider shall not constitute a breach of confidentiality requirements imposed by this article;

(6) The Bureau or the Centers for Disease Control and Prevention of the United States Public Health Service in accordance with reporting requirements for HIV and a diagnosed case of AIDS, or a related condition;

(7) A health facility or health care provider which procures, processes, distributes or uses: (A) A human body part from a deceased person with respect to medical information regarding that person; (B) semen provided prior to the effective date of this article for the purpose of artificial insemination; (C) blood or blood products for transfusion or injection; or (D) human body parts for transplant with respect to medical information regarding the donor or recipient;

(8) Health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews so long as any identity remains anonymous;

(9) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer or any other payer of health care claims, where the disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection is confidential and may not be released or
available to persons who are not involved in handling or
determining medical claims payment;

(10) Persons, health care providers or health facilities
engaging in or providing for the exchange of protected health
information among the same in order to provide health care
services to the patient, including, but not limited to,
disclosure through a health information exchange, disclosure
and exchange within health care facilities, and disclosure for
a permitted purpose, including disclosure to a legally
authorized public health authority; and

(11) A person allowed access to the record by a court
order that is issued in compliance with the following
provisions:

(i) No court of this state may issue the order unless the
court finds that the person seeking the test results has
demonstrated a compelling need for the test results which
cannot be accommodated by other means. In assessing
compelling need, the court shall weigh the need for
disclosure against the privacy interest of the test subject and
the public interest;

(ii) Pleadings pertaining to disclosure of test results shall
substitute a pseudonym for the true name of the test subject
of the test. The disclosure to the parties of the test subject’s
true name shall be communicated confidentially in
documents not filed with the court;

(iii) Before granting any such order, the court shall, if
possible, provide the individual whose test result is in
question with notice and a reasonable opportunity to
participate in the proceedings if he or she is not already a
party;

(iv) Court proceedings as to disclosure of test results shall
be conducted in camera unless the subject of the test agrees
to a hearing in open court or unless the court determines that
the public hearing is necessary to the public interest and the
proper administration of justice; and

(v) Upon the issuance of an order to disclose test results,
the court shall impose appropriate safeguards against
unauthorized disclosure, which shall specify the person who
may have access to the information, the purposes for which
the information may be used and appropriate prohibitions on
future disclosure.

(b) No person to whom the results of an HIV-related test
have been disclosed pursuant to subsection (a) of this section
may disclose the test results to another person except as
authorized by said subsection.

(c) Notwithstanding the provisions set forth in
subsections (a) through (c) of this section, the use of HIV test
results to inform individuals named or identified as spouses,
sex partners or contacts, or persons who have shared needles
that they may be at risk of having acquired the HIV infection
as a result of possible exchange of body fluids, is permitted:
Provided, That the Bureau shall make a good faith effort to
inform spouses, sex partners, contacts or persons who have
shared needles that they may be at risk of having acquired the
HIV infection as a result of possible exchange of body fluids:
Provided, however, That the Bureau has no notification
obligations when the Bureau determines that there has been
no likely exposure of these persons to HIV from the infected
test subject within the ten-year period immediately prior to
the diagnosis of the infection. The name or identity of the
person whose HIV test result was positive is to remain
confidential. Spouses, contacts, or sex partners or persons
who have shared needles may be tested anonymously at the
State Bureau for public Health’s designated test sites, or at
their own expense by a health care provider or an approved
laboratory of their choice confidentially should the test be
positive. A cause of action may not arise against the Bureau, a physician or other health care provider from any such notification.

(d) There is no duty on the part of the physician or health care provider to notify the spouse or other sexual partner of, or persons who have shared needles with, an infected individual of their HIV infection and a cause of action may not arise from any failure to make such notification. However, if contact is not made, the Bureau will be so notified.

CHAPTER 88

(S. B. 392 - By Senators Snyder, Klempa, Yost and McCabe)

[Passed March 4, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §19-23-3 of the Code of West Virginia, 1931, as amended, relating to changing the definition of “accredited thoroughbred horse” to require registration with the West Virginia Thoroughbred Breeders Association.

Be it enacted by the Legislature of West Virginia:

That §19-23-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 19. HORSE AND DOG RACING.


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

1. “Horse racing” means any type of horse racing, including, but not limited to, thoroughbred racing and harness racing;

2. “Thoroughbred racing” means flat or running type horse racing in which each horse participating is a thoroughbred and mounted by a jockey;

3. “Harness racing” means horse racing in which the horses participating are harnessed to a sulky, carriage or other vehicle and does not include any form of horse racing in which the horses are mounted by jockeys;

4. “Horse race meeting” means the whole period of time for which a license is required by the provisions of section one of this article;

5. “Dog racing” means any type of dog racing, including, but not limited to, greyhound racing;

6. “Purse” means any purse, stake or award for which a horse or dog race is run;

7. “Racing association” or “person” means any individual, partnership, firm, association, corporation or other entity or organization of whatever character or description;

8. “Applicant” means any racing association making application for a license under the provisions of this article or any person making application for a permit under the provisions of this article or any person making application for a construction permit under the provisions of this article;
(9) "License" means the license required by the provisions of section one of this article;

(10) "Permit" means the permit required by the provisions of section two of this article;

(11) "Construction permit" means the construction permit required by the provisions of section eighteen of this article;

(12) "Licensee" means any racing association holding a license required by the provisions of section one of this article and issued under the provisions of this article;

(13) "Permit holder" means any person holding a permit required by the provisions of section two of this article and issued under the provisions of this article;

(14) "Construction permit holder" means any person holding a construction permit required by the provisions of section eighteen of this article and issued under the provisions of this article;

(15) "Hold or conduct" includes "assist, aid or abet in holding or conducting";

(16) "Racing commission" means the West Virginia Racing Commission;

(17) "Stewards" means the steward or stewards representing the Racing Commission, the steward or stewards representing a licensee and any other steward or stewards whose duty it is to supervise any horse or dog race meeting, all as may be provided by reasonable rules of the Racing Commission which rules shall specify the number of stewards to be appointed, the method and manner of their appointment and their powers, authority and duties;
(18) "Pari-mutuel" means a mutuel or collective pool that can be divided among those who have contributed their wagers to one central agency, the odds to be reckoned in accordance to the collective amounts wagered upon each contestant running in a horse or dog race upon which the pool is made, but the total to be divided among the first three contestants on the basis of the number of wagers on these;

(19) "Pari-mutuel clerk" means any employee of a licensed racing association who is responsible for the collection of wagers, the distribution of moneys for winning pari-mutuel tickets, verification of the validity of pari-mutuel tickets and accounting for pari-mutuel funds;

(20) "Pool" means a combination of interests in a joint wagering enterprise or a stake in such enterprise;

(21) "Legitimate breakage" is the percentage left over in the division of a pool;

(22) "To the dime" means that wagers shall be figured and paid to the dime;

(23) "Code" means the Code of West Virginia, 1931, as heretofore and hereinafter amended;

(24) "Accredited thoroughbred horse" means a thoroughbred horse that is registered with the West Virginia Thoroughbred Breeders Association and that is:

(A) Foaled in West Virginia; or

(B) Sired by an accredited West Virginia sire; or

(C) As a yearling, finished twelve consecutive months of verifiable residence in the state, except for thirty days’ grace:
(i) For the horse to be shipped to and from horse sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company, or

(ii) For obtaining veterinary services, documented by veterinary reports;

(25) “Accredited West Virginia sire” is a sire that is permanently domiciled in West Virginia, stands a full season in West Virginia and is registered with West Virginia Thoroughbred Breeders Association;

(26) “Breeder of an accredited West Virginia horse” is the owner of the foal at the time it was born in West Virginia;

(27) “Raiser of an accredited West Virginia horse” is the owner of the yearling at the time it finished twelve consecutive months of verifiable residence in the state. During the period, the raiser will be granted one month of grace for his or her horse to be shipped to and from thoroughbred sales where the horse is officially entered in the sales catalogue of a recognized thoroughbred sales company. In the event the yearling was born in another state and transported to this state, this definition does not apply after the December 31, 2007, to any pari-mutuel racing facility located in Jefferson County nor shall it apply after the December 31, 2012, and thereafter to any pari-mutuel racing facility located in Hancock County. Prior to the horse being shipped out of the state for sales, the raiser must notify the Racing Commission of his or her intentions;

(28) The “owner of an accredited West Virginia sire” is the owner of record at the time the offspring is conceived;

(29) The “owner of an accredited West Virginia horse” means the owner at the time the horse earned designated purses to qualify for restricted purse supplements provided in section thirteen-b of this article;
(30) "Registered greyhound owner" means an owner of a greyhound that is registered with the National Greyhound Association;

(31) "Fund" means the West Virginia Thoroughbred Development Fund established in section thirteen-b of this article; and

(32) "Regular purse" means both regular purses and stakes purses.

CHAPTER 89

(S. B. 413 - By Senators Snyder, Klempa, Yost, McCabe, Unger and D. Facemire)

[Passed March 8, 2011; in effect July 1, 2011.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §19-23-5 and §19-23-6 of the Code of West Virginia, 1931, as amended, all relating to changing the title of the West Virginia Racing Commission’s racing secretary to executive director.

Be it enacted by the Legislature of West Virginia:

That §19-23-5 and §19-23-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 19. HORSE AND DOG RACING.

§19-23-5. Executive director and other personnel; qualifications; terms; powers and duties; compensation and expenses.

(a) The Racing Commission shall appoint an executive director to represent the Racing Commission who shall have the powers and authority and perform such duties as the Racing Commission directs. The executive director shall preserve at the Racing Commission's principal office all books, maps, records, documents and other papers of the Racing Commission. The executive director shall, in addition to all other duties imposed upon him or her by the Racing Commission, serve in a liaison capacity between licensees and the Racing Commission. The Racing Commission may also employ, direct and define the duties of an assistant executive director and such stenographers, clerks and other office personnel as it deems necessary to carry out the duties imposed upon it under the provisions of this article.

(b) In addition to the employees referred to above, the Racing Commission shall employ, direct and define the duties of a chief clerk, director of security, director of audit, chief chemist, stewards to represent the Racing Commission, supervisors of the pari-mutuel wagering conducted under the provisions of this article, veterinarians, inspectors, accountants, guards and all other employees deemed by the Racing Commission to be essential in connection with any horse or dog race meeting. The director of audit shall be a certified public accountant or experienced public accountant.

(c) No individual shall knowingly be employed or be continued in employment by the Racing Commission in any capacity whatever:

(1) Who directly or indirectly, or in any capacity, owns or has any interest, in any manner, in any racetrack where horse or dog race meetings may be held, including, but not limited to, an interest as owner, lessor, lessee, stockholder or employee;
(2) Who at the time is or has been within one year prior, a member of the Legislature or an elective officer of this state unless he or she is experienced and qualified as a racing official; or

(3) Who has been or shall be convicted of an offense which, under the law of this state or any other state or of the United States of America, constitutes a felony or is a violation of article four, chapter sixty-one of this code. Any steward employed by the Racing Commission or by a licensee shall be a person of integrity and experienced and qualified for such position by the generally accepted practices and customs of horse or dog racing in the United States.

(d) The executive director and all other employees of the Racing Commission shall serve at the will and pleasure of the Racing Commission. The executive director and the other employees referred to in this section as employees of the Racing Commission shall receive such compensation as may be fixed by the Racing Commission within the limit of available funds and shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(e) All compensation and reimbursement for expenses of the members of the Racing Commission, the executive director and all other employees of the Racing Commission shall be paid from the funds in the hands of the State Treasurer collected under the provisions of this article and shall be itemized in the budget in the same manner as all other departments of state government. No reimbursement for expenses incurred shall be paid unless an itemized account, under oath, is first filed with the State Auditor.


The Racing Commission has full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings and, in this regard, it has plenary power and authority:
(1) To investigate applicants and determine the eligibility of the applicants for a license or permit or construction permit under the provisions of this article;

(2) To fix, from time to time, the annual fee to be paid to the Racing Commission for any permit required under the provisions of section two of this article;

(3) To promulgate reasonable rules implementing and making effective the provisions of this article and the powers and authority conferred and the duties imposed upon the Racing Commission under the provisions of this article, including, but not limited to, reasonable rules under which all horse races, dog races, horse race meetings and dog race meetings shall be held and conducted, all of which reasonable rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code except that the Racing Commission shall promulgate separate rules, in accordance with article three, chapter twenty-nine-a, pertaining to the kinds of legal combination wagers which may be placed in connection with the pari-mutuel system of wagering authorized by this article;

(4) To register colors and assumed names and to fix, from time to time, the annual fee to be paid to the Racing Commission for any such registration;

(5) To fix and regulate the minimum purse to be offered during any horse or dog race meeting;

(6) To fix a minimum and a maximum number of horse races or dog races to be held on any respective racing day;

(7) To enter the office, horse racetrack, dog racetrack, kennel, facilities and other places of business of any licensee to determine whether the provisions of this article and its reasonable rules are being complied with, and for this purpose, the Racing Commission, its executive director,
representatives and employees may visit, investigate and
have free access to any such office, horse racetrack, dog
racetrack, kennel, facilities and other places of business;

(8) To investigate alleged violations of the provisions of
this article, its reasonable rules, orders and final decisions
and to take appropriate disciplinary action against any
licensee or permit holder or construction permit holder for a
violation or institute appropriate legal action for enforcement
or take disciplinary action and institute legal action;

(9) By reasonable rules, to authorize stewards, starters
and other racing officials to impose reasonable fines or other
sanctions upon a person connected with or involved in any
horse or dog racing or any horse or dog race meeting and to
authorize stewards to rule off the grounds of any horse or dog
racetrack any tout, bookmaker or other undesirable individual
determined inimical to the best interests of horse and dog
racing or the pari-mutuel system of wagering in connection
therewith;

(10) To require at any time the removal of any racing
official or racing employee of any licensee for the violation
of any provision of this article, any reasonable rule of the
Racing Commission or for any fraudulent practice;

(11) To acquire, establish, maintain and operate, or to
provide by contract for the maintenance and operation of, a
testing laboratory and related facilities for the purpose of
conducting saliva, urine and other tests on the horse or dog or
horses or dogs run or to be run in any horse or dog race
meeting and to purchase all equipment and supplies
considered necessary or desirable in connection with the
acquisition, establishment, maintenance and operation of any
testing laboratory and related facilities and all such tests;

(12) To hold up, in any disputed horse or dog race, the
payment of any purse pending a final determination of the
results thereof;
(13) To require each licensee to file an annual balance sheet and profit and loss statement pertaining to the licensee's horse or dog racing activities in this state together with a list of each licensee's stockholders or other persons having any beneficial interest in the horse or dog racing activities of the licensee;

(14) To issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records and other pertinent documents and to administer oaths and affirmations to such witnesses, whenever, in the judgment of the Racing Commission, it is necessary to do so for the effective discharge of its duties under the provisions of this article;

(15) To keep accurate and complete records of its proceedings and to certify the same as may be appropriate;

(16) To take any other action that may be reasonable or appropriate to effectuate the provisions of this article and its reasonable rules;

(17) To provide breeders' awards, purse supplements and moneys for capital improvements at racetracks in compliance with section thirteen-b of this article; and

(18) To mediate on site, upon request of a party, all disputes existing between the racetrack licensees located in this state and representatives of a majority of the horse owners and trainers licensed at the track which threaten to disrupt any scheduled racing event or events. The Racing Commission shall, upon the request of a party, mediate on site all disputes existing between racetrack licensees and representatives of pari-mutuel clerks which threaten to disrupt any scheduled racing event or events. When a request for mediation is made, the commission shall designate from among its members one person to act as mediator in each dispute that arises. Each opposing party involved in any
dispute shall negotiate in good faith with the goal of reaching
a fair and mutual resolution. The mediator may issue
recommendations designed to assist each side toward
reaching a fair compromise. No owner or operator or any
horse owner or trainer or any pari-mutuel clerk licensed at the
track is required to abide by any recommendation made by
any mediator acting pursuant to this subsection.

The Racing Commission shall not interfere in the internal
business or internal affairs of any licensee.

CHAPTER 90

(H. B. 2990 - By Delegates Doyle, Ferns,
Guthrie, Morgan, Storch and Swartzmiller)
[By Request of the Racing Commission]

[Passed March 8, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §19-23-8 of the Code of West
Virginia, 1931, as amended, relating to changing the renewal
of Racing Commission-issued occupational permits from
December 31 of each year to a schedule determined according
to the applicant’s date of birth.

Be it enacted by the Legislature of West Virginia:

That §19-23-8 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:
ARTICLE 23. HORSE AND DOG RACING.

§19-23-8. Consideration of application for license or permit; issuance or denial; contents of license or permit; grounds for denial of application; determination of racing dates; license or permit not transferable or assignable; limitation on license; validity of permit.

(a) The Racing Commission shall promptly consider any application for a license or permit, as the case may be. Based upon such application and all other information before it, the Racing Commission shall make and enter an order either approving or denying the application. The application may be denied for any reason specified in subsection (b) of this section. If an application for a license is approved, the Racing Commission shall issue a license to conduct a horse or dog race meeting and shall designate on the face of the license the kind or type of horse or dog racing for which the same is issued, the racing association to which the same is issued, the dates upon which the horse or dog race meeting is to be held or conducted (which may be any weekdays, or week-nights, including Sundays), the location of the horse or dog racetrack, place or enclosure where the horse or dog race meeting is to be held or conducted and other information as the Racing Commission shall consider proper. If an application for a permit is approved, the Racing Commission shall issue a permit and shall designate on the face of the permit such information as the Racing Commission considers proper.

(b) The Racing Commission may deny the application and refuse to issue the license or permit, as the case may be, which denial and refusal is final and conclusive unless a hearing is demanded in accordance with the provisions of section sixteen of this article, if the Racing Commission finds that the applicant individually, if an individual, or the partners or members, if a partnership, firm or association, or the owners and directors, if a corporation:
(1) Has knowingly made false statement of a material fact in the application or has knowingly failed to disclose any information called for in the application;

(2) Is or has been guilty of any corrupt or fraudulent act, practice or conduct in connection with a horse or dog race meeting in this or any other state;

(3) Has been convicted, within ten years prior to the date of the application, of an offense which under the law of this state, of any other state or of the United States of America, shall constitute a felony or a crime involving moral turpitude;

(4) Has failed to comply with the provisions of this article or any reasonable rules of the Racing Commission;

(5) Has had a license to hold or conduct a horse or dog race meeting or a permit to participate therein denied for just cause, suspended or revoked in any other state;

(6) Has defaulted in the payment of any obligation or debt due to this state under the provisions of this article;

(7) Is, if a corporation, neither incorporated under the laws of this state nor qualified to do business within this state;

(8) In the case of an application for a license, has failed to furnish bond or other adequate security, if the same is required by the Racing Commission under the provisions of section seven of this article;

(9) In the case of an application for a permit, is unqualified to perform the duties required for the permit sought; or

(10) In the case of an application for a permit, is, for just cause, determined to be undesirable to perform the duties required of the applicant.
(c) In issuing licenses and fixing dates for horse or dog race meetings at the various horse racetracks and dog racetracks in this state, the Racing Commission shall consider the horse racing circuits and dog racing circuits with which the horse racetracks and dog racetracks in this state are associated or contiguous to and shall also consider dates which are calculated to increase the tax revenues accruing from horse racing and dog racing.

(d) A license issued under the provisions of this article is neither transferable nor assignable to any other racing association and may not permit the holding or conducting of a horse or dog race meeting at any horse or dog racetrack, place or enclosure not specified thereon. However, if the specified horse or dog racetrack, place or enclosure becomes unsuitable for the horse or dog race meeting because of flood, fire or other catastrophe, or cannot be used for any reason, the Racing Commission may, upon application, authorize the horse or dog race meeting, or any remaining portion thereof, to be conducted at any other racetrack, place or enclosure available for that purpose, provided that the owner of the racetrack, place or enclosure willingly consents to the use.

(e) No type of horse racing or dog racing shall be conducted by a licensee at any race meeting other than that type for which a license was issued.

(f) Each permit issued under the provisions of this section shall be for a period of one year, unless approved otherwise by the Commission. Effective January 1, 2012, each permit shall be renewed according to the following schedule: Permits issued to persons whose date of birth is January 1 through and including April 30 shall be renewed no later than April 30 of each year; permits issued to persons whose date of birth is May 1 through and including August 31 shall be renewed no later than August 31 of each year; and permits issued to persons whose date of birth is September 1 through and including December 31 shall be renewed no later than
December 31 of each year. Each permit shall be valid at all horse or dog race meetings during the period for which it was issued unless it be sooner suspended or revoked in accordance with the provisions of this article. A permit issued under the provisions of this article is neither transferable nor assignable to any other person.

(g) The Racing Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which establish the criteria for the approval or denial of a license or permit.

CHAPTER 91

(Com. Sub. for H. B. 2959 - By Delegates Doyle, Swartzmiller, Guthrie and Morgan)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §19-23-13b of the Code of West Virginia, 1931, as amended, relating to providing additional funds to the West Virginia Racing Commission for its Administration and Promotion Account.

Be it enacted by the Legislature of West Virginia:

That §19-23-13b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:
ARTICLE 23. HORSE AND DOG RACING.

§19-23-13b. West Virginia Thoroughbred Development Fund; distribution; restricted races; nonrestricted purse supplements; preference for West Virginia accredited thoroughbreds.

(a) The Racing Commission shall deposit moneys required to be withheld by an association or licensee in subsection (b), section nine of this article in a banking institution of its choice in a special account to be known as "West Virginia Racing Commission Special Account -- West Virginia Thoroughbred Development Fund": Provided, That after the West Virginia Lottery Commission has divided moneys between the West Virginia Thoroughbred Development Fund and the West Virginia Greyhound Breeding Development Fund pursuant to the provisions of sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code, the Racing Commission shall, beginning October 1, 2005, deposit the remaining moneys required to be withheld from an association or licensee designated to the Thoroughbred Development Fund under the provisions of subsection (b), section nine of this article, subdivision (3), subsection (e), section twelve-b of this article, subsection (b), section twelve-c of this article, paragraph (B), subdivision (3), subsection (b), section thirteen-c of this article and sections ten and ten-b, article twenty-two-a, chapter twenty-nine of this code into accounts for each thoroughbred racetrack licensee with a banking institution of its choice with a separate account for each association or licensee. Each separate account shall be a special account to be known as "West Virginia Racing Commission Special Account -- West Virginia Thoroughbred Development Fund" and shall name the licensee for which the special account has been established: Provided, however, That the Racing Commission shall deposit all moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992 from July 8, 2005 until the effective date of the amendment to this section passed
during the fourth extraordinary session of the seventy-seventh Legislature shall be paid into the purse fund of that thoroughbred racetrack licensee: Provided further, That the moneys paid into the Thoroughbred Development Fund by a thoroughbred racetrack licensee that did not participate in the Thoroughbred Development Fund for at least four consecutive calendar years prior to December 31, 1992, shall be transferred into that licensee’s purse fund until April 1, 2006. Notice of the amount, date and place of the deposits shall be given by the Racing Commission, in writing, to the state Treasurer. The purpose of the funds is to promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners and thoroughbred race horse owners: Provided, That five percent of the deposits required to be withheld by an association or licensee in subsection (b), section nine of this article shall be placed in a special revenue account hereby continued in the state Treasury called the “Administration and Promotion Account”: Provided, however, That four and one-half percent of the deposits into the Thoroughbred Development Fund shall be placed in the Administration and Promotion Account, except that of this percentage, no more than $305,000 shall be placed in the account in any year.

(b) The Racing Commission is authorized to expend the moneys deposited in the Administration and Promotion Account at times and in amounts as the Commission determines to be necessary for purposes of administering and promoting the thoroughbred development program: Provided, That during any fiscal year in which the Commission anticipates spending any money from the account, the Commission shall submit to the executive department during the budget preparation period prior to the Legislature convening before that fiscal year for inclusion in the executive budget document and budget bill the recommended expenditures, as well as requests of appropriations for the purpose of administration and promotion of the program. The Commission shall make an annual report to the
Legislature on the status of the Administration and Promotion Account, including the previous year’s expenditures and projected expenditures for the next year.

(c) The fund or funds and the account or accounts established in subsection (a) of this section shall operate on an annual basis.

(d) Funds in the Thoroughbred Development Fund or funds in the separate accounts for each association or licensee as provided in subsection (a) of this section shall be expended for awards and purses except as otherwise provided in this section. Annually, the first $800,000 shall be available for distribution for a minimum of fourteen accredited stakes races at a racetrack which has participated in the West Virginia Thoroughbred Development Fund for a period of more than four consecutive calendar years prior to December 31, 1992. The weights for all accredited stakes races shall be weight for age. One of the stakes races shall be the West Virginia Futurity and the second shall be the Frank Gall Memorial Stakes. For the purpose of participating in the West Virginia Futurity only, all mares, starting with the breeding season beginning February 1 through July 31, 2004, and each successive breeding season thereafter shall be bred back that year to an accredited West Virginia stallion only which is registered with the West Virginia Thoroughbred Breeders Association. The accredited stake races shall be chosen by the committee set forth in subsection (f) of this section.

(e) Awards and purses shall be distributed as follows:

(1) The breeders/raisers of accredited thoroughbred horses that earn a purse at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to the breeders/raisers, which shall be sixty percent of the fund available for distribution in any one year. The total amount available for
the breeders'/raisers' awards shall be distributed according to the ratio of purses earned by an accredited race horse to the total amount earned in the participating races by all accredited race horses for that year as a percentage of the fund dedicated to the breeders/raisers. However, no breeder/raiser may receive from the fund dedicated to breeders'/raisers' awards an amount in excess of the earnings of the accredited horse at West Virginia meets. In addition, should a horse's breeder and raiser qualify for the same award on the same horse, they will each be awarded one half of the proceeds. The bonus referred to in this subdivision may only be paid on the first $100,000 of any purse and not on any amounts in excess of the first $100,000.

(2) The owner of an accredited West Virginia sire of an accredited thoroughbred horse that earns a purse in any race at a participating West Virginia meet shall receive a bonus award calculated at the end of the year as a percentage of the fund dedicated to sire owners, which shall be fifteen percent of the fund available for distribution in any one year. The total amount available for the sire owners' awards shall be distributed according to the ratio of purses earned by the progeny of accredited West Virginia stallions in the participating races for a particular stallion to the total purses earned by the progeny of all accredited West Virginia stallions in the participating races. However, no sire owner may receive from the fund dedicated to sire owners an amount in excess of thirty-five percent of the accredited earnings for each sire. The bonus referred to in this subdivision shall only be paid on the first $100,000 of any purse and not on any amounts in excess of the first $100,000.

(3) The owner of an accredited thoroughbred horse that earns a purse in any participating race at a West Virginia meet shall receive a restricted purse supplement award calculated at the end of the year, which shall be twenty-five percent of the fund available for distribution in any one year, based on the ratio of the earnings in the races of a particular
race horse to the total amount earned by all accredited race
horses in the participating races during that year as a
percentage of the fund dedicated to purse supplements.
However, the owners may not receive from the fund
dedicated to purse supplements an amount in excess of
thirty-five percent of the total accredited earnings for each
accredited race horse. The bonus referred to in this
subdivision shall only be paid on the first $100,000 of any
purse and not on any amounts in excess of the first $100,000.

(4) In no event may purses earned at a meet held at a
track which did not make a contribution to the Thoroughbred
Development Fund out of the daily pool on the day the meet
was held qualify or count toward eligibility for an award
under this subsection.

(5) Any balance in the breeders/raisers, sire owners and
purse supplement funds after yearly distributions shall first
be used to fund the races established in subsection (f) of this
section. Any amount not so used shall revert into the general
account of the Thoroughbred Development Fund for each
racing association or licensee for distribution in the next year.

Distribution shall be made on the fifteenth day of each
February for the preceding year's achievements.

(f)(1) Each pari-mutuel thoroughbred horse track shall
provide at least one restricted race per racing day: Provided,
That sufficient horses and funds are available. For purposes
of this subsection, there are sufficient horses if there are at
least seven single betting interests received for the race:
Provided, however, That if sufficient horses and funds are
available, any thoroughbred horse racetrack whose licensee
participated in the Thoroughbred Development Fund for at
least four consecutive calendar years prior to December 31,
1992, shall provide two restricted races per racing day, at
least one of which may be split at the discretion of the racing
secretary. The restricted race required by this section must
be included in the first nine races written in the condition
book for that racing day.

(2) The restricted races established in this subsection
shall be administered by a three-member committee at each
track consisting of:

(A) The racing secretary at each track;

(B) A member appointed by the authorized representative
of a majority of the owners and trainers at the thoroughbred
track; and

(C) A member appointed by the West Virginia
Thoroughbred Breeders Association.

(3) Restricted races shall be funded by each racing
association from:

(A) Moneys placed in the general purse fund: Provided,
That a thoroughbred horse racetrack which did not participate
in the West Virginia Thoroughbred Development Fund for a
period of more than four consecutive years prior to December
31, 1992, may fund restricted races in an amount not to
exceed $1,000,000 per year.

(B) Moneys as provided in subdivision (5), subsection (e)
of this section, which shall be placed in a special fund called
the “West Virginia Accredited Race Fund”.

(4) The racing schedules, purse amounts and types of
races are subject to the approval of the West Virginia Racing
Commission.

(5) If less than seventy-five percent of the restricted races
required by this subsection fail to receive enough entries to
race, the Racing Commission shall, on a quarterly basis,
dedicate funds in each fund back to the general purse fund of
the racing association or licensee: *Provided*, That no moneys may be dedicated back to a general purse fund if the dedication would leave less than $250,000 in the fund.

(g) As used in this section, "West Virginia bred-foal" means a horse that was born in the State of West Virginia.

(h) To qualify for the West Virginia Accredited Race Fund, the breeder must qualify under one of the following:

(1) The breeder of the West Virginia bred-foal is a West Virginia resident;

(2) The breeder of the West Virginia bred-foal is not a West Virginia resident, but keeps his or her breeding stock in West Virginia year round; or

(3) The breeder of the West Virginia bred-foal is not a West Virginia resident and does not qualify under subdivision (2) of this subsection, but either the sire of the West Virginia bred-foal is a West Virginia stallion, or the mare is covered only by a West Virginia accredited stallion or stallions before December 31 of the calendar year following the birth of that West Virginia bred-foal.

(i) From July 1, 2001, West Virginia accredited thoroughbred horses have preference for entry in all accredited races at a thoroughbred racetrack at which the licensee participates in the West Virginia Thoroughbred Development Fund.

(j) Beginning July 1, 2006, any racing association licensed by the Racing Commission to conduct thoroughbred racing and permitting and conducting pari-mutuel wagering under the provisions of this article must have a West Virginia Thoroughbred Racing Breeders Program.
CHAPTER 92

(Com. Sub. for H. B. 2958 - By Delegates Doyle, Swartzmiller, Guthrie and Morgan)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §19-23-14 of the Code of West Virginia, 1931, as amended, relating to allowing the West Virginia Racing Commission to use certain permit and registration fees to pay salaries and other budgeted expenses; and providing that judges and the Racing Commission may also impose penalties.

Be it enacted by the Legislature of West Virginia:

That §19-23-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-14. Disposition of permit fees, registration fees and civil penalties.

1. (a) All permit fees and fees paid for the registration of colors or assumed names collected by the Racing Commission shall be paid by the commission to the State Treasurer for deposit in the Racing Commission’s general administrative account.

2. (b) All civil penalties imposed by the stewards, judges or the commission shall be paid into a relief fund and paid out
on the order of the commission for hospitalization, medical
9 care and funeral expenses occasioned by injuries or death
10 resulting from an accident sustained by any permit holder
11 while in the discharge of his or her duties under the
jurisdiction of the Racing Commission: Provided, That (1)
13 No payment may be made from the relief fund for any
14 hospitalization, medical care or funeral expenses of a permit
holder who is covered by workers' compensation or an
16 insurance policy providing payments for hospitalization,
17 medical care or funeral expenses; and (2) any balance in the
18 relief fund in excess of $5,000, less any outstanding
19 obligations, shall thereupon be transferred by the Racing
20 Commission to the State Treasurer for deposit to the credit of
21 the General Revenue Fund of this state.

CHAPTER 93

(H. B. 2989 - By Delegates Doyle, Swartzmiller,
Ferns, Storch, Guthrie and Morgan)
[By Request of the Racing Commission]

[Passed March 9, 2011; in effect ninety days from passage.]  
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact §19-23-16 of the Code of West 
Virginia, 1931, as amended, relating to addressing appeals from 
decisions of stewards or judges generally; adding references to 
suspensions or revocations made by judges; providing a 
process for seeking a stay pending appeal and authority for 
granting such a request; providing that hearing examiners 
appointed by the Racing Commission may hear appeals; 
creating requirements for hearing examiner recommended 
decision; and providing options for the Racing Commission 
following a hearing examiner recommended decision.
Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. HORSE AND DOG RACING.

§19-23-16. Entry of order suspending or revoking license or permit; service of order; contents; hearing; decision to be in writing.

(a) Whenever the Racing Commission shall deny an application for a license or a permit or shall suspend or revoke a license or a permit, it shall make and enter an order to that effect and serve a copy thereof on the applicant, licensee or permit holder, as the case may be, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken, and, in the case of an order of suspension or revocation, shall state the effective date of such suspension or revocation.

(b) Whenever a majority of the stewards or judges at any horse or dog race meeting shall suspend or revoke a permit, such suspension or revocation shall be effective immediately. The stewards or judges shall, as soon as thereafter practicable, make and enter an order to that effect and serve a copy thereof on the permit holder, in any manner in which a summons may be served in a civil action or by certified mail, return receipt requested. Such order shall state the grounds for the action taken.

(c) Any person adversely affected by any such order shall be entitled to a hearing thereon if, within twenty days after service of a copy thereof if served in any manner in which a summons may be served as aforesaid or within twenty days after receipt of a copy thereof if served by certified mail as aforesaid, such person files with the Racing Commission a
26 written demand for such hearing. A demand for hearing shall
27 operate automatically to stay or suspend the execution of any
28 order suspending or revoking a license, but a demand for
29 hearing shall not operate automatically to stay or suspend the
30 execution of any order suspending or revoking a permit.
31 Upon the written request of any permit holder who has been
32 adversely affected by an order of the stewards or judges, a
33 stay may be granted by the Racing Commission, its
34 chairman, or by a member of the commission designated by
35 the chairman. A request for a stay must be filed with the
36 Racing Commission’s executive director no later than the
37 deadline for filing a written demand for a hearing before the
38 commission. If a stay is granted, it is not a presumption that
39 the order of the stewards or judges is invalid. The Racing
40 Commission may require the person demanding a hearing to
41 give reasonable security for the costs thereof and if such
42 person does not substantially prevail at such hearing such
43 costs shall be assessed against such person and may be
44 collected by an action at law or other proper remedy.

45 (d) Upon receipt of a written demand for such hearing,
46 the Racing Commission shall set a time and place therefor
47 not less than ten and not more than thirty days thereafter.
48 Any hearing may be continued by the Racing Commission or
49 its appointed hearing examiner for good cause shown.

50 (e) All of the pertinent provisions of article five, chapter
51 twenty-nine-a of this code shall apply to and govern the
52 hearing and the administrative procedures in connection with
53 and following such hearing, with like effect as if the
54 provisions of said article five were set forth in this
55 subsection.

56 (f) Any such hearing shall be conducted by a quorum of
57 the Racing Commission or by a hearing examiner appointed
58 by the Racing Commission who is licensed to practice law in
59 the State of West Virginia. For the purpose of conducting
60 any such hearing, any member of the Racing Commission or
its appointed hearing examiner has the power and authority
to issue subpoenas and subpoenas duces tecum as provided
in section six of this article. Any such subpoenas and
subpoenas duces tecum shall be issued and served within the
time, for the fees and shall be enforced, as specified in
section one, article five of said chapter twenty-nine-a, and all
of the said section one provisions dealing with subpoenas and
subpoenas duces tecum shall apply to subpoenas and
subpoenas duces tecum issued for the purpose of a hearing
hereunder.

(g) At any such hearing the person who demanded the
same may represent such person's own interests or be
represented by an attorney-at-law admitted to practice before
any circuit court of this state. Upon request by the Racing
Commission, it shall be represented at any such hearing by
the Attorney General or his or her assistants without
additional compensation. The Racing Commission, with the
written approval of the Attorney General, may employ
special counsel to represent the Racing Commission at any
such hearing.

(h) After any such hearing and consideration of all of the
testimony, evidence and record in the case, the Racing
Commission shall render its decision in writing. The written
decision of the Racing Commission shall be accompanied by
findings of fact and conclusions of law as specified in section
three, article five, chapter twenty-nine-a of this code, and a
copy of such decision and accompanying findings and
conclusions shall be served by certified mail, return receipt
requested, upon the person demanding such hearing, and his
or her attorney of record, if any. If a hearing is conducted by
a hearing examiner appointed by the Racing Commission, he
or she shall prepare a written recommended decision that
meets the requirements of this subsection for the
commission's consideration. The Racing Commission, in its
discretion, may accept the recommendation in its entirety,
modify it, or reject it. If the Racing Commission modifies or rejects a recommended decision of an appointed hearing examiner, either in whole or in part, it shall issue a reasoned, articulate explanation and a recitation of the underlying evidence or other matters upon which it bases its decision, including findings of fact and conclusions of law.

(i) The decision of the Racing Commission shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section seventeen of this article.

CHAPTER 94

(H. B. 3000 - By Delegates Shaver, Crosier, Stowers, Varner, Williams, Andes, Pethtel, Ferro, Romine, Evans and Walker)

[Passed March 11, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia, 1931, as amended, relating to making it lawful to hunt coyotes with a green colored light.

Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

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, green 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, 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;

(16) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, August 16, 1916, and February 7, 1936, except during the time and in the manner and numbers prescribed by the federal Migratory Bird Treaty Act, 16 U.S.C. §703, et seq., and regulations made thereunder;

(17) Kill, take, catch or have in his or her possession, living or dead, any wild bird other than a game bird; or
expose for sale or transport within or without the state any bird except as aforesaid. No part of the plumage, skin or body of any protected bird may be sold or had in possession for sale except mounted or stuffed plumage, skin, bodies or heads of the birds legally taken and stuffed or mounted, irrespective of whether the bird was captured within or without this state, except the English or European sparrow (passer domesticus), starling (sturnus vulgaris) and cowbird (molothrus ater), which may not be protected and the killing thereof at any time is lawful;

(18) Use dynamite or any like explosive or poisonous mixture placed in any waters of the state for the purpose of killing or taking fish. Any person violating the provisions of this subdivision is guilty of a felony and, upon conviction thereof, shall be fined not more than $500 or imprisoned for not less than six months nor more than three years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow or arrows, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields or use a crossbow to hunt for, take or attempt to take any wildlife, 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.
AN ACT to amend and reenact §20-2-21 of the Code of West Virginia, 1931, as amended, relating to reporting beaver and otter taken, tagged and checked.

Be it enacted by the Legislature of West Virginia:

That §20-2-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.


1 Each trapper shall present each beaver and otter, or each pelt, to a game checking station or representative of the division within thirty days after the close of a legal season.
2 A tag provided by the division shall be affixed to each beaver and otter, or each pelt and remain attached to the animal or pelt until it is processed into commercial fur.
AN ACT to amend and and reenact §20-2-27 and §20-2-28 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-42x, all relating to senior resident lifetime hunting, fishing and trapping license and fee of $25; and allowing persons who are sixty-five years of age before January 1, 2012, to remain exempt from the purchase of the license.

Be it enacted by the Legislature of West Virginia:

That §20-2-27 and §20-2-28 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 §20-2-42x, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.


Except as otherwise provided by law, no resident who has reached his or her fifteenth birthday and who has not reached his or her sixty-fifth birthday before January 1, 2012, and no nonresident shall at any time take, hunt, pursue, trap for, kill or chase any wild animals, wild birds, or fish for, take, kill or catch any fish, amphibians or aquatic life of any
kind whatsoever in this state without first having secured a license or permit and then only during the respective open seasons, except that a nonresident who has not reached his or her fifteenth birthday may fish for, take, kill or catch any fish, amphibians or aquatic life of any kind whatsoever in this state without first having secured a license or permit. A person under the age of fifteen years shall not hunt or chase any wild animals or wild birds upon lands of another unless accompanied by a licensed adult.

A resident or nonresident member of any club, organization or association or persons owning or leasing a game preserve or fish preserve, plant or pond in this state shall not hunt or fish therein without first securing a license or permit as required by law: Provided, That resident landowners or their resident children, or bona fide resident tenants of land, may, without a permit or license, hunt and fish on their own land during open seasons in accordance with laws and rules applying to such hunting and fishing unless the lands have been designated as a wildlife refuge or preserve.

Licenses and permits shall be of the kinds and classes set forth in this article and shall be conditioned upon the payment of the fees established for the licenses and permits.

§20-2-28. When licenses or permits not required.

Persons in the following categories are not required to obtain licenses or permits as indicated:

(a) Bona fide resident landowners or their resident children, or resident parents, or bona fide resident tenants of the land may hunt, trap or fish on their own land during open season in accordance with the laws and rules applying to the hunting, trapping and fishing without obtaining a license, unless the lands have been designated as a wildlife refuge or preserve.
(b) Any bona fide resident of this state who is totally blind may fish in this state without obtaining a fishing license. A written statement or certificate from a duly licensed physician of this state showing the resident to be totally blind shall serve in lieu of a fishing license and shall be carried on the person of the resident at all times while he or she is fishing in this state.

(c) All residents of West Virginia on active duty in the armed forces of the United States of America, while on leave or furlough, may hunt, trap or fish in season in West Virginia without obtaining a license. Leave or furlough papers shall serve in lieu of any license and shall be carried on the person at all times while trapping, hunting or fishing.

(d) In accordance with the provisions of section twenty-seven of this article, any resident sixty-five years of age or older before January 1, 2012, is not required to have a license to hunt, trap or fish during the legal seasons in West Virginia, but in lieu of the license the person shall at all times while hunting, trapping or fishing carry on his or her person a valid West Virginia driver's license or nondriver identification card issued by the Division of Motor Vehicles.

(e) Residents of the State of Maryland who carry hunting or fishing licenses valid in that state may hunt or fish from the West Virginia banks of the Potomac River without obtaining licenses, but the hunting or fishing shall be confined to the fish and waterfowl of the river proper and not on its tributaries: Provided, That the State of Maryland shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing on the Potomac River from the Maryland banks of the river to licensed residents of West Virginia without requiring the residents to obtain Maryland hunting and fishing licenses.
(f) Residents of the State of Ohio who carry hunting or fishing licenses valid in that state may hunt or fish on the Ohio River or from the West Virginia banks of the river without obtaining licenses, but the hunting or fishing shall be confined to fish and waterfowl of the river proper and to points on West Virginia tributaries and embayments identified by the director: Provided, That the State of Ohio shall first enter into a reciprocal agreement with the director extending a like privilege of hunting and fishing from the Ohio banks of the river to licensed residents of West Virginia without requiring the residents to obtain Ohio hunting and fishing licenses.

(g) Any resident of West Virginia who was honorably discharged from the Armed Forces of the United States of America and who receives a veteran’s pension based on total permanent service-connected disability as certified to by the Veterans Administration may hunt, trap or fish in this state without obtaining a license. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code setting forth the procedure for the certification of the veteran, manner of applying for and receiving the certification and requirements as to identification while the veteran is hunting, trapping or fishing.

(h) Any disabled veteran who is a resident of West Virginia and who, as certified to by the Commissioner of Motor Vehicles, is eligible to be exempt from the payment of any fee on account of registration of any motor vehicle owned by the disabled veteran as provided in section eight, article ten, chapter seventeen-a of this code shall be permitted to hunt, trap or fish in this state without obtaining a license. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code setting forth the procedure for the certification of the disabled veteran, manner of applying for
and receiving the certification and requirements as to identification while the disabled veteran is hunting, trapping or fishing.

(i) Any resident or inpatient in any state mental health, health or benevolent institution or facility may fish in this state, under proper supervision of the institution involved, without obtaining a fishing license. A written statement or certificate signed by the superintendent of the mental health, health or benevolent institution or facility in which the resident or inpatient, as the case may be, is institutionalized shall serve in lieu of a fishing license and shall be carried on the person of the resident or inpatient at all times while he or she is fishing in this state.

(j) Any resident who is developmentally disabled, as certified by a physician and the Director of the Division of Health, may fish in this state without obtaining a fishing license. As used in this section, “developmentally disabled” means a person with a severe, chronic disability which:

(1) Is attributable to a mental or physical impairment or a combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

(3) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;
(E) Self-direction;

(F) Capacity for independent living; and

(G) Economic self-sufficiency; and

(4) Reflects the person’s need for a combination and sequence of care, treatment or supportive services which are of lifelong or extended duration and are individually planned and coordinated.

(k) A student eighteen years of age or younger receiving instruction in fly fishing in a public, private, parochial or Christian school in this state may fly fish in the state for catch and release only without obtaining a fishing license while under the supervision of an instructor authorized by the school.

§20-2-42x. Class XS resident senior hunting, fishing and trapping license.

(a) A Class XS license is a resident senior hunting, fishing and trapping license and entitles the licensee to hunt and trap for all legal species of wild animals and wild birds, to fish for all legal species of fish and to take frogs in all counties of the state, except as prohibited by the rules of the Director or Natural Resources Commission and when additional licenses, stamps or permits are required. No additional fees shall be required of Class XS licensees for a Class CS stamp or a Class O stamp.

(b) A Class XS licensee shall be entitled to participate with the same privileges and subject to the same restrictions as a youth hunter in any special youth deer season established by the Natural Resources Commission pursuant to the provisions of subdivision (b)(7), section 17, article one of this chapter.
(c) A Class XS license is required for residents or aliens lawfully residing in the United States who have been domiciled residents of West Virginia for a period of thirty consecutive days or more immediately prior to the date of their application for a license and who reach sixty-five years of age on or after January 1, 2012.

(d) A Class XS license may be voluntarily purchased by residents or aliens lawfully residing in the United States and who have been domiciled residents of West Virginia for a period of thirty consecutive days or more immediately prior to the date of their application for a license and who reach sixty-five years of age on or before December 31, 2011, entitling those persons to the same privileges and subjecting them to the same restrictions as any Class XS licensee.

(e) The fee for the Class XS license is $25.

(f) A Class XS license is valid for the lifetime of the purchaser without payment of additional fees for the privileges associated with the Class X license, Class CS stamp and the Class O stamp. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

(g) The Division of Natural Resources shall coordinate with the Department of Motor Vehicles to adopt and implement a program whereby the senior hunting license provided for in this section shall be identified by an appropriate decal, sticker or other marking to be affixed to the drivers’ or chauffeurs’ license of such person.

(h) On or before July 1 annually, the Division of Natural Resources shall file an annual report with the joint committee on government and finance describing its implementation of the senior license program as set forth in this section. The
48 report shall include the number of licenses issued, any increase in state funds as a result of the senior license created by this section, any federal funds received as a result of the implementation of the senior license created by this section and the intended use of the those funds.

CHAPTER 97

(Com. Sub. for H. B. 2745 - By Delegates Perry, Hartman, Walters, Hall, Ashley and Azinger)

[By Request of the Insurance Commissioner]

[Passed March 12, 2011; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2011.]

AN ACT to amend reenact §33-4-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-4A-8, all relating to the Insurance Commissioner generally; providing that certain information provided by insurance companies to the Insurance Commissioner is confidential; exempting such confidential information from the freedom of information disclosure requirements; providing that such confidential information is not subject to subpoena or discoverable in a private civil action; commissioner’s authority to release, share and receive documents otherwise treated as confidential in furtherance of the commissioner’s official duties; stating conditions attached thereto; authorizing legislative rules; creating an all-payer claims database; defining terms; developing the database by the Insurance Commissioner, Secretary of Health and Human Resources and Chairperson of the Health Care Authority and providing powers in regard
thereto; exempting from purchasing rules; providing data subject to the database; providing for the protection of personal identifiers and the confidentiality of information; permitting fees and assessments to be assessed; authorizing penalties to be set by rule; authorizing injunctive relief; establishing special revenue account; and allowing other sanctions.

Be it enacted by the Legislature of West Virginia:

That §33-4-14 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 §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-4, §33-4A-5, §33-4A-6, §33-4A-7 and §33-4A-8, all to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-14. Financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner.

(a) Each licensed insurer shall annually on or before March 1, unless the time is extended by the commissioner for good cause shown, file with the commissioner a true statement of its financial condition, transactions and affairs as of the preceding December 31. Such statement shall be on the appropriate National Association of Insurance Commissioners annual statement blank; shall be prepared in accordance with the National Association of Insurance Commissioners annual statement instructions handbook; and shall follow the accounting practices and procedures prescribed by the National Association of Insurance Commissioners accounting practices and procedures manual as amended: Provided, That each licensed insurer shall also file true statements of financial condition on a more frequent basis if the commissioner so orders. The commissioner shall establish the frequency, due date and form acceptable to him or her for such filings: Provided, however, That the statement
of an alien insurer shall relate only to its transactions and
affairs in the United States unless the commissioner requires
otherwise.

(b) Each domestic insurer shall also file with the
commissioner a true quarterly statement of its financial
condition, transactions and affairs as of March 31, June 30,
and September 30, of each year. Quarterly statements shall
be due forty-five days after the end of each quarter. All
quarterly statements shall be submitted on the appropriate
National Association of Insurance Commissioners quarterly
statement blank; shall be prepared in accordance with the
National Association of Insurance Commissioners quarterly
statement instructions; and shall follow the accounting
practices and procedures prescribed by the National
Association of Insurance Commissioners accounting
practices and procedures manual, as amended. The
commissioner may subject any licensed insurer to the
requirements of this section whenever the commissioner
deems it necessary.

(c) The commissioner may require that all or part of the
information contained in the annual statement blank and the
quarterly statement blanks be submitted in a
computer-readable form compatible with the electronic data
processing system of the department.

(d) Each domestic, foreign and alien insurer, organization
or corporation that is subject to the requirements of this
section shall annually, on or before March 1 each year, and
forty-five days after the end of the first, second and third
calendar quarters, file with the National Association of
Insurance Commissioners a copy of its annual statement
convention blank and the quarterly statement blanks, along
with such additional filings as prescribed by the
commissioner and shall pay the fee established by the
National Association of Insurance Commissioners for filing,
review or processing of the information. The information
filed with the National Association of Insurance Commissioners shall be in the same format and scope as that
required by the commissioner and shall include the signed jurat page and any other required information. Any
amendments and addenda to the annual statement filing and quarterly statement filings subsequently filed with the
commissioner shall also be filed with the National Association of Insurance Commissioners.

(e) Foreign insurers that are domiciled in a state which has a law substantially similar to subsection (a) of this section shall be deemed in compliance with this section.

(f) In the absence of actual malice, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates, National Association of Insurance Commissioners employees and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks and the quarterly statement blanks shall be acting as agents of the commissioner under the authority of this article and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required hereunder.

(g)(1) All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the commissioner by the National Association of Insurance Commissioners insurance regulatory information system, and all actuarial reports, work papers and actuarial summaries submitted by insurers in conjunction with their annual financial statements is confidential by law and privileged. These documents are not subject to disclosure pursuant to chapter twenty-nine-b of this code, are not subject to subpoena and are not subject to discovery or admissible as
evidence in any private civil action: Provided, That nothing
in this section may be construed to limit the ability of parties
in a civil action to discover such information from insurers
under the Rules of Civil Procedure.

(2) This subsection shall not be construed to limit the
commissioner’s authority to release the documents to the
Actuarial Board for Counseling and Discipline (ABCD), so
long as the material is required for the purpose of
professional disciplinary proceedings and the ABCD
establishes procedures satisfactory to the commissioner for
preserving the confidentiality of the documents; nor shall this
section be construed to limit the commissioner’s authority to
use the documents, materials or other information in
furtherance of any regulatory or legal action brought as part
of the commissioner’s official duties.

(3) Neither the commissioner nor any person who
received documents, materials or other information while
acting under the authority of the commissioner shall be
permitted or required to testify in any private civil action
concerning any confidential documents, materials or
information subject to subdivision (1) of this subsection.

(4) In order to assist in the performance of the
commissioner’s duties, the commissioner:

(A) May share documents, materials or other information,
including the confidential and privileged documents,
materials or information subject to subparagraph (1) of this
subsection with other state, federal and international
regulatory agencies, and with state, federal and international
law-enforcement authorities, provided that the recipient
agrees to maintain the confidentiality and privileged status of
the document, material or other information and has the legal
authority to maintain confidentiality; and
(B) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

(h) The commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement or the quarterly statement blanks, or any other statement of financial condition required by this section, when due or within any extension of time which the commissioner, for good cause, may have granted.

(i) Any variance to the requirements of this section shall require the express authorization of the commissioner.

(j) The commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to effectuate the requirements of this article.

ARTICLE 4A. ALL-PAYER CLAIMS DATABASE.

§33-4A-1. Definitions.

(a) “All-payer claims database” or “APCD” means the program authorized by this article that collects, retains, uses and discloses information concerning the claims and administrative expenses of health care payers.

(b) “Chair” means the chairperson of the West Virginia Health Care Authority.
(c) "Commissioner" means the West Virginia Insurance Commissioner.

(d) "Data" means the data elements from enrollment and eligibility files, specified types of claims, and reference files for data elements not maintained in formats consistent with national coding standards.

(e) "Health care payer" means any entity that pays or administers the payment of health insurance claims or medical claims under workers' compensation insurance to providers in this state, including workers' compensation insurers; accident and sickness insurers; nonprofit hospital service corporations, medical service corporations and dental service organizations; nonprofit health service corporations; prepaid limited health service organizations; health maintenance organizations; and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency; the term also includes any third-party administrator including any pharmacy benefit manager, that administers a fully-funded or self-funded plan.

A "health insurance claim" does not include:

1. Any claim paid under an individual or group policy providing coverage only for accident, or disability income insurance or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability; credit-only insurance; coverage for on-site medical clinics; other similar insurance coverage, which may be specified by rule, under which benefits for medical care are secondary or incidental to other insurance benefits; or

2. Any of the following if provided under a separate policy, certificate, or contract of insurance: Limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any
combination thereof; coverage for only a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

"Health insurance claims” shall only include information from Medicare supplemental policies if the same information is obtained with respect to Medicare.

(f) “Personal identifiers” means information relating to an individual member or insured that identifies, or can be used to identify, locate or contact a particular individual member or insured, including but not limited to the individual’s name, street address, social security number, e-mail address and telephone number.

(g) “Secretary” means the Secretary of the West Virginia Department of Health and Human Services.

(h) “Third-party administrator” has the same meaning ascribed to it in section two, article forty-six of this chapter.

§33-4A-2. Establishment and development of an all-payer claims database.

(a) The secretary, commissioner and chair, collectively referred to herein as the “MOU parties”, shall enter into a memorandum of understanding to develop an all-payer claims database program.

(b) The memorandum of understanding shall, at a minimum:

(1) Provide that the commissioner will have primary responsibility for the collection of the data in order to facilitate the efficient administration of state oversight, the secretary will have primary responsibility for the retention of data supplied to the state under its health care oversight
function, and the chair will have primary responsibility for
the dissemination of the data;

(2) Delineate the MOU parties' roles, describe the
process to develop legislative rules required by this article,
establish communication processes and a coordination plan,
and address vendor relationship management;

(3) Provide for the development of a plan for the financial
stability of the APCD, including provision for funding by the
MOU parties' agencies; and

(4) Provide for the use of the hospital discharge data
collected by the West Virginia Health Care Authority as a
tool in the validation of APCD reports.

§33-4A-3. Powers of the commissioner, secretary and chair;
exemption from purchasing rules.

(a) The MOU parties may:

(1) Accept gifts, bequests, grants or other funds dedicated
to the furtherance of the goals of the APCD;

(2) Select a vendor to handle data collection and
processing and such other tasks as deemed appropriate;

(3) Enter into agreements with other states to perform
joint administrative operations, share information and assist
in the development of multistate efforts to further the goals
of this article: Provided, That any such agreements must
include adequate protections with respect to the
confidentiality of the information to be shared and comply
with all state and federal laws and regulations;

(4) Enter into memoranda of understanding with other
governmental agencies to carry out any of its functions,
including contracts with other states to perform joint
administrative functions;

(5) Attempt to ensure that the requirements with respect
to the reporting of data be standardized so as to minimize the
expense to parties subject to similar requirements in other
jurisdictions;

(6) Enter into voluntary agreements to obtain data from
payers not subject to mandatory reporting under this article;
and

(7) Exempt a payer or class of payers from the
requirements of this article for cause.

(b) Contracts for professional services for the
development and operation of the APCD are not subject to
the provisions of article three, chapter five-a of this code
relating to the Purchasing Division of the Department of
Administration. The award of such contracts shall be subject
to a competitive process established by the MOU parties.

(c) The MOU parties shall make an annual report to the
Governor, which shall also be filed with the Joint Committee
on Government and Finance, summarizing the activities of
the APCD in the preceding calendar year.

§33-4A-4. Data subject to this article.

(a) All health care payers shall submit data to the
commissioner or an entity designated by the commissioner at
such times and in a form specified in rule. Any health care
payer that the commissioner determines paid or administered
the payment of health insurance claims in this state for
policies on fewer than 500 covered lives in the previous
calendar year is exempt from the requirements of this article.
(b) Data submitted in accordance with this article shall be considered confidential by law and privileged, are exempt from disclosure pursuant to chapter twenty-nine-b of this code, are not open to public inspection, are not subject to subpoena, are not subject to discovery or admissible in evidence in any criminal, private civil or administrative action, are not subject to production pursuant to court order, and shall only be used and disclosed pursuant to law and legislative rules promulgated pursuant to this article.

(c)(1) Data submitted to and retained by the APCD shall be available as a resource for the MOU parties to continuously review health care utilization, expenditures and performance in West Virginia and to enhance the ability of consumers to make informed and cost-effective health care decisions.

(2) Data submitted to and retained by the APCD may, in accordance with this article and the legislative rules promulgated pursuant to this article, also be available as a resource for insurers, researchers, employers, providers, purchasers of health care, consumers, and state agencies.

(d) Notwithstanding any other provision of law to the contrary, the APCD shall not disclose any data that contain personal identifiers. The MOU parties, in accordance with procedures and standards set forth in legislative rule, may approve access to other data elements not prohibited from disclosure by the APCD, as well as synthetic or created unique identifiers, for use by researchers, including government agencies, with established protocols for safeguarding confidential or privileged information. The MOU parties’ use of the data shall not constitute a disclosure.

§33-4A-5. User fees; waiver.

Reasonable user fees may be set in the manner established in legislative rule, for the right to access and use
the data available from the APCD. The chair may reduce or waive the fee if he or she determines that the user is unable to pay the scheduled fees and that the user has a viable plan to use the data or information in research of general value to the public health.

§33-4A-6. Enforcement; injunctive relief.

In the event of any violation of this article or any rule adopted thereunder, the commissioner, secretary or chair may seek to enjoin a further violation in the circuit court of Kanawha County. Injunctive relief ordered pursuant to this section may be in addition to any other remedies and enforcement actions available to the commissioner under this chapter.

§33-4A-7. Special revenue account created.

(a) There is hereby created a special revenue account in the State Treasury, designated the West Virginia All-Payer Claims Database Fund, which shall be an interest-bearing account and may be invested in the manner permitted by article six, chapter twelve of this code, with the interest income a proper credit to the fund and which shall not revert to the general revenue, unless otherwise designated in law. The fund shall be overseen by the commissioner, secretary and chair, shall be administered by the commissioner, and shall be used to pay all proper costs incurred in implementing the provisions of this article.

(b) The following funds shall be paid into this account:

(1) Penalties imposed on health care payers pursuant to this article and rules promulgated hereunder;

(2) Funds received from the federal government;

(3) Appropriations from the Legislature; and

To effectuate the provisions of this article, the MOU parties may propose joint rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement this article. No actions to collect data or assess fees pursuant to this article may be undertaken until rules promulgated hereunder are made effective. Such rules may include, but are not limited to, the following:

(a) Procedures for the collection, retention, use and disclosure of data from the APCD, including procedures and safeguards to protect the privacy, integrity, confidentiality and availability of any data;

(b) Penalties against health care payers for violation of rules governing the submission of data, including a schedule of fines for failure to file data or to pay assessments;

(c) Fees payable by users of the data and the process for a waiver or reduction of user fees. Any such fees shall be established at a level that, when considered together with other available funding sources, is deemed necessary to sustain the operation of the APCD;

(d) A proposed time frame for the creation of the database;

(e) Criteria for determining whether data collected, beyond the listed personal identifiers, is confidential clinical data, confidential financial data or privileged medical information, and procedures to give affected providers and health care payers notice and opportunity to comment in...
response to requests for information that may be considered confidential or privileged;

(f) Penalties, including fines and other administrative sanctions, that may be imposed by the commissioner for a health care payer’s failure to comply with requirements of this article and rules adopted hereunder; and

(g) Establishment of advisory boards to provide advice to the MOU parties with respect to the various functions of the APCD.

CHAPTER 98

(Com. Sub. for S. B. 472 - By Senator Minard)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-12-32a, relating to providing an exemption from insurance licensing requirements for vendors of portable electronics when offering portable electronics insurance generally; defining terms; establishing requirements and authority regarding the sale of portable electronics insurance; stating authority of vendors of portable electronics to sell portable electronics insurance; requiring training of employees who sell portable electronics insurance; providing for the suspension of privileges and imposition of fines for violations of this section; providing for the termination of portable electronics insurance; and giving the Insurance Commissioner the authority to bring administrative actions on supervising entities.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-12-32a, to read as follows:

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-32a. Exemption for Portable Electronics.

(a) Definitions. For purposes of this section, the following terms have the following meanings:

(1) “Authorized Representative” means any individual who is authorized by a vendor to engage in portable electronic transactions on behalf of the vendor and who conducts such transactions under the direction and authority of such vendor;

(2) “Customer” means a person who purchases portable electronics or services;

(3) “Enrolled Customer” means a customer who elects coverage under a portable electronics insurance policy and issued to a vendor of portable electronics;

(4) “Location” means any physical location in the State of West Virginia or any website, call center site, or similar location directed to residents of the State of West Virginia.

(5) “Portable Electronics” means electronic devices that are portable in nature, their accessories and services related to the use of the device;

(6) (A) “Portable Electronic Insurance” means insurance providing coverage for the repair or replacement of portable electronics which may cover portable electronics against any
one or more of the following causes of loss: loss, theft, mechanical failure, malfunction, damage or other applicable perils.

(B) "Portable Electronics Insurance" does not include:

(i) A service contract or extended warranty providing coverage limited solely to the repair, replacement, or maintenance of property for the operational or structural failure of property due to a defect in materials, workmanship, accidental damage from handling or normal wear and tear;

(ii) A policy of insurance covering a seller's or a manufacturer's obligations under a warranty; or

(iii) A homeowner's, renter's, private passenger automobile, commercial multi-peril, or similar policy.

(7) "Portable Electronics Transaction" means:

(A) The sale or lease of portable electronics by a vendor to a customer; or

(B) The sale of a service related to the use of portable electronics by a vendor to a customer.

(8) "Supervising Entity" means a business entity that is a licensed insurance producer or an insurer;

(9) "Vendor" means a person in the business of engaging in portable electronics transactions directly or indirectly, whether through an entity that is a corporate affiliate or an entity with which it has a contractual relationship to market portable electronics.

(b) Exemption from licensing.
(1) A vendor that complies with the provisions of this section is deemed to be in compliance with the requirements of this article regarding producer licensing not only for the vendor, but also for any employee or authorized representative of the vendor selling or offering coverage under a policy of portable electronics insurance to a customer at each location at which the vendor engages in portable electronics transactions.

(2) A vendor shall maintain, and share with its supervising entity, a list of all locations in this state that offer portable electronics insurance on its behalf. The supervising entity shall submit the list to the Insurance Commissioner within thirty days upon request.

(c) Requirements for Sale of Portable Electronics Insurance.

(1) At every location where portable electronics insurance is offered to customers, brochures or other written materials must be made available to a prospective customer which:

(A) Disclose that portable electronics insurance may provide a duplication of coverage already provided by a customer’s homeowner’s insurance policy, renter’s insurance policy or other source of coverage;

(B) State that the enrollment by the customer in a portable electronics insurance program is not required in order to purchase or lease portable electronics or services;

(C) Summarize the material terms of the insurance coverage, including:

(i) The identity of the insurer;
(ii) The identity of the supervising entity;

(iii) The amount of any applicable deductible and how it is to be paid;

(iv) Benefits of the coverage; and

(v) Key terms and conditions of coverage such as whether portable electronics may be repaired or replaced with similar make and model reconditioned or non-original manufacturer parts or equipment.

(D) Summarize the process for filing a claim, including a description of any requirements:

(i) To return portable electronics and the maximum fee applicable in the event the enrolled customer fails to comply with any equipment return requirements; and

(ii) Proof of loss requirements.

(E) State that the enrolled customer may cancel enrollment for coverage under a portable electronics insurance policy at any time and the person paying the premium shall receive a refund of any applicable unearned premium.

(2) Portable electronics insurance may be offered on a month to month or other periodic basis as a group or master commercial insurance policy issued to a vendor of portable electronics under which individual customers may elect to enroll for coverage.

(3) Eligibility and underwriting standards for customers electing to enroll in coverage shall be established for each portable electronics insurance program.
(d) Authority of Vendors of Portable Electronics.

(1) The employees and authorized representatives of vendors may sell or offer portable electronics insurance to customers and shall not be subject to licensure as an insurance producer under this article provided that:

(A) The vendor complies with the provisions of this section;

(B) The insurer issuing the portable electronics insurance appoints a supervising entity to supervise the administration of the program including development of a training program for employees and authorized representatives of the vendors. The training required by this subdivision shall comply with the following:

(i) The training shall be delivered to all employees and authorized representatives of the vendors who sell or offer portable electronics insurance.

(ii) The training may be provided in electronic form. However, if conducted in an electronic form the supervising entity shall implement a supplemental education program regarding portable electronics insurance that is conducted and overseen by licensed employees of the supervising entity; and

(iii) Each employee and authorized representative shall receive basic instruction about the portable electronics insurance offered to customers and the disclosures required under subsection (c);

(C) No employee or authorized representative of a vendor of portable electronics shall advertise, represent or otherwise hold himself or herself out as a licensed insurance producer.

(D) No employee or authorized representative of a vendor of portable electronics is compensated based primarily on the
number of customers enrolled for portable electronics insurance coverage but may receive compensation for enrolling customers for portable electronics insurance coverage so long as the compensation for those activities is incidental to their overall compensation.

(2) The charges for portable electronics insurance coverage may be billed and collected by the vendor of portable electronics. Any charge to the enrolled customer for coverage that is not included in the cost associated with the purchase or lease of portable electronics or related services shall be separately itemized on the enrolled customer's bill. If the coverage is included in the purchase or lease of portable electronics or related services the vendor shall clearly and conspicuously disclose to the enrolled customer that the portable electronics insurance coverage is included with the portable electronics or related services. No vendor shall require the purchase of any kind of insurance specified in this section as a condition of the purchase or lease of portable electronics or services. Vendors billing and collecting such charges shall not be required to maintain such funds in a segregated account provided that the vendor is authorized by the insurer to hold such funds in an alternative manner and remits such amounts to the supervising entity within sixty (60) days of receipt. All funds received by a vendor from an enrolled customer for the sale of portable electronics insurance shall be considered funds held in trust by the vendor in a fiduciary capacity for the benefit of the insurer. Vendors may receive compensation for billing and collection services.

(e) Suspension of Privileges.

(1) If a vendor of portable electronics or its employee or authorized representative violates any provision of this section, the Insurance Commissioner may do any of the following:
(A) After notice and hearing, impose fines not to exceed $500 per violation or $5,000 in the aggregate for such conduct.

(B) After notice and hearing, impose other penalties that the commissioner deems necessary and reasonable to carry out the purpose of this article, including:

(i) Suspending the privilege of transacting portable electronics insurance pursuant to this section at specific business locations where violations have occurred; and

(ii) Suspending or revoking the ability of individual employees or authorized representatives to act under the section.

(f) Termination of Portable Electronics Insurance.

(1) Notwithstanding any other provision of law:

(A) An insurer may terminate or otherwise change the terms and conditions of a policy of portable electronics insurance only upon providing the policyholder and enrolled customers with at least thirty (30) days notice.

(B) If the insurer changes the terms and conditions, then the insurer shall provide the vendor policyholder with a revised policy of endorsement and each enrolled customer with a revised certificate, endorsement, updated brochure, or other evidence indicating a change in the terms and conditions has occurred and a summary of material changes.

(2) Notwithstanding subdivision (1) of this subsection, an insurer may terminate an enrolled customer’s enrollment under a portable electronics insurance policy upon fifteen (15) days notice for discovery of fraud or material misrepresentation in obtaining coverage or in the presentation of a claim number.
(3) Notwithstanding subdivision (2) of this subsection, an insurer may immediately terminate an enrolled customer's enrollment under a portable electronics insurance policy:

(A) For nonpayment of premium;

(B) If the enrolled customer ceases to have an active service with the vendor of portable electronics; or

(C) If an enrolled customer exhausts the aggregate limit of liability, if any, under the terms of the portable electronics insurance policy and the insurer sends notice of termination to the enrolled customer within thirty (30) calendar days after exhaustion of the limit. However, if notice is not timely sent, enrollment shall continue notwithstanding the aggregate limit of liability until the insurer sends notice of termination to the enrolled customer.

(4) Where a portable electronics insurance policy is terminated by a policyholder, the policyholder shall mail or deliver written notice to each enrolled customer advising the enrolled customer of the termination. The written notice shall be mailed or delivered to the enrolled customer at least (30) days prior to the termination.

(5) Whenever notice is required pursuant to this section, it shall be in writing and may be mailed or delivered to the vendor of portable electronics at the vendor's mailing address and to its affected enrolled customers' last known mailing addresses on file with the insurer. If notice is mailed, the insurer or vendor of portable electronics, as the case may be, shall maintain proof of mailing in a form authorized or accepted by the United States Postal Service or other commercial mail delivery service. Alternatively, an insurer or vendor policyholder may comply with any notice required by this section by providing electronic notice to a vendor or its affected enrolled customers, as the case may be, by
electronic means. If notice is accomplished through electronic means the insurer or vendor of portable electronics, as the case may be, shall maintain proof that the notice was sent.

(g) If a supervising entity is determined by the Insurance Commissioner to have not performed its required duties under this section or has otherwise violated any provision of this section, it shall be subject to the administrative actions set forth in section twenty-four of this article.

CHAPTER 99

(S. B. 435 - By Senator Minard)

[Passed March 12, 2011; in effect July 1, 2011.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §33-12C-3, §33-12C-5, §33-12C-7 and §33-12C-8 of the Code of West Virginia, 1931, as amended, all relating to surplus lines insurance; defining terms; providing for compliance with the federal Nonadmitted and Reinsurance Reform Act of 2010; authorizing Insurance Commissioner to enter into multistate agreements regarding taxation of surplus lines insurance; establishing a blended taxation rate; authorizing participation in clearinghouse or other process for allocation of taxes; specifying disbursement and distribution of moneys; restricting certain provisions to transactions in which West Virginia is the home state of the insurer; and exempting certain large entities from compliance with due diligence requirements.

Be it enacted by the Legislature of West Virginia:
That §33-12C-3, §33-12C-5, §33-12C-7 and §33-12C-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 12C. SURPLUS LINE – NONADMITTED INSURANCE ACT.

§33-12C-3. Definitions.

As used in this article:

(a) “Admitted insurer” means an insurer licensed to do an insurance business in this state.

(b) “Business entity” means a corporation, association, partnership, limited liability company, or other legal entity.

(c) “Capital”, as used in the financial requirements of section five of this article, means funds paid in for stock or other evidence of ownership.

(d) “Commissioner” means the Insurance Commissioner of West Virginia, or the commissioner’s deputies or staff, or the commissioner, director or superintendent of insurance in any other state.

(e) “Eligible surplus lines insurer” means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance pursuant to section five of this article.

(f) “Exempt commercial purchaser” means any person purchasing commercial insurance that, at the time of placement, employs or retains a qualified risk manager to negotiate insurance coverage, has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding twelve months, and meets at least one of the following criteria:
(1) Has a net worth in excess of $20 million;

(2) Generates annual revenues in excess of $50 million;

(3) Employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(4) Is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30 million; or

(5) Is a municipality with a population in excess of fifty thousand persons: Provided, That on January 1, 2015 and every five years thereafter, the amounts in subdivisions (1), (2) and (4) of this subsection shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the federal Department of Labor.

(g) "Export" means to place surplus lines insurance with a nonadmitted insurer.

(h) "Foreign decree" means any decree or order in equity of a court located in any United States jurisdiction, including a federal court of the United States, against any person engaging in the transaction of insurance in this state.

(i) "Home state" means, with respect to an insured:

(1) The state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or

(2) If one hundred percent of the insured risk is located out of the state referred to in subdivision one of this
subsection, the state to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(j) “Individual” means any private or natural person as distinguished from a partnership, corporation, limited liability company or other legal entity.

(k) “Insurance” means any of the lines of authority in section ten, article one of this chapter.

(l) “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. Wherever the word “agent” appears in this chapter, it shall mean an individual insurance producer.

(m) “Insurer” means any person, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, insurance exchange syndicate, fraternal benefit society, and any other legal entity engaged in the business of making contracts of insurance under section two, article one of this chapter.

(n) “Kind of insurance” means one of the types of insurance required to be reported in the annual statement which must be filed with the commissioner by admitted insurers.

(o) “License” means a document issued by this state’s Insurance Commissioner authorizing an individual to act as a surplus lines licensee for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurer.

(p) “Nonadmitted insurer” means an insurer not licensed to do an insurance business in this state.
(q) "Nonadmitted and Reinsurance Reform Act of 2010" or "NRRA" means those provisions incorporated as Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-517.

(r) "Nonadmitted Insurance Multi-State Agreement" or "NIMA" means the model agreement adopted by the National Association of Insurance Commissioners on December 16, 2010, to facilitate the collection, allocation and disbursement of premium taxes attributable to the placement of nonadmitted insurance, provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, and share information among states relating to nonadmitted insurance premium taxes; such term includes the agreements’ allocation tables and any changes made thereto in response to changes to the laws of signatory states.

(s) "Person" means any natural person or other entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations.

(t) "Policy" or "contract" means any contract of insurance including, but not limited to, annuities, indemnity, medical or hospital service, workers’ compensation, fidelity or suretyship.

(u) "Signatory state" means a state that has entered into NIMA or a similar allocation procedure with this state.

(v) "Surplus", as used in the financial requirements of section five of this article, means funds over and above liabilities and capital of the company for the protection of policyholders.

(w) "Surplus lines insurance" means any property and casualty insurance in this state on properties, risks or exposures, located or to be performed in this state, permitted
to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, pursuant to section seven of this article. Wherever the term "excess line" appears in this chapter, it shall mean surplus lines insurance.

(x) "Surplus lines licensee" means an individual licensed under section five of this article to place insurance on properties, risks or exposures located or to be performed in this state with nonadmitted insurers eligible to accept such insurance. Wherever the term "excess line broker" appears in this chapter, it shall mean surplus lines licensee.

(y) "Transaction of insurance" –

(1) For purposes of this article, any of the following acts in this state effected by mail or otherwise by a nonadmitted insurer or by any person acting with the actual or apparent authority of the insurer, on behalf of the insurer, is deemed to constitute the transaction of an insurance business in or from this state:

(A) The making of or proposing to make, as an insurer, an insurance contract;

(B) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;

(C) The taking or receiving of an application for insurance;

(D) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for insurance or any part thereof;
(E) The issuance or delivery in this state of contracts of
insurance to residents of this state or to persons authorized to
do business in this state;

(F) The solicitation, negotiation, procurement or
effectuation of insurance or renewals thereof;

(G) The dissemination of information as to coverage or
rates, or forwarding of applications, or delivery of policies or
contracts, or inspection of risks, the fixing of rates or
investigation or adjustment of claims or losses or the
transaction of matters subsequent to effectuation of the
contract and arising out of it, or any other manner of
representing or assisting a person or insurer in the transaction
of risks with respect to properties, risks or exposures located
or to be performed in this state;

(H) The transaction of any kind of insurance business
specifically recognized as transacting an insurance business
within the meaning of the statutes relating to insurance;

(I) The offering of insurance or the transacting of
insurance business; or

(J) Offering an agreement or contract which purports to
alter, amend or void coverage of an insurance contract.

(2) The provisions of this subsection shall not operate to
prohibit employees, officers, directors or partners of a
commercial insured from acting in the capacity of an
insurance manager or buyer in placing insurance on behalf of
the employer, provided that the person’s compensation is not
based on buying insurance.

(3) The venue of an act committed by mail is at the point
where the matter transmitted by mail is delivered or issued
for delivery or takes effect.
(z) "Line of insurance" means coverage afforded under the particular policy that is being placed.

(aa) "Model allocation schedule and reporting form" means the current version of the NAIC model allocation schedule and reporting form for surplus lines insurers.

(bb) "Wet marine and transportation insurance" means:

(1) Insurance upon vessels, crafts, hulls and other interests in them or with relation to them;

(2) Insurance of marine builder’s risks, marine war risks and contracts of marine protection and indemnity insurance;

(3) Insurance of freight and disbursements pertaining to a subject of insurance within the scope of this subsection; and

(4) Insurance of personal property and interests therein, in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or perils of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any incidental delays, transshipment, or reshipment; provided, however, that insurance of personal property and interests therein shall not be considered wet marine and transportation insurance if the property has:

(A) Been transported solely by land; or

(B) Reached its final destination as specified in the bill of lading or other shipping document; or

(C) The insured no longer has an insurable interest in the property.
§33-12C-5. Surplus lines insurance.

(a) The placement of surplus lines insurance is subject to this section only if this state is the insured’s home state.

(b) Surplus lines insurance may be placed by a surplus lines licensee if:

(1) Each insurer is an eligible surplus lines insurer; and

(2) Each insurer is authorized to write the type of insurance in its domiciliary jurisdiction; and

(3) The full amount or line of insurance cannot be obtained from insurers who are admitted to do business in this state. The full amount or type of insurance may be procured from eligible surplus lines insurers, provided that a diligent search is made by the individual insurance producer among the insurers who are admitted to transact and are actually writing the particular type of insurance in this state if any are writing it: Provided, That such a search is not required when the licensee is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser if the licensee disclosed to such purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight and that such purchaser has subsequently requested in writing that the licensee procure or place such insurance from a nonadmitted insurer; and

(4) All other requirements of this article are met.

(c) Subject to subdivision (3), subsection (b) of this section, a surplus lines licensee may place any coverage with a nonadmitted insurer eligible to accept the insurance, unless specifically prohibited by the laws of this state.
(d) A surplus lines licensee shall not place coverage with
a nonadmitted insurer, unless, at the time of placement, the
surplus lines licensee has determined that the nonadmitted
insurer:

(1) Has established satisfactory evidence of good repute
and financial integrity; and

(2) Qualifies under one of the following paragraphs:

(A) Has capital and surplus or its equivalent under the
laws of its domiciliary jurisdiction which equals the greater
of:

(i) The minimum capital and surplus requirements
under the law of this state; or

(ii) $15 million;

(ii) The requirements of subparagraph (i), paragraph (A)
of this subdivision may be satisfied by an insurer’s
possessing less than the minimum capital and surplus upon
an affirmative finding of acceptability by the commissioner.
The finding shall be based upon such factors as quality of
management, capital and surplus of any parent company,
company underwriting profit and investment income trends,
market availability and company record and reputation within
the industry. In no event shall the commissioner make an
affirmative finding of acceptability when the nonadmitted
insurer’s capital and surplus is less than $4,500,000; or

(B) In the case of an insurance exchange created by the
laws of a state other than this state:

(i) The syndicates of the exchange shall maintain under
terms acceptable to the commissioner capital and surplus, or
its equivalent under the laws of its domiciliary jurisdiction,
of not less than $75 million in the aggregate; and
(ii) The exchange shall maintain under terms acceptable to the commissioner not less than fifty percent of the policyholder surplus of each syndicate in a custodial account accessible to the exchange or its domiciliary commissioner in the event of insolvency or impairment of the individual syndicate; and

(iii) In addition, each individual syndicate to be eligible to accept surplus lines insurance placements from this state shall meet either of the following requirements:

(I) For insurance exchanges which maintain funds in an amount of not less than $15 million for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of the domiciliary jurisdiction, of not less than $5 million; or

(II) For insurance exchanges which do not maintain funds in an amount of not less than $15 million for the protection of all exchange policyholders, the syndicate shall maintain under terms acceptable to the commissioner minimum capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, of not less than the minimum capital and surplus requirements under the laws of its domiciliary jurisdiction or $15 million, whichever is greater; or

(C) In the case of a Lloyd’s plan or other similar group of insurers, which consists of unincorporated individual insurers, or a combination of both unincorporated and incorporated insurers:

(i) The plan or group maintains a trust fund that shall consist of a trusteed account representing the group’s liabilities attributable to business written in the United States; and

(ii) In addition, the group shall establish and maintain in trust a surplus in the amount of $100 million; which shall be
available for the benefit of United States surplus lines policyholders of any member of the group.

(iii) The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group’s domiciliary regulator as are the unincorporated members.

(iv) The trust funds shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, consisting of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state and, in addition, the trust required by subparagraph (ii) of this subdivision shall satisfy the requirements of the standard trust agreement required for listing with the National Association of Insurance Commissioners (NAIC) International Insurers Department or any successor thereto; or

(D) In the case of a group of incorporated insurers under common administration, which has continuously transacted an insurance business outside the United States for at least three years immediately prior to this time, and which submits to this state’s authority to examine its books and records and bears the expense of the examination:

(i) The group shall maintain an aggregate policyholders’ surplus of $10 billion; and

(ii) The group shall maintain in trust a surplus in the amount of $10 billion; which shall be available for the benefit of United States surplus lines policyholders of any member of the group; and
(iii) Each insurer shall individually maintain capital and surplus of not less than $25 million per company.

(iv) The trust funds shall satisfy the requirements of the standard trust agreement requirement for listing with the NAIC International Insurers Department or any successor thereto, and shall be maintained in an irrevocable trust account in the United States in a qualified financial institution, and shall consist of cash, securities, letters of credit or investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state.

(v) Additionally, each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant; or

(E) Except for an exchange or plan complying with paragraph (B), (C) or (D) of this subdivision, an insurer not domiciled in one of the United States or its territories shall satisfy the capital and surplus requirements of paragraph (A), subdivision (2), subsection (d) of this section and shall have in force a trust fund of not less than the greater of:

(i) $5,400,000; or

(ii) Thirty percent of the United States surplus lines gross liabilities, excluding aviation, wet marine and transportation insurance liabilities, not to exceed $60 million, to be determined annually on the basis of accounting practices and procedures substantially equivalent to those promulgated by this state, as of December 31 next preceding the date of determination, where:
(I) The liabilities are maintained in an irrevocable trust account in the United States in a qualified financial institution, on behalf of U.S. policyholders consisting of cash, securities, letters of credit or other investments of substantially the same character and quality as those which are eligible investments pursuant to article eight of this chapter for the capital and statutory reserves of admitted insurers to write like kinds of insurance in this state. The trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall satisfy the requirements of the Standard Trust Agreement required for listing with the NAIC International Insurers Department or any successor thereto; and

(II) The insurer may request approval from the commissioner to use the trust fund to pay valid surplus lines claims: Provided, however, That the balance of the trust fund is never less than the greater of $5,400,000 or thirty percent of the insurer's current gross U.S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance liabilities; and

(III) In calculating the trust fund amount required by this subsection, credit shall be given for surplus lines deposits separately required and maintained for a particular state or U.S. territory, not to exceed the amount of the insurer's loss and loss adjustment reserves in the particular state or territory;

(F) An insurer or group of insurers meeting the requirements to do a surplus lines business in this state at the effective date of this law shall have two years from the date of enactment to meet the requirements of paragraph (E) of this subdivision, as follows:
### Year Following Enactment

<table>
<thead>
<tr>
<th>Year Following Enactment</th>
<th>Trust Fund Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>15% of U. S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of $30 million</td>
</tr>
<tr>
<td>2</td>
<td>30% of U. S. surplus lines liabilities, excluding aviation, wet marine and transportation insurance, with a maximum of $60 million</td>
</tr>
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(G) The commissioner shall have the authority to adjust, in response to inflation, the trust fund amounts required by paragraph (E) of this subdivision.

(3) In addition to all of the other requirements of this subsection, an insurer not domiciled in the United States or its territories shall be listed on the NAIC’s quarterly listing of alien insurers. The commissioner may waive the requirement in this subdivision or the requirements of subparagraph (ii), paragraph (E), subdivision (2), subsection (d) of this section may be satisfied by an insurer’s possessing less than the trust fund amount specified in subparagraph (ii), paragraph (E), subdivision (2), subsection (d) of this section upon an affirmative finding of acceptability by the commissioner if the commissioner is satisfied that the placement of insurance with the insurer is necessary and will not be detrimental to the public and the policyholder. In determining whether business may be placed with the insurer, the commissioner may consider such factors as:

(A) The interests of the public and policyholders;

(B) The length of time the insurer has been authorized in its domiciliary jurisdiction and elsewhere;
(C) Unavailability of particular coverages from authorized insurers or unauthorized insurers meeting the requirements of this section;

(D) The size of the company as measured by its assets, capital and surplus, reserves, premium writings, insurance in force or other appropriate criteria;

(E) The kinds of business the company writes, its net exposure and the extent to which the company’s business is diversified among several lines of insurance and geographic locations; and

(F) The past and projected trend in the size of the company’s capital and surplus considering such factors as premium growth, operating history, loss and expense ratios, or other appropriate criteria; and

(4) Has caused to be provided to the commissioner a copy of its current annual statement certified by the insurer and an actuarial opinion as to the adequacy of, and methodology used to determine, the insurer’s loss reserves. The statement shall be provided at the same time it is provided to the insurer’s domicile, but in no event more than eight months after the close of the period reported upon, and shall be certified as a true and correct copy by an accounting or auditing firm licensed in the jurisdiction of the insurer’s domicile and certified by a senior officer of the nonadmitted insurer as a true and correct copy of the statement filed with the regulatory authority in the domicile of the nonadmitted insurer. In the case of an insurance exchange qualifying under paragraph (B), subdivision (2) of this subsection, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported; and

(5) In addition to meeting the requirements in subdivisions (1) to (4) of this subsection an insurer shall be
an eligible surplus lines insurer if it appears on the most
recent list of eligible surplus lines insurers published by the
commissioner from time to time but at least annually.
Nothing in this subdivision shall require the commissioner to
place or maintain the name of any nonadmitted insurer on the
list of eligible surplus lines insurers.

(6) Notwithstanding subsection (a) of this section, only
that portion of any risk eligible for export for which the full
amount of coverage is not procurable from listed eligible
surplus lines insurers may be placed with any other
nonadmitted insurer which does not appear on the list of
eligible surplus lines insurers published by the commissioner
pursuant to subdivision (5) of this subsection but nonetheless
meets the requirements set forth in subdivisions (1) and (2),
subsection (d) of this section and any regulations of the
commissioner. The surplus lines licensee seeking to provide
coverage through an unlisted nonadmitted insurer shall make
a filing specifying the amounts and percentages of each risk
to be placed, and naming the nonadmitted insurers with
which placement is intended. Within thirty days after placing
the coverage, the surplus lines licensee shall also send written
notice to the insured that the insurance, or a portion thereof,
has been placed with the nonadmitted insurer.

(c) Insurance procured under this section shall be valid
and enforceable as to all parties.

§33-12C-7. Surplus lines tax.

(a) In addition to the full amount of gross premiums
charged by the insurer for the insurance, every person
licensed pursuant to section eight of this article shall collect
and pay to the commissioner a sum equal to four and fifty-
five one-hundredths percent of the gross premiums and gross
fees charged, less any return premiums, for surplus lines
insurance provided by the licensee pursuant to the license. Where the insurance covers properties, risks or exposures located or to be performed both in and out of this state and this state is the insured’s home state, the sum payable shall be computed on that portion of the gross premiums allocated to this state, plus an amount equal to the portion of the gross premiums allocated to other states or territories on the basis of the tax rates and fees applicable to properties, risks or exposures located or to be performed outside of this state, and less the amount of gross premiums allocated to this state and returned to the insured due to cancellation of policy: 

Provided, That the surcharge imposed by section thirty-three, article three of this chapter on surplus lines policies shall no longer be effective with respect to premium attributable to coverage under such policies for periods after June 30, 2011: Provided, however, That twelve per cent of taxes collected under this subsection with respect to premium attributable to coverage under such policies after June 30, 2011, shall be disbursed and distributed in accordance with subsection (d), section thirty-three, article three of this chapter and eighty-eight per cent in accordance with subdivision two, subsection (f) of this section. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any.

(b) The individual insurance producer may not:

(1) Pay directly or indirectly the tax or any portion thereof, either as an inducement to the policyholder to purchase the insurance or for any other reason; or

(2) Rebate all or part of the tax or the surplus lines licensee’s commission, either as an inducement to the 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)(1) 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.

(2) Except as provided in subsection (a) of this section, all taxes remitted to the commissioner pursuant to subdivision one of 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) In determining the amount of gross premiums taxable in this state for a placement of surplus lines insurance covering 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 properties, risks or exposures located or to be performed in this state and which relates to the kinds of insurance being placed as determined by reference to an appropriate allocation table.

(1) If a policy covers more than one classification:
(A) For any portion of the coverage identified by a classification on the allocation schedule, the tax shall be computed by using the allocation schedule for the corresponding portion of the premium;

(B) For any portion of the coverage not identified by a classification on the allocation schedule, the tax shall be computed by using an alternative equitable method of allocation for the property or risk;

(C) For any portion of the coverage where the premium is indivisible, the tax shall be computed by using the method of allocation which pertains to the classification describing the predominant coverage.

(2) If the information provided by the surplus lines 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.
(h) The commissioner is authorized to participate in a clearinghouse established through NIMA or in a similar allocation procedure for the purpose of collecting and disbursing to signatory states any funds collected pursuant to this section that are allocable to properties, risks or exposures located or to be performed outside of this state: Provided, That twelve per cent of any moneys received from a clearinghouse or through a similar allocation procedure is subject to the provisions of subsection (d), section thirty-three, article three of this chapter and eighty-eight per cent of such moneys is subject to the provisions of subdivision (2), subsection (f) of this section: Provided, however, That to the extent other states where portions of the properties, risks or exposures reside have failed to enter into NIMA or a similar allocation procedure with this state, the net premium tax collected shall be retained by this state and shall be disbursed and distributed in the same manner as moneys received through a clearinghouse or similar allocation procedure.

(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.

§33-12C-8. Surplus lines licenses.

(a) No person shall procure a contract of surplus lines insurance with a nonadmitted insurer for an insured whose home state is West Virginia unless the person possesses a
current surplus lines insurance license issued by the commissioner.

(b) The commissioner may issue a surplus lines license to a qualified holder of a current property and casualty individual insurance producer’s license but only when the individual insurance producer has:

(1) Remitted the $200 annual fee to the commissioner, of which all fees so collected are to be used for the purposes set forth in section thirteen, article three of this chapter;

(2) Submitted a completed license application on a form supplied by the commissioner;

(3) Passed a qualifying examination approved by the commissioner, except that all holders of a license prior to the effective date of this article shall be deemed to have passed such an examination; and

(4) If a resident, established and continues to maintain an office in this state.

(c) If the commissioner determines that a surplus lines licensee of another state is competent, trustworthy and meets the licensing requirements of this state, the commissioner may, in his or her discretion, issue a nonresident surplus lines license. A license shall not be issued unless the prospective licensee furnishes the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident surplus lines licensee may be served. The licensee shall promptly notify the commissioner in writing of every change in its designated agent for service of process, and the change shall not become effective until acknowledged by the commissioner.
34  (d) Each surplus lines license shall expire at midnight on
35  May 31 next following the date of issuance, and an
36  application for renewal shall be filed before May 1 of each
37  year upon payment of the annual fee and compliance with
38  other provisions of this article. A surplus lines licensee who
39  fails to apply for renewal of the license before May 1 shall
40  pay a penalty of $100 and be subject to penalties provided by
41  law before the license will be renewed.

CHAPTER 100

(Com. Sub. for S. B. 408 - By Senators Minard,
Foster, Jenkins, Kessler (Acting President),
Chafin and Stollings)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new article, designated §33-16G-1, §33-
16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-
16G-7, §33-16G-8 and §33-16G-9, all relating generally to the
establishment of a West Virginia Health Benefit Exchange;
setting forth purpose; defining terms; providing for the
establishment of the West Virginia Health Benefit Exchange;
establishing the governing board of directors; providing for
membership on the board of directors; setting forth meeting
requirements of the board of directors; allowing the board of
directors to hire an executive director and appropriate staff;
exempting employees from classified service; providing for an
annual report by the board of directors; setting forth the
functions of the board; outlining the board’s duties and
authority; providing for the response of the board in the event of reduction of federal funding or legislative or judicial invalidation of federal act; authorizing emergency and legislative rulemaking; establishing a special revenue account; training; purchasing exemption; and authorizing assessment of fees.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-16G-1, §33-16G-2, §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and §33-16G-9, all to read as follows:

ARTICLE 16G. WEST VIRGINIA HEALTH BENEFIT EXCHANGE ACT.

§33-16G-1. Purpose.

The purpose of this article is to establish a West Virginia Health Benefit Exchange to facilitate the purchase and sale of qualified health plans in the individual market in this state and a Small Business Health Options Program within the exchange to assist qualified small employers in this state in facilitating the enrollment of their employees in qualified health plans.


For purposes of this article:

(a) "Board" means the board established in section four of this article.

(b) "Commissioner" means the West Virginia Insurance Commissioner.
(c) "Exchange" means the West Virginia Health Benefit Exchange established pursuant to section three of this article.

(d) "Federal Act" means the Federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any amendments thereto, or regulations or guidance issued thereunder.

(e) "Health carrier" or "carrier" means an entity subject to the insurance laws of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including a sickness and accident insurance company, a health maintenance organization, a nonprofit hospital and health service corporation, or any other entity providing a plan of health insurance, health benefits or health services.

(f) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(g) "SHOP Exchange" means the Small Business Health Options Program established under this article.

(h) "Small employer" means an employer that employed an average of not more than fifty employees during the preceding calendar year.


(a) There is established within the Offices of the Insurance Commissioner an entity known as the West Virginia Health Benefit Exchange. This is a governmental entity of the state.
(b) The exchange shall pursue available federal funding for operation of the exchange and shall promulgate rules necessary to obtain federal recognition of the exchange as a certified exchange under the Federal Act.

(c) The exchange may accept gifts, grants and bequests, contract with other persons, and enter into memoranda of understanding with other governmental agencies to carry out any of its functions, including agreements with other states to perform joint administrative functions. The provisions of article three, chapter five-a of this code relating to the Purchasing Division of the Department of Administration do not apply to these contracts: Provided, That these contracts shall be awarded on a competitive basis. The exchange may not enter into contracts with any health insurance carrier or an affiliate of a health insurance carrier.

(d) The exchange may enter into information-sharing agreements with federal and state agencies and other state exchanges to carry out its responsibilities under this article, provided such agreements include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations.

§33-16G-4. Duties of exchange; decrease in funding or invalidation of the Federal Act.

(a) In carrying out the duties under this article, the exchange shall:

(1) Consult with stakeholders, including but not limited to consumers, carriers, producers, providers and advocates for hard to reach populations; and

(2) Meet the following financial integrity requirements:
(A) Keep an accurate accounting of all activities, receipts and expenditures and annually submit to the secretary, the Governor, the commissioner and the Legislature a report concerning such accountings;

(B) Fully cooperate with any investigation conducted by the secretary pursuant to the secretary's authority under the Federal Act and allow the secretary, in coordination with the Inspector General of the United States Department of Health and Humans Services, to:

   (i) Investigate the affairs of the exchange;

   (ii) Examine the properties and records of the exchange; and

   (iii) Require periodic reports in relation to the activities undertaken by the exchange; and

(C) In carrying out its activities under this article, not use any funds intended for the administrative and operational expenses of the exchange for staff retreats, promotional giveaways, excessive executive compensation or promotion of federal or state legislative and regulatory modifications.

(b) (1) The implementation of the provisions of this article, other than this subsection, section three of this article, and section five of this article, shall be contingent on a determination by the board that sufficient financial resources exist or will exist in the fund, which determination shall be based on, at a minimum:

   (A) Financial projections identifying that sufficient resources exist or will exist in the fund to implement the exchange; and
(B) A comparison of the projected resources available to support the exchange and the projected costs of activities required by this article.

(2) In the event any portion of the Federal Act or of any regulation or other guidance issued thereunder is legislatively or judicially invalidated and rendered of no effect in this state, the board shall immediately issue a bulletin setting forth its legal opinion as to the effect of such legislative or judicial action on the legal status of the corresponding provisions of such act, regulation or guidance as set forth in this article or in rules promulgated hereunder; the board shall also issue recommendations to the Legislature for amendments to this article necessitated by such judicial or legislative action.

§33-16G-5. Establishment of governing board of the exchange; reports; training.

(a) The exchange shall operate subject to the supervision and control of a governing board. The powers conferred upon the board by this article and the carrying out of its purposes and duties shall be considered to be essential governmental functions and for a public purpose. The Governor shall appoint a chairperson of the board from the membership set forth in subsection (b) of this section, with the advice and consent of the Senate.

(b) The board shall be composed of the following members:

(1) Four voting ex officio members: The Commissioner; the Commissioner of the West Virginia Bureau for Medical Services; the Director of the West Virginia Children’s Health Insurance Program; and the Chair of the West Virginia
Health Care Authority. *Ex officio* members may designate a representative to serve in his or her place;

(2) Four persons appointed by the Governor with advice and consent of the Senate, each to represent the interests of one of the following groups: Individual health care consumers; small employers; organized labor; and insurance producers;

(3) One person to represent the interests of payors who is selected by majority vote of an advisory group comprising representatives of the ten carriers with the highest health insurance premium volume in this state in the preceding calendar year, as certified by the commissioner. Beginning in 2014, the advisory group shall be comprised only of representatives of those carriers that are offering qualified plans in the exchange regardless of premium volume: Provided, That the member selected pursuant to this paragraph may not be an employee of a carrier or an affiliate of a carrier eligible to select such member; and

(4) One person to represent the interests of health care providers selected by the majority vote of an advisory group comprised of a representative of each of the following: West Virginia Association of Free Clinics, West Virginia Hospital Association, West Virginia State Medical Association, West Virginia Primary Care Association, West Virginia Nurses Association, West Virginia Society of Osteopathic Medicine, West Virginia Academy of Family Physicians, West Virginia Pharmacists Association, West Virginia Dental Association, West Virginia Behavioral Health Care Providers, West Virginia Chiropractic Society, West Virginia Optometric Association, West Virginia Podiatric Medical Association, West Virginia Physical Therapists Association, and a full-time health officer of a county or regional health department.
selected by all full-time health officers of all county or regional health departments.

(5) Selection of board members pursuant to paragraphs (3) and (4) of this subdivision shall be conducted in a manner and at such times designated by the chair of the board.

(6) Each member appointed pursuant to paragraph (2) of this section or selected pursuant to paragraph (3) or (4) of this subsection shall serve a term of four years and is eligible to be reappointed, except that the term of each of the four persons initially appointed pursuant to paragraph (2) of this section to represent the groups listed therein shall be as follows: Individual consumer, one year; small employers, two years; labor, three years; and producers, four years. Any appointed or selected member whose term has expired may continue to serve until either he or she has been reappointed or his or her successor has been duly appointed or selected.

(c) Board members may be removed by the Governor for cause.

(d) Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(e) Seven members of the board constitute a quorum, and the affirmative vote of six members is necessary for any action taken by vote of the board. No vacancy in the membership of the board impairs the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board.

(f) The board may employ an executive director who has overall management responsibility for the exchange and such
employees as may be necessary. The executive director and employees of the exchange shall receive a salary as provided by the board. The executive director and all employees of the board are exempt from the classified service and not subject to the procedures and protections provided by article two, chapter six-c of this code and article six, chapter twenty-nine of this code;

(g) The board may establish ad hoc or standing advisory committees of consumers and other stakeholder groups or interested parties to study particular policy issues and to advise the board.

(h) The board shall make an annual report to the Governor and also file it with the Joint Committee on Government and Finance. The report shall summarize the activities of the exchange in the preceding calendar year.

(i) Neither the board nor its employees are liable for any obligations of the exchange. No member of the board or employee of the exchange is liable and no cause of action of any nature may arise against them for any act or omission related to the performance of their powers and duties under this article unless the act or omission constitutes willful or wanton misconduct. The board may provide in its bylaws or rules for indemnification of, and legal representation for, its members and employees.

(j) Members of the board shall receive governmental ethics training within the first six months of being appointed. Additional ethics training is required for board members at least every two years thereafter.
§33-16G-6. Funding; publication of costs.

(a) On and after July 1, 2011, the board is authorized to assess fees on health carriers selling qualified dental plans or health benefit plans in this state, including health benefit plans sold outside the exchange, and shall establish the amount of such fees and the manner of the remittance and collection of such fees in legislative rules. Fees shall be based on premium volume of the qualified dental plans or health benefit plans sold in this state and shall be for the purpose of operation of the exchange.

(b) The exchange shall publish the average costs of licensing, regulatory fees and any other payments required by the exchange, and the administrative costs of the exchange, on an Internet website to educate consumers on such costs. This information shall include information on moneys lost to waste, fraud and abuse.


The board may promulgate emergency rules and propose legislative rules for adoption by the Legislature pursuant to the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article. Emergency or legislative rules promulgated under this section may not conflict with or prevent the application of the federal act or regulations promulgated by the secretary under such act.

§33-16G-8. Relation to other laws.

Nothing in this article, and no action taken by the exchange pursuant to this article, preempts or supersedes the authority of the commissioner to regulate the business of insurance within this state and, except as expressly provided to the contrary in this article, all health carriers offering qualified health plans in this state shall comply fully with all
applicable health insurance laws of this state and orders
issued by the commissioner.

§33-16G-9. Special revenue account created.

(a) There is hereby created a special revenue account in
the State Treasury, designated the “West Virginia Health
Benefits Exchange Fund”, which shall be an interest-bearing
account and may be invested in the manner permitted by
article six, chapter twelve of this code, with the interest
income a proper credit to the fund, unless otherwise
designated in law. The fund shall be administered by the
board and used to pay all proper costs incurred in
implementing the provisions of this article. Moneys
deposited into this account are available for expenditure as
the board may direct in accordance with the provisions of this
article. Expenditures shall be for the purposes set forth in
this article, are authorized from collections and do not revert
to the General Fund.

(b) The following shall be paid into this account:

(1) All funds from the federal government received and
dedicated to or otherwise able to be used for the purposes of
this article;

(2) All other payments, gifts, grants, bequests or income
from any source;

(3) Fees on health carriers established by the board; and

(4) Appropriations from the Legislature.
CHAPTER 101

(Com. Sub. for S. B. 253 - By Senators Minard and Jenkins)

[Passed March 12, 2011; in effect July 1, 2012.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend and reenact §33-27-2, §33-27-2a, §33-27-3, §33-27-4, §33-27-5, §33-27-6, §33-27-7, §33-27-9, §33-27-11 and §33-27-14 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-27-3a and §33-27-6a, all relating to insurance holding company systems; defining terms; excluding certain investments from determination of adequacy of surplus; requiring notice and other information with regard to divestiture or acquisition of a controlling interest; changing public hearing requirements; providing standards for review of acquisition request by commissioner; establishing process for consolidated hearings; providing standards and procedures for certain acquisitions not otherwise covered; providing requirements for insurers; expanding examinations and types of information that may be demanded and reviewed by the commissioner, including compelling production; providing for management of domestic insurers subject to registration; providing for establishment of supervisory colleges; providing additional confidentiality measures; providing for payments of costs, expenses and mileage; providing for fines, orders and penalties; and authorizing emergency rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.


1 As used in this article:

2 (a) An “affiliate” of or person “affiliated” with a specific person is a person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

3 (b) “Commissioner” means the West Virginia Insurance Commissioner, his or her deputies or the West Virginia offices of the Insurance Commissioner, as appropriate.

4 (c) “Control” (including the terms “controlling”, “controlled by” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by subsection (k), section four of this article that control does not exist in fact. The commissioner may
determine after furnishing all persons in interest notice and
opportunity to be heard and making specific findings of fact
to support the determination that control exists in fact
notwithstanding the absence of a presumption to that effect.

(d) "Enterprise risk" means any activity, circumstance,
event or series of events involving one or more affiliates of
an insurer that, if not remedied promptly, is likely to have a
material adverse effect upon the financial condition or
liquidity of the insurer or its insurance holding company
system as a whole, including, but not limited to, anything that
would cause the insurer’s risk-based capital to fall into
company action level, as set forth in article forty of this
chapter, or would cause the insurer to be in hazardous
financial condition, as set forth in article thirty-four of this
chapter.

(e) "Insurance holding company system" consists of two
or more affiliated persons, one or more of which is an
insurer.

(f) "Insurer" means any person or persons or corporation,
partnership or company authorized by the laws of this state
to transact the business of insurance in this state, except that
it shall not include agencies, authorities or instrumentalities
of the United States, its possessions and territories, the
commonwealth of Puerto Rico, the District of Columbia or a
state or political subdivision of a state.

(g) "Person" means an individual, a corporation, a limited
liability company, a partnership, an association, a joint-stock
company, a trust, an unincorporated organization, a
depository institution or any similar entity or any
combination of the foregoing acting in concert, but does not
include any joint venture partnership exclusively engaged in
owning, managing, leasing or developing real or tangible
personal property.
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57 (h) A "security holder" of a specified person is one who
58 owns any security of such person, including common stock,
59 preferred stock, debt obligations and any other security
60 convertible into or evidencing the right to acquire any of the
61 foregoing.

62 (i) A "subsidiary" of a specified person is an affiliate
63 controlled by such person directly or indirectly through one
64 or more intermediaries.

65 (j) "Voting security" includes any security convertible
66 into or evidencing a right to acquire a voting security.

§33-27-2a. Subsidiaries of insurers; authorization; investment
authority; exemptions; qualifications; cessation
of controls.

1 (a) Authorization. -- Any domestic insurer, either by itself
2 or in cooperation with one or more persons, may organize or
3 acquire one or more subsidiaries engaged in the following
4 kinds of business with the commissioner's prior approval:

5 (1) Any kind of insurance business authorized by the
6 jurisdiction in which it is incorporated;

7 (2) Acting as an insurance agent for its parent or for any
8 of its parent's insurer subsidiaries;

9 (3) Investing, reinvesting or trading in securities for its
10 own account, that of its parent, any subsidiary of its parent,
11 or any affiliate or subsidiary;

12 (4) Management of any investment company subject to
13 or registered pursuant to the Investment Company Act of
14 1940, as amended, including related sales and services;
(5) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;

(6) Rendering investment advice to governments, government agencies, corporations or other organizations or groups;

(7) Rendering other services related to the operations of an insurance business, including, but not limited to, actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal and collection services;

(8) Ownership and management of assets which the parent corporation could itself own or manage;

(9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;

(10) Financing of insurance premiums, agents and other forms of consumer financing;

(11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and

(12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section;

(b) Additional investment authority. -- In addition to investments in common stock, preferred stock, debt obligations and other securities permitted under any other provision of this chapter, a domestic insurer may also with the commissioner’s prior approval:

(1) Invest in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries,
amounts which do not exceed the lesser of ten percent of the insurer’s assets or fifty percent of the insurer’s surplus as regards policyholders: Provided, That after the investments, the insurer’s surplus as regards policyholders will be reasonable in relation to the insurer’s outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded and there shall be included:

(A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations and other securities, and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer: Provided, That each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in subdivision (1) of this subsection or in article eight of this chapter applicable to the insurer. For the purpose of this subdivision, “the total investment of the insurer” includes:

(A) Any direct investment by the insurer in an asset; and
(B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary.

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations or other securities of one or more subsidiaries: Provided, That after investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Exemption from investment restrictions. -- Investments in common stock, preferred stock, debt obligations or other securities of subsidiaries made pursuant to subsection (b) of this section are not subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to the investments of insurers.

(d) Qualification of investment; when determined. -- Whether any investment made pursuant to subsection (b) of this section meets the applicable requirements of that subsection is to be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.

(e) Cessation of control. -- If an insurer ceases to control a subsidiary, it shall dispose of any investment in the subsidiary made pursuant to this section within three years from the time of the cessation of control or within any further time prescribed by the commissioner, unless at any time after
§33-27-3. Acquisition of control of or merger with domestic insurer; filing requirements; statements; alternative filing material; approval by the commissioner; hearings; notice; mailings to shareholders; expenses; exemptions; violations and jurisdiction.

(a) Filing requirements. --

(1) No person other than the issuer may make a tender offer for or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the consummation thereof, the person would, directly or indirectly (or by conversion or by exercise of any right to acquire) be in control of the insurer and a person shall not enter into an agreement to merge with or otherwise to acquire control of a domestic insurer or any person controlling a domestic insurer unless at the time the offer, request or invitation is made or the agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the insurer and, to the extent permitted by applicable federal laws, rules and regulations, the insurer has sent to its shareholders a statement containing the information required by this section and the offer, request, invitation, agreement or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

(2) For purposes of this section, any controlling person of a domestic insurer seeking to divest its controlling interest in the domestic insurer, in any manner, shall file with the
commissioner, with a copy to the insurer, confidential notice of its proposed divestiture at least thirty days prior to the cessation of control. The commissioner shall determine those instances in which the party or parties seeking to divest or to acquire a controlling interest in an insurer will be required to file for and obtain approval of the transaction. The information shall remain confidential until the conclusion of the transaction unless the commissioner, in his or her discretion, determines that confidential treatment will interfere with enforcement of this section. If the statement referred to in subsection (a) of this section is otherwise filed, this subdivision does not apply.

(3) With respect to a transaction subject to this section, the acquiring person must also file a preacquisition notification with the commissioner, which shall contain the information set forth in subdivision (1), subsection (c), section three-a of this article. A failure to file the notification may subject the person to penalties specified in subdivision (3), subsection (e), section three-a of this article.

(4) For purposes of this section, a "domestic insurer" includes any person controlling a domestic insurer unless the person as determined by the commissioner is either directly or through its affiliates primarily engaged in business other than the business of insurance. For purposes of this section, "person" does not include any securities broker holding, in the usual and customary broker’s function, less than twenty percent of the voting securities of an insurance company or of any person that controls an insurance company.

(b) Content of statement. -- The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) The name and address of each person by whom or on whose behalf the merger or other acquisition of control
referred to in subsection (a) of this section is to be effected
(hereinafter called "acquiring party"); and

(A) If such person is an individual, his or her principal
occupation and all offices and positions held during the past
five years and any conviction of crimes other than minor
traffic violations during the past ten years; or

(B) If the person is not an individual, a report of the
nature of its business operations during the past five years or
for such lesser period as the person and any predecessors
thereof shall have been in existence; an informative
description of the business intended to be done by the person
and the person’s subsidiaries; and a list of all individuals who
are or who have been selected to become directors or
executive officers of the person, or who perform or will
perform functions appropriate to those positions. The list
shall include for each individual the information required by
paragraph (2) of this subdivision;

(2) The source, nature and amount of the consideration
used or to be used in effecting the merger or other acquisition
of control, a description of any transaction wherein funds
were or are to be obtained for any such purpose, including
any pledge of the insurer’s stock or the stock of any of its
subsidiaries or controlling affiliates, and the identity of
persons furnishing such consideration: Provided, That where
a source of the consideration is a loan made in the lender’s
ordinary course of business, the identity of the lender shall
remain confidential if the person filing the statement so
requests;

(3) Fully audited financial information as to the earnings
and financial condition of each acquiring party for the
preceding five fiscal years of each acquiring party (or for
such lesser period as each acquiring party and any
predecessors thereof shall have been in existence) and similar
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unaudited information as of a date not earlier than ninety
days prior to the filing of the statement;

(4) Any plans or proposals which each acquiring party
may have to liquidate the insurer, to sell its assets or merge
or consolidate it with any person or to make any other
material change in its business or corporate structure or
management;

(5) The number of shares of any security referred to in
subsection (a) of this section which each acquiring party
proposes to acquire and the terms of the offer, request,
invitation, agreement or acquisition referred to in that
subsection and a statement as to the method by which the
fairness of the proposal was arrived at;

(6) The amount of each class of any security referred to
in subsection (a) of this section which is beneficially owned
or concerning which there is a right to acquire beneficial
ownership by each acquiring party;

(7) A full description of any contracts, arrangements or
understanding with respect to any security referred to in
subsection (a) of this section in which any acquiring party is
involved, including, but not limited to, transfer of any of the
securities, joint ventures, loan or option arrangements, puts
or calls, guarantees of loans, guarantees against loss or
guarantees of profits, division of losses or profits or the
giving or withholding of proxies. The description shall
identify the persons with whom such contracts, arrangements
or understandings have been entered into;

(8) A description of the purchase of any security referred
to in subsection (a) of this section during the twelve calendar
months preceding the filing of the statement by any acquiring
party, including the dates of purchase, names of the
purchasers and consideration paid or agreed to be paid
therefor;
(9) A description of any recommendations to purchase any security referred to in subsection (a) of this section made during the twelve calendar months preceding the filing of the statement by an acquiring party or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities referred to in subsection (a) of this section and, if distributed, of additional soliciting material relating thereto;

(11) The terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in subsection (a) of this section for tender and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) An agreement by the person required to file the statement referred to in subsection (a) of this section that it will provide the annual report, specified in subsection (1), section four of this article, for so long as control exists;

(13) An acknowledgment by the person required to file the statement referred to in subsection (a) of this section that the person and all subsidiaries within its control in the insurance holding company system will provide information to the commissioner upon request as necessary to evaluate enterprise risk to the insurer; and

(14) Any additional information as the commissioner may by rule prescribe as necessary or appropriate for the protection of policyholders and security holders of the insurer or in the public interest.

(c) If the person required to file the statement referred to in subsection (a) of this section is a partnership, limited
partnership, syndicate or other group, the commissioner may
require that the information called for by subdivisions (1)
through (14), inclusive, subsection (b) of this section shall be
given with respect to each partner of the partnership or
limited partnership, each member of the syndicate or group
and each person who controls the partner or member. If any
partner, member or person is a corporation or the person
required to file the statement referred to in subsection (a) of
this section is a corporation, the commissioner may require
that the information called for by subdivisions (1) through
(14), inclusive, subsection (b) of this section shall be given
with respect to the corporation and each person who is
directly or indirectly the beneficial owner of more than ten
percent of the outstanding voting securities of the
corporation.

(d) If any material change occurs in the facts set forth in
the statement filed with the commissioner and sent to the
insurer pursuant to this section, an amendment setting forth
such change, together with copies of all documents and other
material relevant to such change, shall be filed with the
commissioner and sent to the insurer within two business
days after the person learns of the change. The insurer shall
send the amendment to its shareholders.

(e) Alternative filing materials. -- If any offer, request,
invitation, agreement or acquisition referred to in subsection
(a) of this section is proposed to be made by means of a
registration statement under the Securities Act of 1933 or in
circumstances requiring the disclosure of similar information
under the Securities Exchange Act of 1934 or under a state
law requiring similar registration or disclosure, the person
required to file the statement referred to in that subsection
may utilize such documents in furnishing the information
called for by that statement.

(f) (1) Approval by commissioner; hearings. -- The
commissioner shall approve any merger or other acquisition
of control referred to in subsection (a) of this section unless, after a public hearing thereon, he or she finds that:

(A) After the change of control the domestic insurer referred to in subsection (a) of this section would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently authorized;

(B) The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly therein.

In applying the competitive standard in this subdivision:

(i) The informational requirements of subdivision (1), subsection (c), section three-a of this article and the standards of subdivision (2), subsection (d), section three-a of this article apply;

(ii) The merger or other acquisition may not be disapproved if the commissioner finds that any of the situations meeting the criteria provided by subdivision (3), subsection (d), section three-a of this article exist; and

(iii) The commissioner may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.

(C) The financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with the acquiring party;

(D) The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person or to make any other material change in its
business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;

(E) The competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(F) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

(2) The public hearing required by this section shall be held within thirty days after the statement required by subsection (a) of this section is filed, and at least twenty days’ notice thereof shall be given by the commissioner to the person filing the statement. Not less than seven days’ notice of the public hearing shall be given by the person filing the statement to the insurer and to any other persons as may be designated by the commissioner. The commissioner shall make a determination within the sixty-day period preceding the effective date of the proposed transaction. At the hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interest may be affected has the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the circuit courts of this state: Provided, That all discovery proceedings shall be concluded not later than three days prior to the commencement of the public hearing.

(3) If the proposed acquisition of control will require the approval of more than one commissioner, a public hearing pursuant to this subsection may be held on a consolidated
basis upon request of the person filing the statement referred
to in subsection (a) of this section. That person shall file the
statement referred to in subsection (a) of this section with the
National Association of Insurance Commissioners within five
days of making the request for a public hearing. A
commissioner may opt out of a consolidated hearing, and
shall provide notice to the applicant of the opt-out within ten
days of the receipt of the statement referred to in subsection
(a) of this section. A hearing conducted on a consolidated
basis shall be public and shall be held within the United
States before the commissioners of the states in which the
insurers are domiciled. Such commissioners shall hear and
receive evidence. A commissioner may attend the hearing,
in person or by telecommunication.

(4) In connection with a change of control of a domestic
insurer, any determination by the commissioner that the
person acquiring control of the insurer is required to maintain
or restore the capital of the insurer to the level required by the
laws of this state shall be made not later than sixty days after
the date of filing the change in control submitted pursuant to
subdivision (1), subsection (a) of this section.

(5) The commissioner may retain at the acquiring
person's expense any attorneys, actuaries, accountants and
other experts not otherwise a part of the commissioner's staff
as may be reasonably necessary to assist the commissioner in
reviewing the proposed acquisition of control.

(g) Exemptions. -- The provisions of this section shall
not apply to any offer, request, invitation, agreement or
acquisition which the commissioner by order shall exempt
therefrom as: (1) Not having been made or entered into for
the purpose of, and not having the effect of, changing or
influencing the control of a domestic insurer; or (2) as
otherwise not comprehended within the purposes of this
section.
(h) The following are violations of this section:

(1) The failure to file any statement, amendment or other material required to be filed pursuant to subsection (a) or (b) of this section; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, divestiture of, or merger with, a domestic insurer unless the commissioner has given his or her approval thereto.

(i) Jurisdiction; consent to service of process. -- The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the commissioner under this section and over all actions involving such person arising out of violations of this section and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the Secretary of State and transmitted by registered or certified mail by the Secretary of State to such person at his or her last known address.

§33-27-3a. Acquisitions involving insurers not otherwise covered; definitions; scope; pre-acquisition notification and waiting period; competitive standard; orders and penalties.

(a) Definitions. -- The following definitions apply to only this section:

(1) “Acquisition” means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person,
and includes, but is not limited to, the acquisition of voting securities, the acquisition of assets, bulk reinsurance and mergers.

(2) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.

(b) **Scope.** (1) Except as exempted in subdivision (2) of this subsection, this section applies to any acquisition in which there is a change in control of an insurer authorized to do business in this state.

(2) This section does not apply to the following:

(A) A purchase of securities solely for investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in this state. If a purchase of securities results in a presumption of control pursuant to subsection (c), section two of this article, it is not solely for investment purposes unless the commissioner of the insurer's state of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and the disclaimer action or affirmative finding is communicated by the domiciliary commissioner to the commissioner of this state;

(B) The acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if pre-acquisition notification is filed with the commissioner pursuant to subdivision (1), subsection (c) of this section thirty days prior to the proposed effective date of the acquisition. However, such pre-acquisition notification is not required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other paragraph of this subdivision;
(C) The acquisition of already affiliated persons;

(D) An acquisition if, as an immediate result of the acquisition:

   (i) In no market would the combined market share of the involved insurers exceed five percent of the total market;

   (ii) There would be no increase in any market share; or

   (iii) In no market would:

      (I) The combined market share of the involved insurers exceed twelve percent of the total market; and

      (II) The market share increase by more than two percent of the total market.

For the purpose of this paragraph, a “market” means direct written insurance premium in this state for a line of business as contained in the annual statement required to be filed by insurers licensed to do business in this state; and

(E) An acquisition for which a pre-acquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business;

(F) An acquisition of an insurer whose domiciliary commissioner affirmatively finds that the insurer is in failing condition; there is a lack of feasible alternative to improving such condition; the public benefits of improving the insurers condition through the acquisition exceed the public benefits that would arise from not lessening competition; and the findings are communicated by the domiciliary commissioner to the commissioner of this state.
(c) Pre-acquisition notification and waiting period. -- An acquisition covered by subsection (b) of this section may be subject to an order pursuant to subsection (e) of this section unless the acquiring person files a pre-acquisition notification and the waiting period has expired. The acquired person may file a pre-acquisition notification. The commissioner shall give confidential treatment to information submitted under this subsection in the same manner as provided in section seven of this article.

(1) The pre-acquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners relating to those markets that, under paragraph (D), subdivision (2), subsection (b) of this section, cause the acquisition not to be exempted from the provisions of this section. The commissioner may require such additional material and information as deemed necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (d) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this state accompanied by a summary of the education and experience of such person indicating his or her ability to render an informed opinion.

(2) The waiting period required shall begin on the date of receipt of the commissioner of a pre-acquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the commissioner. Prior to the end of the waiting period, the commissioner on a one-time basis may require the submission of additional needed information relevant to the proposed acquisition, in which event the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the commissioner or termination of the waiting period by the commissioner.
(d) Competitive Standard. -- (1) The commissioner may enter an order under subdivision (1), subsection (e) of this section, with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be substantially to lessen competition in any line of insurance in this state or tend to create a monopoly or if the insurer fails to file adequate information in compliance with subsection (c) of this section.

(2) In determining whether a proposed acquisition would violate the competitive standard of subdivision (1) of this subsection, the commissioner shall consider the following:

(A) Any acquisition covered under subsection (b) of this section involving two or more insurers competing in the same market is *prima facie* evidence of violation of the competitive standards.

(i) If the market is highly concentrated and the involved insurers possess the following shares of the market:

<table>
<thead>
<tr>
<th>Insurer A</th>
<th>Insurer B</th>
</tr>
</thead>
<tbody>
<tr>
<td>4%</td>
<td>4% or more</td>
</tr>
<tr>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>15%</td>
<td>1% or more</td>
</tr>
</tbody>
</table>

(ii) Or, if the market is not highly concentrated and the involved insurers possess the following shares of the market:

<table>
<thead>
<tr>
<th>Insurer A</th>
<th>Insurer B</th>
</tr>
</thead>
<tbody>
<tr>
<td>5%</td>
<td>5% or more</td>
</tr>
<tr>
<td>10%</td>
<td>4% or more</td>
</tr>
<tr>
<td>15%</td>
<td>3% or more</td>
</tr>
<tr>
<td>19%</td>
<td>1% or more</td>
</tr>
</tbody>
</table>

A highly concentrated market is one in which the share of the four largest insurers is seventy-five percent or more of
the market. Percentages not shown in the tables are
interpolated proportionately to the percentages that are shown.
If more than two insurers are involved, exceeding the total of
the two columns in the table is *prima facie* evidence of
violation of the competitive standard in subdivision one of this
subsection. For the purpose of this item, the insurer with the
largest share of the market shall be deemed to be Insurer A;

(B) There is a significant trend toward increased
congestion when the aggregate market share of any
 grouping of the largest insurers in the market, from the two
largest to the eight largest, has increased by seven percent or
more of the market over a period of time extending from any
base year five to ten years prior to the acquisition up to the
time of the acquisition. Any acquisition or merger covered
under subsection (b) of this section involving two (2) or more
insurers competing in the same market is *prima facie*
evidence of violation of the competitive standard in
subdivision (1) of this subsection if:

(i) There is a significant trend toward increased
concentration in the market;

(ii) One of the insurers involved is one of the insurers in
 a grouping of large insurers showing the requisite increase in
the market share; and

(iii) Another involved insurer’s market is two percent or
 more;

(C) For the purposes of subdivision (2), subsection (d) of
this section:

(i) The term “insurer” includes any company or group of
companies under common management, ownership or
control;
(ii) The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the commissioner shall give due consideration to, among other things, the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, such line being that used in the annual statement required to be filed by insurers doing business in this state, and the relevant geographical market is assumed to be this state;

(iii) The burden of showing *prima facie* evidence of violation of the competitive standard rests upon the commissioner.

(D) Even though an acquisition is not *prima facie* violative of the competitive standard under paragraphs (A) and (B), subdivision (2) of this subsection, the commissioner may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is *prima facie* violative of the competitive standard under paragraphs (A) and (B), subdivision (2) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making a determination under this paragraph include, but are not limited to, the following: market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry and exit into the market.

(3) An order may not be entered under subdivision (1), subsection (e) of this section if:

(A) The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be
feasibly achieved in any other way, and the public benefits
which would arise from such economies exceed the public
benefits which would arise from not lessening competition;
or
(B) The acquisition will substantially increase the
availability of insurance, and the public benefits of the
increase exceed the public benefits which would arise from
not lessening competition.

(e) Orders and Penalties. -- (1)(A) If an acquisition
violates the standards of this section, the commissioner may
enter an order:

(i) Requiring an involved insurer to cease and desist from
doing business in this state with respect to the line or lines of
insurance involved in the violation; or

(ii) Denying the application of an acquired or acquiring
insurer for a license to do business in this state.

(B) Such an order shall not be entered unless:

(i) There is a hearing;

(ii) Notice of the hearing is issued prior to the end of the
waiting period and not less than fifteen days prior to the
hearing; and

(iii) The hearing is concluded and the order is issued no
later than sixty days after the date of the filing of the
preacquisition notification with the commissioner.

(C) Every order issued pursuant to this subsection shall
be accompanied by a written decision of the commissioner
setting forth findings of fact and conclusions of law.
(D) An order pursuant to this subsection does not apply if the acquisition is not consummated.

(2) Any person who violates a cease and desist order of the commissioner under subdivision one of this subsection and while the order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to one or more of the following:

(A) A monetary penalty of not more than $10,000 for every day of violation; or

(B) Suspension or revocation of the person’s license.

(3) Any insurer or other person who fails to make any filing required by this section, and who also fails to demonstrate a good faith effort to comply with any filing requirement, shall be subject to a fine of not more than $50,000.

(f) Inapplicable Provisions. Subsections (b) and (c), section eight of this article and section ten of this article do not apply to acquisitions covered under subsection (b) of this section.

§33-27-4. Registration of insurers; information and form required; summary of changes to registration statement; materiality; reporting of dividends to shareholders; information to insurers; termination of registration; consolidated filing; alternative registration; exemptions; disclaimer; enterprise risk filing; violations.

(a) Registration. -- (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the
commissioner, except a foreign insurer subject to disclosure
requirements and standards adopted by statute or regulation
in the jurisdiction of its domicile which are substantially
similar to those contained in this section, subsections (a), (b)
and (c), section five of this article, and either subsection (d),
section five of this article or has a provision such as the
following: “Each registered insurer shall keep current the
information required to be disclosed in its registration
statement by reporting all material changes or additions
within fifteen days after the end of the month in which it
learns of each change or addition.”

(2) Any insurer which is subject to registration under this
section shall register within fifteen days after it becomes
subject to registration and annually thereafter by June 1 of
each year for the previous calendar year, unless the
commissioner for good cause shown extends the time for
registration. The commissioner may require any authorized
insurer which is a member of a holding company system
which is not subject to registration under this section to
furnish a copy of the registration statement, the summary
described in subsection (c) of this section, or other
information filed by such insurance company with the
insurance regulatory authority of domiciliary jurisdiction.

(b) Information and form required. -- Every insurer
subject to registration shall file a registration statement with
the commissioner on a form and in a format prescribed by the
National Association of Insurance Commissioners, which
shall contain the following current information:

(1) The capital structure, general financial condition,
ownership and management of the insurer and any person
controlling the insurer.

(2) The identity and relationship of every member of the
insurance holding company system.
(3) The following agreements in force, relationships subsisting, and transactions currently outstanding or which have occurred during the last calendar year between such insurer and its affiliates:

(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) Purchases, sales or exchanges of assets;

(C) Transactions not in the ordinary course of business;

(D) Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer’s assets to liability, other than insurance contracts entered into in the ordinary course of the insurer’s business;

(E) All management and service contracts and all cost-sharing arrangements;

(F) All reinsurance agreements;

(G) Dividends and other distributions to shareholders; and

(H) Consolidated tax allocation statements.

(4) Any pledge of the insurer’s stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the insurance holding company system.

(5) If requested by the commissioner, the insurer shall include financial statements of or within an insurance holding company system, including all affiliates. Financial statements may include, but are not limited to, annual audited financial statements filed with the U.S. Securities and Exchange
Commission (SEC) pursuant to the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended. An insurer required to file financial statements pursuant to this subdivision may satisfy the request by providing the commissioner with the most recently filed parent corporation financial statements that have been filed with the SEC.

(6) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(7) Statements that the insurer's board of directors oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures.

(8) Any other information required by the commissioner by rule.

(c) Summary of changes to registration statement. -- All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.

(d) Materiality. -- Information need not be disclosed on the registration statement filed pursuant to subsection (b) of this section if such information is not material for the purpose of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one half of one percent or less of an insurer's admitted assets as of December 31, next preceding shall not be deemed material for purposes of this section.
(e) Reporting of dividends to shareholders. -- Subject to subsection (c), section five of this article, each registered insurer shall report to the commissioner all dividends and other distributions to shareholders within fifteen business days following the declaration thereof.

(f) Information to insurers. -- Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, when such information is reasonably necessary to enable the insurer to comply with the provisions of this article.

(g) Termination of registration. -- The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(h) Consolidated filing. -- The commissioner may require or allow two or more affiliated insurers subject to registration hereunder to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(i) Alternative registration. -- The commissioner may allow an insurer which is authorized to do business in this state and which is a part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (a) of this section and to file all information and material required to be filed under this section.

(j) Exemptions. -- The provisions of this section shall not apply to any insurer, information or transaction if and to the extent that the commissioner by rule or order shall exempt the same from the provisions of this section.
(k) Disclaimer. -- Any person may file with the commissioner a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the person and the insurer as well as the basis for disclaiming such affiliation. A disclaimer of affiliation shall be deemed to have been granted unless the commissioner, within thirty days following receipt of a complete disclaimer, notifies the filing party the disclaimer is disallowed. In the event of disallowance, the disclaiming party may request an administrative hearing, which shall be granted, and the commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. The disclaiming party shall be relieved of its duty to register under this section if approval of the disclaimer has been granted by the commissioner, or if the disclaimer is deemed to have been approved.

(l) Enterprise Risk Filing. -- The ultimate controlling person of every insurer subject to registration shall also file an annual enterprise risk report. The report shall, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that could pose enterprise risk to the insurer. The report shall be filed with the lead state commissioner of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(m) Violations. -- The failure to file a registration statement or enterprise risk filing thereto required by this section within the time specified for such filing shall be a violation of this section.
§33-27-5. Standards; adequacy of surplus; dividends and other
distributions; notice of amendments or
modifications; management of domestic insurers
subject to registration.

(a) Transactions within an insurance holding company
system to which an insurer subject to registration is a party
shall be subject to the following standards:

1. The terms shall be fair and reasonable;

2. Agreements for cost-sharing services and
management shall include such provisions as required by
rule;

3. Charges or fees for services performed shall be
reasonable;

4. Expenses incurred and payment received shall be
allocated to the insurer in conformity with customary
insurance accounting practices consistently applied;

5. The books, accounts and records of each party to all
such transactions shall be so maintained as to clearly and
accurately disclose the nature and details of the transactions,
including such accounting information as is necessary to
support the reasonableness of the charges or fees to the
respective parties; and

6. The insurer’s surplus as regards policyholders
following any dividends or distributions to shareholder
affiliates shall be reasonable in relation to the insurer’s
outstanding liabilities and adequate to its financial needs.

(b) Adequacy of surplus. -- For purposes of this article, in
determining whether an insurer’s surplus as regards
policyholders is reasonable in relation to the insurer’s
outstanding liabilities and adequate to meet its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;

(2) The extent to which the insurer’s business is diversified among the several lines of insurance;

(3) The number and size of risks insured in each line of business;

(4) The extent of the geographical dispersion of the insurer’s insured risks;

(5) The nature and extent of the insurer’s reinsurance program;

(6) The quality, diversification and liquidity of the insurer’s investment portfolio;

(7) The recent past and projected future trend in the size of the insurer’s surplus as regards policyholders;

(8) The surplus as regards policyholders maintained by other comparable insurers;

(9) The adequacy of the insurer’s reserves; and

(10) The quality and liquidity of investments in affiliates.

The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his or her judgment such investment so warrants.
(c) **Dividends and other distributions.** -- (1) No domestic insurer may pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty days after the commissioner has received notice of the declaration thereof and has not within that period disapproved such payment; or

(B) The commissioner has approved that payment within the thirty-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the lesser of:

(A) Ten percent of such insurer’s surplus as regards policyholders as of December 31, next preceding; or

(B) The net gain from operations of such insurer, if such insurer is a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending December 31, next preceding, but shall not include pro rata distributions of any class of the insurer’s own securities. In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner’s approval, and the declaration shall confer no rights upon shareholders until:
(A) The commissioner has approved the payment of such dividend or distribution; or

(B) The commissioner has not disapproved such payment within the thirty-day period referred to above.

(d) The following transactions involving a domestic insurer and any person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, that are subject to any materiality standards contained in subdivisions (1) through (5) of this subsection, may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period: Provided, That nothing contained in this subsection shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law. The notice for amendments or modifications shall include the reasons for the change and the financial impact on the domestic insurer. Informal notice shall be reported, within thirty days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any.

(1) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments provided such transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders; and

(B) With respect to life insurers, three percent of the insurer's admitted assets as of December 31, next preceding;
(2) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of such transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, purchase assets of, or to make investments in, any affiliate of the insurer making such loans or extensions of credit provided the transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer’s admitted assets or twenty-five percent of surplus as regards policyholders; each as of December 31, next preceding;

(B) With respect to life insurers, three percent of the insurer’s admitted assets as of December 31, next preceding;

(3) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements; and

(B) Agreements in which the reinsurance premium or a change in the insurer’s liabilities, or the projected reinsurance premium or a change in the insurer’s liabilities in any of the next three years, equals or exceeds five percent of the insurer’s surplus as regards policyholders, as of December 31, next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(4) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements;
(5) Guarantees when made by a domestic insurer; 
Provided, That a guarantee that is quantifiable as to amount 
is not subject to the notice requirements of this subdivision 
unless it exceeds the lesser of one half of one percent of the 
insurer’s admitted assets or ten percent of surplus as regards 
policyholders as of December 31, next preceding: Provided, 
however, That all guarantees that are not quantifiable as to 
amount are subject to the notice requirements of this 
subdivision.

(6) Direct or indirect acquisitions or investments in a 
person that controls the insurer or in an affiliate of the insurer 
in an amount which, together with its present holdings in 
such investments, exceeds two and one-half percent of the 
insurer’s surplus to policyholders. Direct or indirect 
acquisitions or investments in subsidiaries acquired pursuant 
to section two-a of this article or authorized under any other 
section of this chapter, or in nonsubsidiary insurance 
affiliates that are subject to the provisions of this article, are 
exempt from this requirement; and

(7) Any material transactions, specified by rule, which 
the commissioner determines may adversely affect the 
interests of the insurer’s policyholders.

(e) A domestic insurer may not enter into transactions 
which are part of a plan or series of like transactions with 
persons within the insurance holding company system if the 
purpose of those separate transactions is to avoid the 
statutory threshold amount and thus avoid the review that 
would occur otherwise. If the commissioner determines that 
separate transactions were entered into over any 
twelve-month period for that purpose, he or she may exercise 
his or her authority under section nine of this article.

(f) The commissioner, in reviewing transactions pursuant 
to subsection(d) of this section, shall consider whether the
transactions comply with the standards set forth in subsection (a) of this section and whether they may adversely affect the interests of policyholders.

(g) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in that corporation by the insurance holding company system exceeds ten percent of such corporation’s voting securities.

(h) Management of domestic insurers subject to registration. -- (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with the provisions of this article.

(2) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperatively, or jointly using personnel, property or services with one or more other persons under arrangements meeting the standards of subsection (a) of this section.

(3) Not less than one third of the directors of a domestic insurer, and not less than one third of the members of each committee of the board of directors of any domestic insurer, shall be persons who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee thereof.
The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer and recommending to the board of directors the selection and compensation of the principal officers.

The provisions of subdivisions three and four of this subsection do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees thereof that meet the requirements of such subdivisions with respect to such controlling entity.

An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, is less than $300 million. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity.
§33-27-6. Examination; power of commissioner; access to books and records; use of consultants; expenses; compelling production, contempt and payment of fees, mileage and actual expenses.

(a) Power of commissioner. -- Subject to the limitation contained in this section and in addition to the powers which the commissioner has under other provisions of this chapter relating to the examination of insurers, the commissioner has the power to examine any insurer registered under section four of this article and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, or by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

(b) Access to books and records. --

(1) The commissioner may order any insurer registered under section four of this article to produce such records, books or other information papers in the possession of the insurer or its affiliates as are reasonably necessary to determine compliance with this chapter.

(2) To determine compliance with this chapter, the commissioner may order any insurer registered under section four of this article to produce information not in the possession of the insurer if the insurer can obtain access to such information pursuant to contractual relationships, statutory obligations, or other method. In the event the insurer cannot obtain the information requested by the commissioner, the insurer shall provide the commissioner a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information. Whenever it appears to the commissioner that the detailed explanation is without merit, the commissioner may, after notice and hearing, require the insurer to pay a penalty of up to $10,000 for each day's delay, may suspend or revoke the insurer's license, or both impose a penalty and revoke or suspend the insurer's license.
(c) Use of consultants. -- The commissioner may retain at the registered insurer's expense such attorneys, actuaries, accountants and other experts not otherwise a part of the commissioner's staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (a) of this section. Any person so retained shall be under the direction and control of the commissioner and shall act in a purely advisory capacity.

(d) Expenses. -- Each registered insurer producing for examination records, books and papers pursuant to subsection (a) of this section is liable for and shall pay the expense of such examination in accordance with applicable laws of this state.

(e) Compelling Production. -- In the event the insurer fails to comply with an order, the commissioner may examine the affiliates to obtain the information. The commissioner may also issue subpoenas, to administer oaths, and examine under oath any person for purposes of determining compliance with this section. Upon the failure or refusal of any person to obey a subpoena, the commissioner may petition any circuit court and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court. Every person is obliged to attend as a witness at the place specified in the subpoena, when subpoenaed, anywhere within the state. He or she is entitled to the same fees and mileage, if claimed, as a witness in the circuit court of the county in which attendance is required, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized and charged against, and be paid by, the company being examined.
§33-27-6a. Supervisory colleges; power of commissioner; expenses; agreements.

(a) *Power of commissioner.* -- With respect to any insurer registered under section four of this article, and in accordance with subsection (c) of this section, the commissioner may participate in a supervisory college for any domestic insurer that is part of an insurance holding company system with international operations in order to determine compliance by the insurer with this chapter. The powers of the commissioner with respect to supervisory colleges include, but are not limited to, the following:

1. Initiating the establishment of a supervisory college;
2. Clarifying the membership and participation of other supervisors in the supervisory college;
3. Clarifying the functions of the supervisory college and the role of other regulators, including the establishment of a group-wide supervisor;
4. Coordinating the ongoing activities of the supervisory college, including planning meetings, supervisory activities, and processes for information sharing; and
5. Establishing a crisis management plan.

(b) *Supervisory college.* -- In order to assess the business strategy, financial position, legal and regulatory position, risk exposure, risk management and governance processes, and as part of the examination of individual insurers in accordance with section six of this article, the commissioner may participate in a supervisory college with other regulators charged with supervision of the insurer or its affiliates, including other state, federal and international regulatory agencies. The commissioner may enter into agreements in accordance with subsection (c), section seven of this article providing the basis for cooperation between the commissioner and the other regulatory agencies, and the
activities of the supervisory college: Provided, That this
section may not be construed as delegating to the supervisory
college the authority of the commissioner to regulate or
supervise the insurer or its affiliates within its jurisdiction.


(a) Documents, materials or other information in the
possession or control of the commissioner that are obtained
by or disclosed to the commissioner or any other person in
the course of an examination or investigation made pursuant
to section six of this article and all information reported
pursuant to subdivision thirteen or fourteen, subsection (b),
section three of this article, section four or section five of this
article is confidential by law and privileged, is exempt from
disclosure pursuant to chapter twenty-nine-b of this code, is
not open to public inspection, is not subject to subpoena, is
not subject to discovery or admissible in evidence in any
criminal, private civil or administrative action and is not
subject to production pursuant to court order: Provided, That
the commissioner is authorized to use the documents,
materials or other information in the furtherance of any
regulatory or legal action brought as part of the
commissioner’s official duties. The commissioner may not
otherwise make the documents, materials or other
information public without the prior written consent of the
insurer to which it pertains unless the commissioner, after
giving the insurer and its affiliates who would be affected
thereby notice and opportunity to be heard, determines that
the interests of policyholders, shareholders or the public will
be served by the publication thereof, in which event he or she
may publish all or any part thereof in any manner as he or she
may consider appropriate.

(b) Neither the commissioner nor any person who
received documents, materials or other information while
acting under the authority of the commissioner or with whom
such documents, materials or other information are shared
pursuant to this article may be permitted or required to testify
in any private civil action concerning any confidential
documents, materials, or information subject to subsection (a)
of this section.

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

(1) May share documents, materials or other information,
including the confidential and privileged documents,
materials or information subject to subsection (a) of this
section, with other state, federal and international regulatory
agencies, with the National Association of Insurance
Commissioners and its affiliates and subsidiaries, and with
state, federal, and international law enforcement authorities,
including members of any supervisory college described in
section six-a of this article, if the recipient agrees in writing
to maintain the confidentiality and privileged status of the
document, material or other information, and has verified in
writing the legal authority to maintain confidentiality;

(2) Notwithstanding subdivision (1) of this subsection,
the commissioner may only share confidential and privileged
documents, material, or information reported pursuant to
subsection (l), section four of this article, with commissioners
of states having statutes or regulations substantially similar
to subdivision (1) of this subsection and who have agreed in
writing not to disclose such information;

(3) May receive documents, materials or information,
including otherwise confidential and privileged documents,
materials or information from the National Association of
Insurance Commissioners and its affiliates and subsidiaries
and from regulatory and law-enforcement officials of other
foreign or domestic jurisdictions, and shall maintain as
confidential or privileged any document, material or
information received with notice or the understanding that it
(4) Shall enter into written agreements with the National Association of Insurance Commissioners governing sharing and use of information provided pursuant to this article consistent with this subsection that:

(A) Specify procedures and protocols regarding the confidentiality and security of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article, including procedures and protocols for sharing by the National Association of Insurance Commissioners with other state, federal or international regulators;

(B) Specify that ownership of information shared with the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this article remains with the commissioner, and the National Association of Insurance Commissioners’ use of the information is subject to the direction of the commissioner;

(C) Require prompt notice to be given to an insurer whose confidential information in the possession of the National Association of Insurance Commissioners pursuant to this article is subject to a request or subpoena to the National Association of Insurance Commissioners for disclosure or production; and

(D) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries to consent to intervention by an insurer in any judicial or administrative action in which the National Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose confidential information about the insurer shared with the National Association of Insurance Commissioners;
Commissioners and its affiliates and subsidiaries pursuant to this article.

(d) The sharing of information by the commissioner pursuant to this article does not constitute a delegation of regulatory authority, and the commissioner is solely responsible for the administration, execution and enforcement of the provisions of this article.

(c) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information occurs as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in subsection (c) of this section.

(f) Documents, materials or other information in the possession or control of the National Association of Insurance Commissioners pursuant to this article is confidential by law and privileged, is exempt from disclosure pursuant to chapter twenty-nine-b of this code, is not subject to subpoena, and is not subject to discovery or admissible in evidence in any private civil action.

§33-27-9. Criminal proceedings; penalties; orders; fines; disapproval of dividends and distributions.

(a) Any insurer failing, without just cause, to file any registration statement as required by this article shall be required, after notice and hearing, to pay a penalty of up to one thousand dollars for each day’s delay, to be recovered by the commissioner. Any penalty so recovered shall be paid into the General Revenue Fund of this state. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or
assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to subsection (a), section four of this article and subsections (c) and (d), section five of this article, or which violate any other provision of this article, shall pay, in his or her individual capacity, a civil forfeiture of not more than $5,000 per violation, after notice and hearing before the commissioner. In determining the amount of the civil forfeiture, the commissioner shall take into account the appropriateness of the forfeiture with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require.

(c) Whenever it appears to the commissioner that any insurer subject to this article or any director, officer, employee or agent thereof has engaged in any transaction or entered into a contract which is subject to section five of this article and which would not have been approved had such approval been requested, the commissioner may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing the commissioner may also order the insurer to void any such contracts and restore the status quo if the action is in the best interest of the policyholders, creditors or the public.

(d) Whenever it appears to the commissioner that any person or any director, officer, employee or agent thereof has committed a willful violation of this article, the commissioner may cause criminal proceedings to be instituted against such person or the responsible director, officer, employee or agent thereof. Any insurer who willfully violates this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than ten thousand dollars. Any individual who willfully violates this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined in his or her individual capacity not
more than ten thousand dollars or, if such willful violation involves the deliberate perpetration of a fraud upon the commissioner, is guilty of a felony and, upon conviction thereof, shall be imprisoned not less than one year nor more than three years, or both fined and imprisoned.

(e) Any officer, director or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the commissioner in the performance of his or her duties under this article, is guilty of a felony and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned not less than one year nor more than three years, or both fined and imprisoned. Any fines imposed pursuant to this subsection shall be paid by the officer, director or employee in his or her individual capacity.

(f) Whenever it appears to the commissioner that any person has committed a violation of section three of this article which prevents the full understanding of the enterprise risk to the insurer by affiliates or by the insurance holding company system, the violation may serve as an independent basis for disapproving dividends or distributions and for placing the insurer under an order of supervision in accordance with article thirty-four of this chapter.

§33-27-11. Revocation, suspension or nonrenewal of insurer’s license.

Whenever it appears to the commissioner that any person has committed a violation of this article which makes the continued operation of an insurer contrary to the interests of policyholders or the public, the commissioner may, after giving notice and an opportunity to be heard, determine to suspend, revoke or refuse to renew such insurer’s license or authority to do business in this state for such period as he or she finds is required for the protection of policyholders or the
Provided, That any such determination shall be accompanied by specific findings of fact and conclusions of law.


The Insurance Commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code and may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code, as are necessary to implement the provisions of this article.

CHAPTER 102

(Com. Sub. for S. B. 356 - By Senators Minard, Jenkins and Stollings)

[Passed March 10, 2011; in effect July 1, 2011.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact §33-31-1, §33-31-2, §33-31-6, §33-31-7, §33-31-8, §33-31-10, §33-31-11, §33-31-15, §33-31-16 and §33-31-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-31-16a; and to amend and reenact §33-36-2 of said code, all relating to captive insurance; subjecting any captive insurance company organized as a risk retention group to certain insurance code provisions; and correcting technical errors.

Be it enacted by the Legislature of West Virginia:
That §33-31-1, §33-31-2, §33-31-6, §33-31-7, §33-31-8, §33-31-10, §33-31-11, §33-31-15, §33-31-16 and §33-31-20 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 §33-31-16a; and that §33-36-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.

As used in this article, unless the context requires otherwise:

(1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured or a member organization by virtue of common ownership, control, operation or management.

(2) "Alien captive insurance company" means any insurance company formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of a country other than the United States which imposes statutory or regulatory standards in a form acceptable to the commissioner on companies transacting the business of insurance in such jurisdiction.

(3) "Association" means any legal association of individuals, corporations, limited liability companies, partnerships, associations or other entities that has been in continuous existence for at least one year, the member organizations of which, or which does itself, whether or not in conjunction with some or all of the member organizations:

(A) Own, control or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer;
(B) Have complete voting control over an association captive insurance company incorporated as a mutual insurer; or

(C) Constitute all of the subscribers of an association captive insurance company formed as a reciprocal insurer.

(4) "Association captive insurance company" means any company that insures risks of the member organizations of the association, and their affiliated companies.

(5) "Branch business" means any insurance business transacted by a branch captive insurance company in this state.

(6) "Branch captive insurance company" means any alien captive insurance company licensed by the commissioner to transact the business of insurance in this state through a business unit with a principal place of business in this state.

(7) "Branch operations" means any business operations of a branch captive insurance company in this state.

(8) "Captive insurance company" means any pure captive insurance company, association captive insurance company, sponsored captive insurance company, industrial insured captive insurance company or risk retention group formed or licensed under the provisions of this article. For purposes of this article, a branch captive insurance company shall be a pure captive insurance company with respect to operations in this state, unless otherwise permitted by the commissioner.

(9) "Commissioner" means the Insurance Commissioner of West Virginia.

(10) "Controlled unaffiliated business" means any company:
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(A) That is not in the corporate system of a parent and affiliated companies;

(B) That has an existing contractual relationship with a parent or affiliated company; and

(C) Whose risks are managed by a pure captive insurance company in accordance with section nineteen of this article.

(11) "Industrial insured" means an insured:

(A) Who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer;

(B) Whose aggregate annual premiums for insurance on all risks total at least $25,000; and

(C) Who has at least twenty-five full-time employees.

(12) "Industrial insured captive insurance company" means any company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(13) "Industrial insured group" means any group of industrial insureds that collectively:

(A) Own, control or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurance company incorporated as a stock insurer;

(B) Have complete voting control over an industrial insured captive insurance company incorporated as a mutual insurer; or
(C) Constitute all of the subscribers of an industrial insured captive insurance company formed as a reciprocal insurer.

(14) "Member organization" means any individual, corporation, limited liability company, partnership, association or other entity that belongs to an association.

(15) "Mutual corporation" means a corporation organized without stockholders and includes a nonprofit corporation with members.

(16) "Parent" means a corporation, limited liability company, partnership, other entity, or individual that directly or indirectly owns, controls or holds with power to vote more than fifty percent of the outstanding voting:

(A) Securities of a pure captive insurance company organized as a stock corporation; or

(B) Membership interests of a pure captive insurance company organized as a nonprofit corporation.

(17) "Pure captive insurance company" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.

(18) "Risk retention group" means a captive insurance company organized under the laws of this state pursuant to the Liability Risk Retention Act of 1986, 15 U.S.C. §3901, et seq., as amended, as a stock or mutual corporation, a reciprocal or other limited liability entity.

§33-31-2. Licensing; authority.

(a) Any captive insurance company, when permitted by its articles of association, charter or other organizational
document, may apply to the commissioner for a license to do
any and all insurance comprised in section ten, article one of
this chapter: Provided, That all captive insurance companies,
except pure captive insurance companies, shall maintain their
principal office and principal place of business in this state:
Provided, however, That:

(1) No pure captive insurance company may insure any
risks other than those of its parent and affiliated companies
or controlled unaffiliated business;

(2) No association captive insurance company may insure
any risks other than those of the member organizations of its
association, and their affiliated companies;

(3) No industrial insured captive insurance company may
insure any risks other than those of the industrial insureds
that comprise the industrial insured group, and their affiliated
companies;

(4) No risk retention group may insure any risks other
than those of its members and owners;

(5) No captive insurance company may provide personal
motor vehicle or homeowner’s insurance coverage or any
component thereof;

(6) No captive insurance company may accept or cede
reinsurance except as provided in section eleven of this
article;

(7) Any captive insurance company may provide excess
workers’ compensation insurance to its parent and affiliated
companies, unless prohibited by the federal law or laws of
the state having jurisdiction over the transaction. Any captive
insurance company, unless prohibited by federal law, may
reinsure workers’ compensation of a qualified self-insured
plan of its parent and affiliated companies; and
(8) Any captive insurance company which insures risks described in subsections (a) and (b) of section ten, article one of this chapter shall comply with all applicable state and federal laws.

(b) No captive insurance company may do any insurance business in this state unless:

(1) It first obtains from the commissioner a license authorizing it to do insurance business in this state;

(2) Its board of directors, or, in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one meeting each year in this state; and

(3) It appoints a registered agent to accept service of process and to otherwise act on its behalf in this state: Provided, That whenever such registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Secretary of State shall be an agent of such captive insurance company upon whom any process, notice, or demand may be served.

(c)(1) Before receiving a license, a captive insurance company shall:

(A) File with the commissioner a certified copy of its organizational documents, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the commissioner; and

(B) Submit to the commissioner for approval a description of the coverages, deductibles, coverage limits and rates, together with such additional information as the commissioner may reasonably require. In the event of any subsequent material change in any item in such description,
the captive insurance company shall submit to the commissioner for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the commissioner. The captive insurance company shall inform the commissioner of any material change in rates within thirty days of the adoption of such change.

(2) Each applicant captive insurance company shall also file with the commissioner evidence of the following:

(A) The amount and liquidity of its assets relative to the risks to be assumed;

(B) The adequacy of the expertise, experience and character of the person or persons who will manage it;

(C) The overall soundness of its plan of operation;

(D) The adequacy of the loss prevention programs of its insureds; and

(E) Such other factors deemed relevant by the commissioner in ascertaining whether the proposed captive insurance company will be able to meet its policy obligations.

(3) Information submitted pursuant to this subsection shall be and remain confidential and may not be made public by the commissioner or an employee or agent of the commissioner without the written consent of the company, except that:

(A) Such information may be discoverable by a party in a civil action or contested case to which the captive insurance company that submitted such information is a party, upon a showing by the party seeking to discover such information that:
(i) The information sought is relevant to and necessary for the furtherance of such action or case;

(ii) The information sought is unavailable from other nonconfidential sources; and

(iii) A subpoena issued by a judicial or administrative officer of competent jurisdiction has been submitted to the commissioner: *Provided,* That the provisions of subdivision (3) of this subsection shall not apply to any risk retention group; and

(B) The commissioner may, in the commissioner’s discretion, disclose such information to a public officer having jurisdiction over the regulation of insurance in another state, if:

(i) The public official shall agree in writing to maintain the confidentiality of such information; and

(ii) The laws of the state in which such public official serves require such information to be and to remain confidential.

(d) Each captive insurance company shall pay to the commissioner a nonrefundable fee of two hundred dollars for examining, investigating and processing its application for license, and the commissioner is authorized to retain legal, financial and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of subsection (r), section nine, article two of this chapter shall apply to examinations, investigations and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a license fee for the year of registration and a renewal fee for each year thereafter of $300.
(e) If the commissioner is satisfied that the documents and statements that such captive insurance company has filed comply with the provisions of this article, the commissioner may grant a license authorizing it to do insurance business in this state until May 31, thereafter, which license may be renewed.

§33-31-6. Formation of captive insurance companies in this state.

(a) A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, or as a nonprofit corporation with one or more members.

(b) An association captive insurance company or an industrial insured captive insurance company may be:

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by its insureds; or

(3) Organized as a reciprocal insurer in accordance with article twenty-one of this chapter.

(c) A captive insurance company incorporated or organized in this state shall have not less than three incorporators or three organizers of whom not less than one shall be a resident of this state.

(d) In the case of a captive insurance company:

(1)(A) Formed as a corporation the incorporators shall petition the commissioner to issue a certificate setting forth the commissioner’s finding that the establishment and
maintenance of the proposed corporation will promote the
general good of the state. In arriving at such a finding the
commissioner shall consider:

(i) The character, reputation, financial standing and
purposes of the incorporators;

(ii) The character, reputation, financial responsibility,
insurance experience and business qualifications of the
officers and directors; and

(iii) Such other aspects as the commissioner shall deem
advisable.

(B) The articles of incorporation, such certificate, and the
organization fee shall be transmitted to the Secretary of State,
who shall thereupon record both the articles of incorporation
and the certificate.

(2) Formed as a reciprocal insurer, the organizers shall
petition the commissioner to issue a certificate setting forth
the commissioner’s finding that the establishment and
maintenance of the proposed association will promote the
general good of the state. In arriving at such a finding the
Commissioner shall consider the items set forth in
subparagraphs (i), (ii) and (iii), paragraph (A), subdivision
(1) of this subsection.

(e) The capital stock of a captive insurance company
incorporated as a stock insurer may be authorized with no par
value.

(f) In the case of a captive insurance company:

(1) Formed as a corporation, at least one of the members
of the board of directors shall be a resident of this state; and
(2) Formed as a reciprocal insurer, at least one of the members of the subscribers' advisory committee shall be a resident of this state.

(g) Other than captive insurance companies formed as nonprofit corporations under chapter thirty-one-e of this code, captive insurance companies formed as corporations under the provisions of this article shall have the privileges and be subject to the provisions of the general corporation law as well as the applicable provisions contained in this article. In the event of conflict between the provisions of said general corporation law and the provisions of this article, the latter shall control.

(h) Captive insurance companies formed as nonprofit corporations under the provisions of this article shall have the privileges and be subject to the provisions of chapter thirty-one-e of this code as well as the applicable provisions contained in this article. In the event of conflict between the provisions of chapter thirty-one-e of this code and the provisions of this article, the latter shall control.

(i) The provisions of sections twenty-five, twenty-seven and twenty-eight, article five of this chapter and section three, article twenty-seven of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, redomestications and mutual holding companies, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:

(1) The commissioner may waive or modify the requirements for public notice and hearing in accordance with rules which the commissioner may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the commissioner may cancel the hearing; and
(2) An alien insurer may be a party to a merger authorized under this subsection: Provided, That the requirements for a merger between a captive insurance company and a foreign insurer under section twenty-five, article five of this chapter shall apply to a merger between a captive insurance company and an alien insurer under this subsection. Such alien insurer shall be treated as a foreign insurer under section twenty-five, article five of this chapter and such other jurisdictions shall be the equivalent of a state for purposes of section twenty-five, article five of this chapter.

(j) Captive insurance companies formed as reciprocal insurers under the provisions of this article shall have the privileges and be subject to the provisions of article twenty-one of this chapter in addition to the applicable provisions of this article. In the event of a conflict between the provisions of article twenty-one of this chapter and the provisions of this article, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this article pursuant to article twenty-one of this chapter, such provisions shall not be applicable to a reciprocal insurer formed under this article unless such provisions are expressly made applicable to captive insurance companies under this article.

(k) The articles of incorporation or bylaws of a captive insurance company formed as a corporation may authorize a quorum of its board of directors to consist of no fewer than one third of the fixed or prescribed number of directors determined under section eight hundred twenty-four, article eight, chapter thirty-one-e of this code.

(l) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of its subscribers' advisory committee to consist of no fewer than one third of the number of its members.
(a) Captive insurance companies shall not be required to make any annual report except as provided in this article.

(b) On or before March 1 of each year, each captive insurance company shall submit to the commissioner a report of its financial condition, verified by oath of two of its executive officers. Each captive insurance company shall report using generally accepted accounting principles, unless the commissioner approves the use of statutory accounting principles, with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the commissioner for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the commissioner. Except as otherwise provided, each association captive insurance company and each risk retention group shall file its report in the form required by section fourteen, article four of this chapter, and each risk retention group shall comply with the requirements set forth in article thirty-two of this chapter. The commissioner shall by rule propose the forms in which pure captive insurance companies and industrial insured captive insurance companies shall report.

(c) Any pure captive insurance company or an industrial insured captive insurance company may make written application for filing the required report on a fiscal year-end. If an alternative reporting date is granted:

(1) The annual report is due sixty days after the fiscal year-end; and

(2) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company or industrial insured captive insurance company shall file on or before March 1 of each year for each calendar year-end,
32 pages one, two, three, and five of the "captive annual
33 statement; pure or industrial insured", verified by oath of two
34 of its executive officers.

§33-31-8. Examinations and investigations.

(a) At least once in five years, and whenever the
1 commissioner determines it to be prudent, the commissioner
2 shall personally, or by some competent person appointed by
3 the commissioner, visit each captive insurance company and
4 thoroughly inspect and examine its affairs to ascertain its
5 financial condition, its ability to fulfill its obligations and
6 whether it has complied with the provisions of this article.
7 The captive insurance company shall be subject to the
8 provisions of section nine, article two of this chapter in
9 regard to the expense and conduct of the examination.

(b) All examination reports, preliminary examination
10 reports or results, working papers, recorded information,
11 documents and copies thereof produced by, obtained by or
12 disclosed to the commissioner or any other person in the
13 course of an examination made under this section are
14 confidential and are not subject to subpoena and may not be
15 made public by the commissioner or an employee or agent of
16 the commissioner without the written consent of the
17 company, except to the extent provided in this subsection.
18 Nothing in this subsection shall prevent the commissioner
19 from using such information in furtherance of the
20 commissioner’s regulatory authority under this title. The
21 commissioner may, in the commissioner’s discretion, grant
22 access to such information to public officers having
23 jurisdiction over the regulation of insurance in any other state
24 or country, or to law-enforcement officers of this state or any
25 other state or agency of the federal government at any time,
26 so long as such officers receiving the information agree in
27 writing to hold it in a manner consistent with this section.
§33-31-10. Legal investments.

(a) Association captive insurance companies and risk retention groups shall comply with the investment requirements contained in article eight of this chapter, as applicable. Subsection (b), section ten and section eleven, article seven of this chapter shall apply to association captive insurance companies and risk retention groups except to the extent it is inconsistent with approved accounting standards in use by the company. Notwithstanding any other provision of this article, the commissioner may approve the use of alternative reliable methods of valuation and rating.

(b) No pure captive insurance company or industrial insured captive insurance company shall be subject to any restrictions on allowable investments whatever, including those limitations contained in article eight of this chapter: Provided, That the commissioner may prohibit or limit any investment that threatens the solvency or liquidity of any such company.

(c) No pure captive insurance company may make a loan to or an investment in its parent company or affiliates without prior written approval of the commissioner, and any such loan or investment must be evidenced by documentation approved by the commissioner. Loans of minimum capital and surplus funds required by section four of this article are prohibited.


(a) Any captive insurance company may provide reinsurance, comprised in section fifteen-a, article four of this chapter, on risks ceded by any other insurer: Provided, That if the reinsurer is licensed as a risk retention group, then the ceding risk retention group or its members must qualify for membership with the reinsurer.
(b) Any captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to reinsurers complying with the provisions of sections fifteen-a and fifteen-b, article four of this chapter. Prior approval of the commissioner shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with sections fifteen-a and fifteen-b, article four of this chapter, except for business written by an alien captive insurance company outside of the United States.

(c) In addition to reinsurers authorized under the provisions of section fifteen, article four of this chapter, a captive insurance company may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange or association acting as a reinsurer which has been authorized by the commissioner. The commissioner may require any other documents, financial information or other evidence that such a pool, exchange or association will be able to provide adequate security for its financial obligations. The commissioner may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange or association that, in the commissioner's judgment, are necessary and proper to provide adequate security for the ceding captive insurance company and for the protection and consequent benefit of the public at large.

(d) For all purposes of this article, insurance by a captive insurance company of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.


The commissioner may establish and from time to time amend such rules relating to captive insurance companies as are necessary to enable the commissioner to carry out the provisions of this article.
§33-31-16. Laws applicable.

No provisions of this chapter, other than those contained in this article or contained in specific references in this article, may apply to captive insurance companies.


In addition to the applicable provisions of this article, any captive insurance company organized as a risk retention group is subject to the provisions of section nine, article two (examination of insurers, agents, brokers and solicitors; access to books, records, etc.); section fourteen, article four (financial statement filings; annual and quarterly statements; required format; foreign insurers; agents of the commissioner); section fifteen-a, article four (credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date); article seven (assets and liabilities); article ten (rehabilitation and liquidation); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and commissioner’s authority for companies deemed to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-six (Business Transacted with Producer Controlled Property/Casualty Insurer Act); article thirty-seven (managing general agents); article thirty-eight (Reinsurance Intermediary Act); and article forty-one (Insurance Fraud Prevention Act) of this chapter and any rules promulgated thereunder in accordance with article three, chapter twenty-nine-a of this code.

§33-31-20. Branch captive insurance company formation.

(a) A branch captive may be established in this state in accordance with the provisions of this article to write in this state only insurance or reinsurance of the employee benefit
business of its parent and affiliated companies which is subject to the provisions of the federal Employee Retirement Income Security Act of 1974 and set forth in 29 U. S. C. § 1001, et seq., as amended. In addition to the general provisions of this article, the provisions of sections twenty-one through twenty-five, inclusive, of this article shall apply to branch captive insurance companies.

(b) No branch captive insurance company shall do any insurance business in this state unless it maintains the principal place of business for its branch operations in this state.

ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED PROPERTY/ CASUALTY INSURER ACT.

§33-36-2. Definitions.

As used in this article:

(a) “Accredited state” means a state in which the insurance department or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(b) “Control” or “controlled” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any
other person or controls or appoints a majority of the board of
directors, voting members or similar governing body of any
other person. This presumption may be rebutted by a showing
made in the manner provided by subsection (l), section four,
article twenty-seven of this chapter that control does not exist in
fact. The commissioner may determine, after furnishing all
persons in interest notice and opportunity to be heard and
making specific findings of fact to support the determination,
that control exists in fact, notwithstanding the absence of a
presumption to that effect.

(c) “Controlled insurer” means a licensed insurer which
is controlled, directly or indirectly, by a producer.

(d) “Controlling producer” means a producer who,
directly or indirectly, controls an insurer.

(e) “Licensed insurer” or “insurer” means any person, firm,
association or corporation duly licensed to transact a property or
casualty insurance business, or both property and casualty
insurance, in this state: Provided, That the following are not
licensed insurers for the purposes of this article:

(1) All residual market pools and joint underwriting
authorities or associations; and

(2) All captive insurance companies as defined in article
thirty-one of this chapter: Provided, That a captive insurance
company organized as a risk retention group shall be
considered a licensed insurer for the purposes of this article.

(f) “Producer” means an insurance broker or brokers or
any other person, firm, association or corporation, when, for
any compensation, commission or other thing of value, the
person, firm, association or corporation acts or aids in any
manner in soliciting, negotiating or procuring the making of
any insurance contract on behalf of an insured other than the
person, firm, association or corporation: Provided, That the
designation of any individual or entity as a producer does not expand upon or provide for activities beyond those permitted by article twelve of this chapter.

CHAPTER 103

(Com. Sub. for H. B. 2876 - By Delegates Perry, Hartman, Walters, Hall, Reynolds, Ashley and Azinger)

[Passed March 9, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2011.]

AN ACT to amend and reenact §33-48-7b of the Code of West Virginia, 1931, as amended, relating to expanding eligibility for subsidies to enrollees in the model health plan for uninsurable individuals; and providing for emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-48-7b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS ACT.

§33-48-7b. Surplus available to subsidize premiums.

Whenever the board determines that the account created pursuant to section seven-a of this article contains a surplus above those amounts necessary to provide fully for the expected costs of claims and other expenses listed in subsection (a), section seven of this article, the plan may use
Such surpluses to subsidize the premium of enrollees with an annual average household income at or below four hundred percent of the federal poverty level. The board may propose emergency rules and shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish eligibility criteria for enrollees who are eligible for premium subsidy pursuant to this section.

CHAPTER 104

(COM. SUB. FOR S. B. 61 - BY SENATOR FOSTER)

[Passed March 4, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-5-2b; and to amend and reenact §62-15-4 of said code, all relating generally to juvenile drug courts; appointment of hearing officers for juvenile drug courts; and authorizing additional juvenile drug courts.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-5-2b; and that §62-15-4 of said code be amended and reenacted, all to read as follows:
CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.


Juvenile drug courts shall be designed and operated consistent with the developmental and rehabilitative needs of juveniles as defined in this article. The Supreme Court shall provide uniform referral, procedure and order forms that shall be used in juvenile drug courts. The Supreme Court is further authorized to appoint appropriate hearing officers in those jurisdictions which choose to operate a juvenile drug court. Hearing officers for juvenile drug courts shall be limited to current or senior status circuit court judges or family court judges.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 15. DRUG OFFENDER ACCOUNTABILITY AND TREATMENT ACT.


(a) Each judicial circuit or two or more adjoining judicial circuits may establish a drug court or regional drug court program under which drug offenders will be processed to address appropriately, the identified substance abuse problem as a condition of pretrial release, probation, incarceration, parole or other release from a correctional facility.

(b) The structure, method, and operation of each drug court program may differ and should be based upon the specific needs of and resources available to the judicial circuit or circuits where the drug court program is located.

(c) A drug court program may be preadjudication or post-adjudication for an adult offender.

(d) Participation in drug court, with the consent of the prosecution and the court, shall be pursuant to a written agreement.
(e) A drug court may grant reasonable incentives under the written agreement if it finds that the drug offender:

1. Is performing satisfactorily in drug court;
2. Is benefitting from education, treatment and rehabilitation;
3. Has not engaged in criminal conduct; or
4. Has not violated the terms and conditions of the agreement.

(f) A drug court may impose reasonable sanctions on the drug offender, including incarceration for the underlying offense or expulsion from the program, pursuant to the written agreement, if it finds that the drug offender:

1. Is not performing satisfactorily in drug court;
2. Is not benefitting from education, treatment or rehabilitation;
3. Has engaged in conduct rendering him or her unsuitable for the program;
4. Has otherwise violated the terms and conditions of the agreement; or
5. Is for any reason unable to participate.

(g) Upon successful completion of drug court, a drug offender's case shall be disposed of by the judge in the manner prescribed by the agreement and by the applicable policies and procedures adopted by the drug court. This may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred sentencing,
suspended sentencing, split sentencing, or a reduced period of incarceration.

(h) Drug court shall include the Ten Key Components and the drug court team shall act to ensure compliance with them.

(i) Nothing contained in this article confers a right or an expectation of a right to participate in a drug court nor does it obligate a drug court to accept every drug offender.

(j) Neither the establishment of a drug court nor anything herein may be construed as limiting the discretion of the jurisdiction’s prosecutor to act on any criminal case which he or she deems advisable to prosecute.

(k) Each drug court judge may establish rules and may make special orders as necessary that do not conflict with rules and orders promulgated by the Supreme Court of Appeals which has administrative authority over the courts. The Supreme Court of Appeals shall provide uniform referral, procedure and order forms that shall be used in all drug courts in this state.
month limitation for certain agreements between or among law-enforcement agencies to remain in effect; and permitting agreements between or among different law-enforcement agencies to remain in effect unless terminated.

Be it enacted by the Legislature of West Virginia:

That §15-10-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-4. Cooperation between law-enforcement agencies and other groups of state or local law-enforcement officers.

1 (a) The head of any law-enforcement agency, the head of any campus police or the head of the rangers of the Hatfield-McCoy regional recreational authority, as those terms are defined in section three of this article, may temporarily provide assistance and cooperation to another agency of the state criminal justice system or to a federal law-enforcement agency in investigating crimes or possible criminal activity if requested to do so in writing by the head of another law-enforcement agency or federal law-enforcement agency. Such assistance may also be provided upon the request of the head of the law-enforcement agency or federal law-enforcement agency without first being reduced to writing in emergency situations involving the imminent risk of loss of life or serious bodily injury. The assistance may include, but is not limited to, entering into a multijurisdictional task force agreement to integrate federal, state, county and municipal law-enforcement agencies or other groups of state or local law-enforcement officers, or any combination thereof, for the purpose of enhancing interagency coordination, intelligence gathering, facilitating multijurisdictional investigations, providing criminal justice
enforcement personnel of the law-enforcement agency to work temporarily with personnel of another agency, including in an undercover capacity, and making available equipment, training, technical assistance and information systems for the more efficient investigation, apprehension and adjudication of persons who violate the criminal laws of this state or the United States, and to assist the victims of such crimes. When providing the assistance under this article, a head of a law-enforcement agency shall comply with all applicable statutes, ordinances, rules, policies or guidelines officially adopted by the state or the governing body of the city or county by which he or she is employed, and any conditions or restrictions included therein.

(b) While temporarily assigned to work with another law-enforcement agency or agencies, criminal justice enforcement personnel and other state and local law-enforcement officers shall have the same jurisdiction, powers, privileges and immunities, including those relating to the defense of civil actions, as such criminal justice enforcement personnel would enjoy if actually employed by the agency to which they are assigned, in addition to any corresponding or varying jurisdiction, powers, privileges and immunities conferred by virtue of their continued employment with the assisting agency.

(c) While assigned to another agency or to a multijurisdictional task force, criminal justice enforcement personnel and other state and local law-enforcement officers shall be subject to the lawful operational commands of the superior officers of the agency or task force to which they are assigned, but for personnel and administrative purposes, including compensation, they shall remain under the control of the assisting agency. These assigned personnel shall continue to be covered by all employee rights and benefits provided by the assisting agency, including workers' compensation, to the same extent as though such personnel were functioning within the normal scope of their duties.
(d) No request or agreement between the heads of law-enforcement agencies, the heads of campus police or the head of the rangers of the Hatfield-McCoy regional recreation authority, made or entered into pursuant to this article shall remain in force or effect until a copy of said request or agreement is filed with the office of the circuit clerk of the county or counties in which the law-enforcement agencies, the campus police, or the Hatfield-McCoy regional recreation authority rangers involved operate. Agreements made pursuant to this article shall remain in effect unless and until the agreement is changed or withdrawn in writing by the head of one of the law-enforcement agencies. Upon filing, the requests or agreements may be sealed, subject to disclosure pursuant to an order of a circuit court directing disclosure for good cause. Nothing in this article shall be construed to limit the authority of the head of a law-enforcement agency, the head of campus police or the head of the rangers of the Hatfield-McCoy regional recreation authority to withdraw from any agreement at any time.

(e) Nothing contained in this article shall be construed so as to grant, increase, decrease or in any manner affect the civil service protection or the applicability of civil service laws as to any criminal justice enforcement personnel, or as to any state or local law-enforcement officer or agency operating under the authority of this article, nor shall this article in any way reduce or increase the jurisdiction or authority of any criminal justice enforcement personnel, or of any state or local law-enforcement officer or agency, except as specifically provided herein.

(f) Nothing contained in this article shall be construed so as to authorize the permanent consolidation or merger or the elimination of operations of participating federal, state, county municipal law-enforcement agencies, or other groups of state and local law-enforcement officers, the head campus police or the head of the rangers of the Hatfield-McCoy regional recreation authority.
AN ACT to amend and reenact §15-10-5 of the Code of West Virginia, 1931, as amended, relating to the extension of state law-enforcement authority to federal law-enforcement officers under certain circumstances; extending state law-enforcement authority to police and investigators with the Department of Veterans Affairs under appropriate circumstances; extending state law-enforcement authority to special investigators with the Office of Inspector General under appropriate circumstances; and extending state law-enforcement authority to federal air marshals under appropriate circumstances.

Be it enacted by the Legislature of West Virginia:

That §15-10-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-5. Federal officers’ peace-keeping authority.

1 (a) Notwithstanding any provision of this code to the contrary, any person who is employed by the United States government as a federal law-enforcement officer and is listed
in subsection (b) of this section, has the same authority to
enforce the laws of this state, except state or local traffic laws
or parking ordinances, as that authority granted to state or
local law-enforcement officers, if one or more of the
following circumstances exist:

(1) The federal law-enforcement officer is requested to
provide temporary assistance by the head of a state or local
law-enforcement agency or the designee of the head of the
agency and that request is within the state or local law-
enforcement agency's scope of authority and jurisdiction and
is in writing: Provided, That the request does not need to be
in writing if an emergency situation exists involving the
imminent risk of loss of life or serious bodily injury;

(2) The federal law-enforcement officer is requested by
a state or local law-enforcement officer to provide the officer
temporary assistance when the state or local law-enforcement
officer is acting within the scope of the officer's authority
and jurisdiction and where exigent circumstances exist; or

(3) A felony is committed in the federal law-enforcement
officer's presence or under circumstances indicating a felony
has just occurred.

(b) This section applies to the following persons who are
employed as full-time federal law-enforcement officers by
the United States government and who are authorized to
carry firearms while performing their duties:

(1) Federal Bureau of Investigation special agents;

(2) Drug Enforcement Administration special agents;

(3) United States Marshal's Service marshals and deputy
marshals;
(4) United States postal service inspectors;

(5) Internal revenue service special agents;

(6) United States secret service special agents;

(7) Bureau of alcohol, tobacco, and firearms special agents;

(8) Police officers employed pursuant to 40 U.S.C. §§318 and 490 at the federal bureau of investigation’s criminal justice information services division facility located within this state;

(9) Law-enforcement commissioned rangers of the national park service;

(10) Department of Veterans Affairs Police and Department of Veterans Affairs special investigators;

(11) Office of Inspector General special agents; and

(12) Federal Air Marshals with the Federal Air Marshal Service.

(c) Any person acting under the authority granted pursuant to this section:

(1) Has the same authority and is subject to the same exemptions and exceptions to this code as a state or local law-enforcement officer;

(2) Is not an officer, employee, or agent of any state or local law-enforcement agency;

(3) May not initiate or conduct an independent investigation into an alleged violation of any provision of this
code except to the extent necessary to preserve evidence or
testimony at risk of loss immediately following an occurrence
described in subdivision (3), subsection (a) of this section;

(4) Is subject to 28 U.S.C. §1346, the Federal Tort Claims
Act; and

(5) Has the same immunities from liability as a state or
local law-enforcement officer.

CHAPTER 107

(Com. Sub. for S. B. 193 - By Senators
Foster, Kessler (Acting President), Chafin,
Hall, Jenkins, Laird, Minard, Palumbo,
Snyder, Williams, Unger and Plymale)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §30-29-1, §30-29-2, §30-29-3 and
§30-29-5 of the Code of West Virginia, 1931, as amended; and
to amend said code by adding thereto a new section, designated
§30-29-11, all relating to certifying law-enforcement officers
generally; expanding the responsibilities of the law-
enforcement training subcommittee and renaming it the law-
enforcement professional standards subcommittee; clarifying
the authority to decertify or reactivate a law-enforcement
officer’s certification; adding the West Virginia Troopers
Association to the subcommittee membership; expanding
duties of the Governor’s committee and the subcommittee;
providing consequences for the failure to be certified process
for making inactive the certification of officers who separate
from their employment; reactivating a law-enforcement officer's certification; rehiring of officer reactivated not required; and providing for immunity from civil liability.

Be it enacted by the Legislature of West Virginia:

That §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-29-11, all to read as follows:

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:

(1) "Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) "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;

(3) "County" means the fifty-five major political subdivisions of the state;

(4) "Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;
(5) "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;

(6) "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;

(7) "Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

(8) "Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;
52 (9) "Subcommittee" or "law-enforcement professional standards subcommittee" means the subcommittee of the Governor's committee on crime, delinquency and correction created by section two of this article; and

56 (10) "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.

§30-29-2. Law-enforcement professional standards subcommittee.

(a) The law-enforcement training subcommittee of the Governor's committee on crime, delinquency and corrections is continued and renamed the Law-Enforcement Professional Standards Subcommittee. The subcommittee has the following responsibilities:

(1) Review and administer programs for qualification, training and certification of law-enforcement officers in the state; and

(2) Consider applications by law-enforcement officers whose certification is deemed inactive as a result of his or her separation from employment with a law-enforcement agency.

(b) The subcommittee shall be comprised of eleven members of the Governor's committee including one representative of each of the following:

(1) West Virginia State Police;
Law-enforcement section of the Department of Natural Resources;

(3) West Virginia Sheriffs Association;

(4) West Virginia Association of Chiefs of Police;

(5) West Virginia Deputy Sheriffs Association;

(6) West Virginia State Lodge Fraternal Order of Police;

(7) West Virginia Municipal League;

(8) West Virginia Association of county officials;

(9) Human Rights Commission;

(10) West Virginia Trooper's Association; and

(11) The public at large.

c) The subcommittee shall elect a chairperson and a vice chairperson. Special meetings may be held upon the call of the chairperson, vice chairperson or a majority of the members of the subcommittee. A majority of the members of the subcommittee constitutes a quorum.

§30-29-3. Duties of the Governor's committee and the subcommittee.

Upon recommendation of the subcommittee, the Governor's committee shall, by or pursuant to rules proposed for legislative approval in accordance with article three, chapter twenty-nine-a of this code:

(a) Provide funding for the establishment and support of law-enforcement training academies in the state;
(b) Establish standards governing the establishment and operation of the law-enforcement training academies, including regional locations throughout the state, in order to provide access to each law-enforcement agency in the state in accordance with available funds;

c (c) Establish minimum law-enforcement instructor qualifications;

d (d) Certify qualified law-enforcement instructors;

e (e) Maintain a list of approved law-enforcement 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 or de-certify or reactivate law-enforcement officers, as provided in sections five and eleven of this article;

(l) Establish standards and procedures for the reporting of complaints and certain disciplinary matters concerning law-enforcement officers and for reviewing the certification of law-enforcement officers. These standards and procedures shall provide for preservation of records and access to records by law-enforcement agencies and conditions as to how the information in those records is to be used regarding an officer’s law-enforcement employment by another law enforcement agency;
(1) The subcommittee shall establish and manage a database that is available to all law-enforcement agencies in the state concerning the status of any person's certification.

(2) Personnel or personal information not resulting in a criminal conviction is exempt from disclosure pursuant to the provisions of chapter twenty-nine-b of this code.

(m) Seek supplemental funding for law-enforcement training academies from sources other than the fees collected pursuant to section four of this article;

(n) Any responsibilities and duties as the Legislature may, from time to time, see fit to direct to the committee; and

(o) 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 established pursuant to section four of this article.

§30-29-5. Certification requirements and power to decertify or reinstate.

(a) Except as provided in subsections (b) and (g) below, a person may not be employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any state institution of higher education or by the Public Service Commission of West Virginia on or after the effective date of this article unless the person is certified, or is certifiable in one of the manners specified in subsections (c) through (e) below, by the Governor's committee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article: Provided, That the provisions of this section do not apply to persons hired by the Public Service Commission as
motor carrier inspectors and weight enforcement officers before July 1, 2007.

(b) Except as provided in subsection (g) below, a person who is not certified, or certifiable in one of the manners specified in subsections (c) through (e) below, may be conditionally employed as a law-enforcement officer until certified: Provided, That within ninety calendar days of the commencement of employment or the effective date of this article if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy. The person’s employer shall provide notice, in writing, of the ninety-day deadline to file a written application to the academy within thirty calendar days of that person’s commencement of employment. The employer shall provide full disclosure as to the consequences of failing to file a timely written application. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant’s enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. An applicant who satisfactorily completes the program shall, within thirty days of completion, make written application to the Governor’s committee requesting certification as having met the minimum entry level law-enforcement qualification and training program requirements. Upon determining that an applicant has met the requirements for certification, the Governor’s committee shall forward to the applicant documentation of certification. An applicant who fails to complete the training program to which he or she is first admitted, or was admitted upon reapplication, may not be certified by the Governor’s committee: Provided, however, That an applicant who has completed the minimum training required by the Governor’s committee may be
certified as a law-enforcement officer, notwithstanding the applicant's failure to complete additional training hours required in the training program to which he or she originally applied.

(c) Any person who is employed as a law-enforcement officer on the effective date of this article and is a graduate of the West Virginia basic police training course, the West Virginia State Police cadet training program, or other approved law-enforcement training academy, is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy. To receive certification, the person shall make written application within ninety calendar days of the effective date of this article to the Governor's committee requesting certification. The Governor's committee shall review the applicant's relevant scholastic records and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(d) Any person who is employed as a law-enforcement officer on the effective date of this article and is not a graduate of the West Virginia basic police training course, the West Virginia State Police Cadet Training Program, or other approved law-enforcement training academy, is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy if the person has been employed as a law-enforcement officer for a period of not less than five consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the Governor's committee requesting certification. The
application shall include notarized statements as to the applicant's years of employment as a law-enforcement officer. The Governor's committee shall review the application and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(e) Any person who begins employment on or after the effective date of this article as a law-enforcement officer is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from attending a law-enforcement training academy if the person has satisfactorily completed a course of instruction in law enforcement equivalent to or exceeding the minimum applicable law-enforcement training curricula promulgated by the Governor's committee. To receive certification, the person shall make written application within ninety calendar days following the commencement of employment to the Governor's committee requesting certification. The application shall include a notarized statement of the applicant's satisfactory completion of the course of instruction in law enforcement, a notarized transcript of the applicant's relevant scholastic records, and a notarized copy of the curriculum of the completed course of instruction. The Governor's committee shall review the application and, if it finds the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(f) Except as provided in subdivisions (1) through (3) below, any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified shall be automatically terminated and no further emoluments shall be paid to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a private citizen, to the subcommittee for training and certification, and upon being certified may again be employed as a law-enforcement officer in this state:
Provided, That if a person is terminated under this subsection because an application was not timely filed to the academy, and the person's employer failed to provide notice or disclosure to that person as set forth in subsection (b) of this section, the employer shall pay the full cost of attending the academy if the person's application to the subcommittee as a private citizen is subsequently approved.

(1) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of hardship and/or circumstance beyond his or her control may apply to the director of a training academy for reentry to the next available academy.

(2) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of voluntary separation from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of voluntary separation from an academy program may not be conditionally employed as a law-enforcement officer for a period of two years from the date of voluntary separation.

(3) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of dismissal from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of dismissal from an academy program may not be conditionally employed as a law-enforcement officer for a period of five years from the date of dismissal and receiving approval from the subcommittee.

(g) Nothing in this article may be construed as prohibiting any governing body, Civil Service Commission or chief executive of any West Virginia law-enforcement
agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement qualification and training curricula promulgated by the Governor's committee.

(h) The Governor's committee, or its designee, may decertify or reactivate a law-enforcement officer pursuant to the procedure contained in this article and legislative rules promulgated by the Governor's committee.

(i) The requirement of this section for qualification, training and certification of law-enforcement officers shall not be mandatory during the two years next succeeding July 9, 1981 for the law-enforcement officers of a law-enforcement agency which employs a civil service system for its law-enforcement personnel, nor shall such provisions be mandatory during the five years next succeeding July 9, 1981 for law-enforcement officers of a law-enforcement agency which does not employ a civil service system for its law-enforcement personnel: Provided, That these requirements are mandatory for all such law-enforcement officers until their law-enforcement officials apply for their exemption by submitting a written plan to the Governor's committee which will reasonably assure compliance of all law-enforcement officers of their agencies within the applicable two or five-year period of exemption.

(j) Any person aggrieved by a decision of the Governor's committee made pursuant to this article may contest the decision in accordance with the provisions of article five, chapter twenty-nine-a of this code.

(k) Any person terminated from employment for not filing an application to the law-enforcement training academy within ninety days after commencing employment as a law-enforcement officer may appeal the termination to the
Governor’s committee for reconsideration on an individual basis.

(l) Beginning July 1, 2002 until June 30, 2003, any applicant who has been conditionally employed as a law-enforcement officer who failed to submit a timely application pursuant to the provisions of this section, may be conditionally employed as a law-enforcement officer and may resubmit an application pursuant to subsection (b) of this section to an approved law-enforcement training academy. If the applicant is accepted, the employer shall pay compensation to the employee for attendance at the law-enforcement training academy at the rate provided in section eight of this article.

§30-29-11. Certified law-enforcement officers who are separated from their employment.

(a) The certification of a law-enforcement officer who is separated from his or her employment with a West Virginia law-enforcement agency, shall immediately become inactive and remain inactive until the subcommittee authorizes reactivation of the officer's certification pursuant to the procedure set forth in this section.

(b) Whenever a law-enforcement officer is separated from his or her employment with a West Virginia law-enforcement agency, the chief law-enforcement officer of that law-enforcement agency shall notify the subcommittee of the separation within ten days of the date of separation. The notification of the separation from employment shall include reason or reasons the officer is no longer employed.

(c) A person whose law-enforcement certification has become inactive pursuant to subsection (a), may apply to the subcommittee to have his or her certification reactivated.
(d) At the time of his or her application, an applicant for the reactivation of his or her certification, whether for employment purposes or otherwise, shall provide the subcommittee with an authorization for the release of his or her personnel file from the law-enforcement agency with which they were most recently employed.

(e) Upon receipt of an application for reactivation, the subcommittee shall review the notification of separation received from the law-enforcement agency with which the applicant was most recently employed, and unless the notification indicates that the separation from employment was based on circumstances that would result in the applicant being ineligible for certification pursuant to section five of this article, the subcommittee shall grant the applicant a temporary reactivation of his or her certification until a final determination is made pursuant to subsection (i).

(f) The subcommittee may request that the law-enforcement agency from which the applicant was most recently separated, provide a copy of the applicants personnel file or other information relevant to the applicant’s separation of employment.

(g) Upon receipt of a request by the subcommittee, the chief law-enforcement official of the law-enforcement agency with which the applicant was most recently employed, or his or her designee, shall, within eight calendar days, provide the subcommittee with a copy of the applicant’s personnel file or other information relevant to the applicant’s separation of employment.

(h) An applicant shall be entitled to a copy of all documents or other materials submitted to the subcommittee related to the application.
(i) Within thirty days of the receipt of the applicant's personnel file or any other information provided by the law-enforcement agency, the subcommittee shall review the information and issue a final decision.

(j) For the purpose of making a determination on an application for reactivation, the subcommittee is authorized to examine witnesses and to subpoena persons, books, records or documents from law-enforcement agencies in this state.

(k) An application for reactivation shall be approved unless the subcommittee affirmatively demonstrates, in writing, that the applicant has engaged in conduct that may result in his or her decertification. Where information available to the subcommittee indicates that the applicant has engaged in conduct that is in violation of this article or other laws or rules, the application for reactivation may not be granted.

(l) An applicant whose certification is not reactivated pursuant to a final decision of the subcommittee, may appeal the final decision of the subcommittee to the Governor's committee.

(m) Nothing in this section shall be construed to require the rehiring of a person by a law enforcement agency from which he or she was separated, even though the subcommittee authorizes his or her certification to be reactivated.

(n) A law-enforcement official, or appointing officer, or his or her designee, is immune from civil liability for providing to the subcommittee any information required or requested by this section.
(o) The provisions of this section apply only to those certified law-enforcement officers who are separated from employment with a West Virginia law enforcement agency after the effective date of this section during the 2011 Regular Session of the Legislature.

CHAPTER 108

(Com. Sub. for S. B. 112 - By Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer)

[Passed March 12, 2011; in effect from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact article 2, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Administration; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing the Department of Administration to
promulgate a legislative rule relating to state-owned vehicles; 
authorizing the Consolidated Public Retirement Board to 
promulgate a legislative rule relating to general provisions; 
authorizing the Consolidated Public Retirement Board to 
promulgate a legislative rule relating to Teachers' Defined 
Contribution Retirement System; authorizing the Consolidated 
Public Retirement Board to promulgate a legislative rule 
relating to Public Employees Retirement System; authorizing 
the Consolidated Public Retirement Board to promulgate a 
legislative rule relating to refund, reinstatement, retroactive 
service, loan and employer error interest factors; authorizing 
the Consolidated Public Retirement Board to promulgate a 
legislative rule relating to the West Virginia State Police; and 
authorizing the Ethics Commission to promulgate a legislative 
rule relating to forms.

Be it enacted by the Legislature of West Virginia:

That article 2, chapter 64 of the Code of West Virginia, 1931, 
as amended, be amended and reenacted to read as follows:

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

§64-2-1. Department of Administration.

The legislative rule filed in the state register on the 
twenty-sixth day of July, two thousand ten, authorized under 
the authority of section two, article one, chapter five-a of this 
code, modified by the Department of Administration to meet 
the objections of the Legislative Rule-Making Review 
Committee and refiled in the state register on the twenty-first 
day of January, two thousand eleven, relating to the 
Department of Administration (state owned vehicles, 148 
CSR 3), is authorized with the following amendments:
On page one, subsection 1.1., by striking out all of subsection 1.1 and inserting in lieu thereof a new subsection 1.1 to read as follows:

"1.1 Scope. - This Rule governs all state owned and leased vehicles and aircraft, including the minimal requirements for all state spending units that have a state vehicle and/or aircraft in their possession."

On page four, section 4, by striking out all of section 4 and inserting in lieu thereof a new section four to read as follows:

"§148-3-4. Titles to State owned or Long-Term Leased Vehicles

Vehicles may be titled in the name of the spending unit. The Fleet Management Office will coordinate with spending units to ensure standardized naming convention. For Model Years beginning with 2011, the Fleet Management Office will initiate the titling and registration process, digitize, and safeguard the original title. The original title documents for the Model Years prior to 2011 will be provided to the Fleet Management Office for digitization and safekeeping. Spending units will be provided with web-enabled, secure access to and/or digitized copy of the title documents. Original titling documents will be returned to the spending unit within five (5) business days of a determination by the Department of Administration, Board of Risk and Insurance Management that the vehicle is no longer insurable; or the vehicle is scheduled for decommissioning activity by the spending unit."

On page four, subsection 5.1., by striking out all of subsection 5.1. and inserting in lieu thereof a new subsection 5.1. to read as follows:

"5.1. A vehicle lease may be terminated by the Fleet Management Office for failing to maintain the vehicle;
vehicle abuse beyond the intended purpose of the vehicle; or
becoming seriously delinquent (more than 90 days).”;

On pages four and five, subsection 5.4., by striking out
all of subsection 5.4. and inserting in lieu thereof a new
subsection 5.4. to read as follows:

“5.4. All vehicles governed by this rule should meet
minimum utilization criteria established by the Fleet
Management Office. Justification for each underutilized
vehicle will be provided by the assigned Cabinet Secretary
using the Fleet Management Office designated form.
Utilization criteria will apply to each vehicle individually;
consider periods of inactivity; specialized vehicle mission;
cost effectiveness; minimum mileage requirements; and the
current replacement methodology established by the Fleet
Management Office. Minimum utilization criteria will be
reviewed by the Fleet Management Office each fiscal year,
provided to assigned cabinet secretary, and included in an
annual report to the Executive and Legislative branches of
State Government.”;

On page seven, after subdivision 8.8.6., by inserting a
new subsection 8.9. to read as follows:

“8.9. Confidentially played vehicles may be excluded, at the
discretion of the spending unit, from any automated fleet
management program: Provided, That information necessary to
accurately report the vehicle for asset management purposes,
such as vehicle class, model year, drive type, in-service date, and
odometer reading as well as vehicle commuting status for fringe
benefit reporting purposes will be provided by the fifth working
day of each month by the spending unit using the Fleet
Management Office designated form.”;

On page nine, subsection 10.1., by striking out all of
subsection 10.1. and inserting a new subsection 10.1. to read
as follows:
10.1. Any long-term vehicle lease must first be approved by the Fleet Management Office. Any vehicle purchase must first be reviewed by the Fleet Management Office.

Regardless of vehicle acquisition method, spending units should not increase their fleet size without prior notification to the Fleet Management Office. A designated form will be processed by the Fleet Management Office with response provided to spending unit within five (5) business days from receipt of the designated form by the Fleet Management Office.

And,

On page eleven, subdivision 10.9.1., by striking out the first sentence and inserting in lieu thereof a new first sentence to read as follows:

"Accidents and damage to vehicles and aircraft must be reported to the Fleet Management Office and the Board of Risk and Insurance Management by the spending unit on the day of the accident if practical or the next business day if it is impractical to report the accident."


(a) The legislative rule filed in the state register on the twenty-second day of July, two thousand ten, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (general provisions, 162 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-second day of July, two thousand ten, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement
Board (Teachers' Defined Contribution System, 162 CSR 3), is authorized.

(c) The legislative rule filed in the state register on the twenty-second day of July, two thousand ten, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (Public Employees Retirement System, 162 CSR 5), is authorized with the following amendments:

On page two, subdivision 5.1.4., by striking out the word “5.1.2.” and inserting in lieu thereof the word “5.1.3.”;

And,

On page two, subdivision 5.1.5., by striking out the word “5.1.3.” and inserting in lieu thereof the word “5.1.4.”.

(d) The legislative rule filed in the state register on the twenty-second day of July, two thousand ten, authorized under the authority of section one, article ten-d, chapter five of this code, relating to the Consolidated Public Retirement Board (refund, reinstatement, retroactive service, loan and employer error interest factors, 162 CSR 7), is authorized with the following amendment:

On page five, subsection 4.2., by striking out all of subsection 4.2. and inserting in lieu thereof a new subsection 4.2. to read as follows:

“4.2. West Virginia State Police Death, Disability and Retirement Fund. In the event a member of the West Virginia State Police Death, Disability and Retirement Funds requests and is determined to be eligible to restore retirement system service credit for periods of previously terminated employment, the member shall pay into the West Virginia State Police Retirement System as established in W. Va. Code §15-2A-1 et seq., any contributions which the member may have previously
withdrawn from the West Virginia State Police Death, Disability
and Retirement Fund at the termination of any prior periods of
employment, plus reinstatement interest at the rate specified in
W. Va. Code §15-2-37(b).”

(e) The legislative rule filed in the state register on the
twenty-second day of July, two thousand ten, authorized
under the authority of section one, article ten-d, chapter five
of this code, relating to the Consolidated Public Retirement
Board (West Virginia State Police, 162 CSR 9), is authorized.


The legislative rule filed in the state register on the
twenty-fourth day of June, two thousand ten, authorized
under the authority of section two, article two, chapter six-b
of this code, modified by the Ethics Commission to meet the
objections of the Legislative Rule-Making Review
Committee and refiled in the state register on the twentieth
day of August, two thousand ten, relating to the Ethics
Commission (forms, 158 CSR 20), is authorized.

CHAPTER 109

(Com. Sub. for S. B. 121 - By Senators
Minard, Snyder, Prezioso, Unger,
Boley and K. Facemyer)

[Amended and again passed March 18, 2011, in an effort to meet the
objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2011.]

AN ACT to amend and reenact article 3, chapter 64 of the Code of
West Virginia, 1931, as amended, relating generally to the
promulgation of administrative rules by the Department of Environmental Protection; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management systems; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to permits for construction and major modification of major stationary sources of air pollution which cause or contribute to nonattainment; authorizing the Department of
Environmental Protection to promulgate a legislative rule relating to the control of air pollution from hazardous waste treatment, storage and disposal facilities; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the National Pollutant Discharge Elimination System (NPDES) Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing groundwater standards; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to monitoring well design standards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

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

(a) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section six, article eighteen, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-first day of September, two thousand ten, relating to the Department of Environmental Protection (hazardous waste management system, 33 CSR 20), is authorized.
The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section four, article three, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the eighteenth day of January, two thousand eleven, relating to the Department of Environmental Protection (surface mining reclamation, 38 CSR 2), is authorized with the following amendments:

On page fifty-four, subdivision 3.32.b., by striking out the words "For the purposes of W.Va. Code §22-3-19(a)(1)(B), an operator shall be considered in compliance with the applicable environmental performance standards referenced therein unless it has unabated cessation orders, notices of violations that are not in the process of being abated to the Secretary's satisfaction, delinquent civil penalties, or bond forfeitures."

On pages one hundred fifty-four and one hundred fifty-five, paragraph 12.2.a.1., by striking out all of paragraph 12.2.a.1. and inserting in lieu thereof a new paragraph 12.2.a.1. to read as follows:

"12.2.a.1. The permittee may file an application with the Secretary for the release of all or part of a bond. Applications may be filed only at times or during seasons established by the Secretary which allow proper evaluation of the completed reclamation operations."

And,

On page one hundred seventy-seven, subdivision 14.11.h., by striking out the words "e. and f." and inserting in lieu thereof the words "e., f. and g."
(c) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (ambient air quality standards, 45 CSR 8), is authorized.

(d) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the eleventh day of January, two thousand eleven, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration, 45 CSR 14), is authorized with the following amendment:

On page twenty, after paragraph 2.80.e.2., by adding the following:

"2.80.f. Notwithstanding subdivisions 2.80.d. and 2.80.e., and subject to the public notice requirements set forth in subdivision 2.80.g., the preconstruction permit requirements of this rule shall not apply to a source’s GHG emissions if any of the following actions result in GHGs not being subject to regulation under the otherwise applicable federal prevention of significant deterioration requirements set forth in 40 CFR §51.166:

2.80.f.1. A US EPA final rule;

2.80.f.2. An act of the United States Congress;

2.80.f.3. A Presidential Executive Order;
2.80.f.4. A final order of the District of Columbia Circuit Court of Appeals, if the specified time for appealing the order has lapsed and no appeals, petitions seeking clarification or rehearing, or other petitions regarding the order have been filed, or, if any appeals or petitions are filed, the resolution of any and all appeals and petitions regarding the final order are complete and have upheld the relevant determination(s). Moreover, a stay shall also create an exemption during the effective length of the stay. These two specific exemptions shall become effective only if US EPA does not object in writing by the end of the notice period set forth in subdivision 2.80.g.; or

2.80.f.5. An order of the United States Supreme Court.

2.80.g. The exemption set forth in subdivision 2.80.f. shall become effective after the Secretary provides a thirty day notice of such exemption to US EPA and the public. Such notice shall be published in the West Virginia Register and explain the circumstances justifying the exemption."

(e) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(f) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, authorized under the authority of section four, article five, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the eleventh day of January, two thousand eleven, relating to the Department of Environmental Protection (control of air pollution from combustion of solid waste, 45 CSR 18), is authorized.
(g) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources of air pollution which cause or contribute to nonattainment, 45 CSR 19), is authorized.

(h) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (control of air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized.

(i) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the Department of Environmental Protection (emission standards for hazardous air pollutants, 45 CSR 34), is authorized.

(j) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section four, article eleven, chapter twenty-two of this code, relating to the Department of Environmental Protection (requirements governing water quality standards, 47 CSR 2), is authorized with the following amendments:

On pages two and three, subsection 3.1, by striking out the words “and certain water withdrawal activities”;

On page three, subsection 3.2, by striking out the words “or water withdrawal activities”;
On page fourteen, subdivision 8.2.b., striking out all of subdivision 8.2.b. and inserting in lieu thereof a new subdivision 8.2.b. to read as follows:

"8.2.b. For waters other than the Ohio River between river mile points 68.0 and 70.0, a final determination on the critical design flow for carcinogens is not made in this rule, in order to permit further review and study of that issue. Following the conclusion of such review and study, the Legislature may again take up the authorization of this rule for purposes of addressing the critical design flow for carcinogens: Provided, That until such time as the review and study of the issue is concluded or until such time as the Legislature may again take up the authorization of this rule, the regulatory requirements for determining effluent limits for carcinogens shall remain as they were on the date this rule was proposed."

On page fourteen, after subdivision 8.2.b., by adding a new paragraph 8.2.b.1. to read as follows:

"8.2.b.1. For the Ohio River between river mile points 68.0 and 70.0 the critical design flow for determining effluent limits for carcinogens shall be harmonic mean flow.";

On page fourteen, subdivision 8.3.b., by striking out all of subdivision 8.3.b.;

On page fourteen, paragraph 8.3.b.1., by striking out all of paragraph 8.3.b.1.;

On page fourteen, subparagraph 8.3.b.1.A., by striking out all of subparagraph 8.3.b.1.A.;

And,

On page forty-seven, by striking out all of parameter 8.32 and renumbering the remaining parameters.
(k) The legislative rule filed in the State Register on April 8, 2010, authorized under the authority of section four, article eleven, chapter twenty-two of this code, approved for promulgation by the Legislature on March 13, 2010, relating to the Department of Environmental Protection (National Pollutant Discharge Elimination System (NPDES) Program, 47 CSR 10), is authorized with the following amendments:


"13.1.b.4.A.13. Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system."


On page forty-four, part 13.1.b.4.B.1, by striking out all of part 13.1.b.4.B.1.;

And,


(I) The legislative rule filed in the state register on the twenty-third day of July, two thousand ten, authorized under the authority of section four, article twelve, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the fourteenth day of September, two thousand ten, relating to the Department of Environmental Protection (requirements governing groundwater standards, 47 CSR 12), is authorized.
(m) The legislative rule filed in the state register on the twenty-sixth day of July, two thousand ten, authorized under the authority of section five, article twelve, chapter twenty-two of this code, modified by the Department of Environmental Protection to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-second day of September, two thousand ten, relating to the Department of Environmental Protection (monitoring well design standards, 47 CSR 60), is authorized.

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CHAPTER 110

(Com. Sub. for S. B. 295 - By Senators Minard, Snyder, Prezioso, Unger, Boley and K. Facemyer)

[Amended and again passed March 18, 2011, in an effort to meet the objections of the Governor; in effect from passage.]
[Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact article 5, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Health and Human Resources; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate
certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to specialized multipatient medical transport; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to food manufacturing facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fire department rapid response services licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to cancer registry; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to maternal risk screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to safety and treatment programs; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to requirements for licensure of nonprofit corporations for conservator service; and authorizing the Health Care Authority to promulgate a legislative rule relating to certificates of need.

Be it enacted by the Legislature of West Virginia:

That article 5, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-5-1. Department of Health and Human Resources.

1 (a) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand ten, authorized under
the authority of section four, article one, chapter sixteen, of
this code, relating to the Department of Health and Human
Resources (public water systems, 64 CSR 3), is authorized.

(b) The legislative rule filed in the state register on the
thirtieth day of July, two thousand ten, authorized under the
authority of section six, article four-c, chapter sixteen, of this
code, relating to the Department of Health and Human
Resources (specialized multipatient medical transport, 64
CSR 29), is authorized.

(c) The legislative rule filed in the state register on the
twenty-ninth day of July, two thousand ten, authorized under
the authority of section four, article one, chapter sixteen, of this
code, modified by the Department of Health and Human
Resources to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the state register on
the third day of January, two thousand eleven, relating to the
Department of Health and Human Resources (food
manufacturing facilities, 64 CSR 43), is authorized.

(d) The legislative rule filed in the state register on the
thirtieth day of July, two thousand ten, authorized under the
authority of section six, article four-c, chapter sixteen, of this
code, relating to the Department of Health and Human
Resources (fire department rapid response services licensure,
64 CSR 44), is authorized.

(e) The legislative rule filed in the state register on the
thirtieth day of July, two thousand ten, authorized under the
authority of section six, article four-c, chapter sixteen, of this
code, modified by the Department of Health and Human
Resources to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the state register on
the twenty-fourth day of January, two thousand eleven,
relating to the Department of Health and Human Resources
(emergency medical services, 64 CSR 48), is authorized with the following amendments:

On page four, subsection 2.12., by striking out the word "commissioner" and inserting in lieu thereof the word "Commissioner";

On page seven, subsection 2.46., by striking out all of subsection 2.46.;

On page eight, subsection 3.1.d., by striking out the word "Commissions" and inserting in lieu thereof the word "commission";

On page eight, subdivision 3.2.b., by striking out all of subdivision 3.2.b. and inserting in lieu thereof a new subdivision 3.2.b. to read as follows:

"3.2.b. EMS agencies shall collect, maintain and report accurate patient data for all EMS incidents. Agencies shall complete a patient care report (PCR) for all EMS incidents. PCRs shall be complete and submitted to the West Virginia Prehospital Information System (PreMIS) following the conclusion of providing EMS services to a patient, in accordance with policies and guidelines established by OEMS."

On page nine, subdivision 3.2.c., by striking out the words "a minimum written patient handoff report," and inserting in lieu thereof the words "at a minimum a patient handoff report";

On page fourteen, subdivision 4.23.a., by striking out all of subdivision 4.23.a. and inserting in lieu thereof a new subdivision 4.23.a. to read as follows:

"4.23.a. The EMS agency has a rapid response program which routinely places trained and equipped personnel on the
scene of potential life-threatening emergencies prior to the arrival of an ambulance in accordance with policies and guidelines established by OEMS. Five (5) points; or”;

On page fifteen, subdivision 4.27.d., by striking out “of . . .”;

On page eighteen, paragraph 4.36.b.2., after the word “action” by inserting the word “to”;

On page nineteen, subdivision 4.37.h., by striking out the words “event of” and inserting in lieu thereof the words “the event”; On page nineteen, subdivision 4.38.a., by striking out the word “state” and inserting in lieu thereof the word “State”; On page twenty, subdivision 5.1.a., by striking out the words “Ground ambulances shall meet applicable US Government Services Agency KKK-A-1822” and inserting in lieu thereof the words “Unless specified differently herein, ground ambulances shall meet US Government Services Agency KKK-A-1822 or subsequent federally approved”; On page twenty, subdivision 5.1.c., by striking the word “Unites” and inserting in lieu thereof the word “United”; On page twenty-one, subdivision 5.1.i., by striking out the word “be”; On page twenty-one, subdivision 5.1.j., by striking out the words “medication kit and its supplies” and inserting in lieu thereof the words “medications in accordance with policies and guidelines established by OEMS”; On page twenty-two, paragraph 5.1.k.5., by striking out the words “accordance with applicable US Government Services Agency KKK-A-1822 specifications at the time of vehicle manufacture”;
On page twenty-three, subdivision 5.3.b., by striking out the words “requirements are” and inserting in lieu thereof the word “is”; 

On page twenty-three, subdivision 5.3.b., after the words “practice and” by inserting the words “appropriate staff”; 

On page twenty-three, subsection 5.4., by striking out the words “be a Federal Aviation Administration (FAA) Part 135 air carrier certificate holder” and inserting in lieu thereof the words “operate under Federal Aviation Administration (FAA) Part 135 rules”; 

On page twenty-six, paragraph 5.5.b.7., by striking out the words “requirements are” and inserting the word “is”; 

On page twenty-six, subsection 5.5.b.7., after the words “practice and” by inserting the words “appropriate staff”; 

On page twenty-seven, subdivision 6.1.a., by striking out the word “apriority” and inserting in lieu thereof the word “primary”; 

On page thirty-three, subdivision 6.9., by striking out the word “establish” and inserting in lieu thereof the word “established”; 

On page thirty-five, subdivision 7.2.e., by striking out the word “Other” and inserting in lieu thereof the word “other”; 

On page forty-five, paragraph 8.4.a.1., by striking out “STEMS” and inserting in lieu thereof “OEMS”; 

On page forty-five, paragraph 8.4.a.2., by striking out “STEMS” and inserting in lieu thereof “OEMS”; 

On page forty-six, subparagraph 8.4.c.1.A., by striking out “STEMS” and inserting in lieu thereof “OEMS”;
On page forty-six, subparagraph 8.4.c.2.E., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page forty-eight, paragraph 8.5.b.1., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty, subparagraph 9.1.a.3.A., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-one, subparagraph 9.1.b.1.B., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-two, subparagraph 9.1.c.2.J., by striking out the words "Assist STEMS in ensuring" and inserting in lieu thereof the word "Ensure";

On page fifty-two, subparagraph 9.1.c.2.N., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-two, paragraph 9.1.c.3., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-three, subdivision 9.2.a., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-four, subparagraph 9.2.a.1.A., striking out both references to "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-four, subparagraph 9.2.a.1.C., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-four, subparagraph 9.2.a.1.D., by striking out "STEMS" and inserting in lieu thereof "OEMS";

On page fifty-four, subparagraph 9.2.a.3.E., by striking out "STEMS" and inserting in lieu thereof "OEMS";
On page fifty-four, subparagraph 9.2.a.3.F., by striking out both references to “STEMS” and inserting in lieu thereof “OEMS”;

On page fifty-five, paragraph 9.2.a.4, by striking out “STEMS” and inserting in lieu thereof “OEMS”;

On page fifty-five, subdivision 10.3.d, by striking out “STEMS” and inserting in lieu thereof “OEMS”;

And,

On page fifty-six, subsection 10.6, by striking out “STEMS” and inserting in lieu thereof “OEMS”.

(f) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand ten, authorized under the authority of section four, article one, chapter sixteen, of this code, relating to the Department of Health and Human Resources (cancer registry, 64 CSR 68), is authorized.

(g) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand ten, authorized under the authority of section four, article four-e, chapter sixteen, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the third day of January, two thousand eleven, relating to the Department of Health and Human Resources (maternal risk screening, 64 CSR 97), is authorized with the following amendments:

On page two, subsection 5.3., after the words “Family Health” by inserting the words “by FAX to (304)957-0176”;

And,

On page two, subsection 5.3., by deleting the words “BPH/OM/CFH Maternal Risk Screening 350 Capitol Street, Room 427 Charleston, WV 25301”.

The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section three, article five-a, chapter seventeen-c, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the third day of December, two thousand ten, relating to the Department of Health and Human Resources (safety and treatment program, 64 CSR 98), is authorized with the following amendments:

On page one, subsection 1.2., by striking out “17C-SA-3” and inserting in lieu thereof “17C-5A-3”;

On page one, after subsection 3.4., by inserting a new subsection 3.5. to read as follows:

“3.5. DUI—Any act which would constitute a violation of §17C-5-2.” and renumbering the remaining subsections;

On page one, subsection 3.7., by striking out “17C-SA-3” and inserting in lieu thereof “17C-5A-3”;

On page two, subsection 4.2., striking out the words “shall first approve any program curriculum used in the program.” and inserting in lieu thereof the words “is also responsible for the development of program standards for individuals involved in the service delivery, for approval of program curriculum and for monitoring of compliance by providers with the standards.”;

On page three, subsection 6.1., by striking out the words “in the field of substance abuse” and inserting in lieu thereof the words “who meet requirements as established in the Program Standards published by the Department”;

On page three, subsection 6.5., following the word “refinement.” by adding the following: “The Program
Coordinator shall, at a minimum, be a Clinical Certified Addictions Counselor.

On page four, subsection 8.1., after the words “Program Enrollment” by inserting the words “and Level I Component”;

On page four, subsection 8.1., by striking out the words “Secretary fee for enrollment in the Program is established by the Secretary.” and inserting in lieu thereof the words “initial fee for enrollment in the Program shall be Four Hundred Dollars ($400.00).”;

On page four, subdivision 8.3.a., by striking out the words “at any level and participation in Safety and Treatment programming which is not covered by private or public third-party sponsorship, and which is not eligible for a Community Behavioral Health Center’s charity care funds” and inserting in lieu thereof the words “in the Level 1, Prevention and Education Component as set forth in 5.3 of this rule.”;

On page four, subsection 8.4., by striking out all of subsection 8.4. and inserting in lieu thereof a new subsection 8.4. to read as follows:

"8.4. The Department of Health and Human Resources Safety and Treatment Fund-Upon enrollment in the Program, the Participant shall pay to the provider the sum of Four Hundred Dollars ($400.00), except for those Participants which are determined under 8.3 to be indigent. The provider shall remit to the Department the sum of Two Hundred Twenty-Five Dollars ($225.00) and the provider shall retain One Hundred Seventy-Five Dollars ($175.00). The Department shall deposit One Hundred Twenty-Five Dollars ($125.00) of this sum in the Department of Health and Human Resources Safety and Treatment Fund, to be used to reimburse providers for their portion of the enrollment fee for persons qualifying for indigent status.";
And,

On page four, subsection 8.5., by striking out all of subsection 8.5.

(i) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section eight, article one, chapter forty-four-a, of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the third day of December, two thousand ten, relating to the Department of Health and Human Resources (requirements for licensure of nonprofit corporations for conservator service, 64 CSR 99), is authorized with the following amendments:

On page one, subsection 3.6., after the word "directors" by inserting the words "of the Corporation";

On page two, subsection 3.7., after the word "directors" by inserting the words "of the Corporation";

On page two, subsection 3.12., after the word "of" by inserting the words "The Department of";

On page four, subdivision 4.2.5., after the word "if" by inserting the words "he or";

On page five, subdivision 4.7.3., by striking out the words "approved, modified or rejected" and inserting in lieu thereof the words "approve, modify or reject";

On page six, subdivision 4.8.2., by striking out all of subdivision 4.8.2. and inserting in lieu thereof a new subsection 4.8.2., to read as follows:

"4.8.2. Reports of the Secretary of any inspection or investigation shall, when appropriate, specify the nature of
any deficiency in compliance with this rule or law and specifically indicate the rule or law violated.”;

And,

On page seven, subsection 5.3., after the words “under this rule,” by striking out the word “the” and inserting in lieu thereof the word “and”.


The legislative rule filed in the state register on the twenty-eighth day of July, two thousand ten, authorized under the authority of section eight-c, article two-d, chapter sixteen, of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the eighth day of December, two thousand ten, relating to the Health Care Authority to promulgate a legislative rule relating to (certificates of need, 65 CSR 7), is authorized with the following amendments:

On page three, subdivisions 2.14.e. and 2.14.f., by striking out all of subdivisions 2.14.e. and 2.14.f. and inserting in lieu thereof a new subdivision 2.14.e to read as follows:

“2.14.e. Notwithstanding anything in this subsection 2.14 to the contrary, any practice granted a determination of nonreviewability as a private office practice by the board on or before July 1, 2010, is and shall remain a private office practice under the Act; provided there has been no material change in the facts and circumstances provided in the original request for determination of reviewability.”
AN ACT to amend and reenact article 6, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the Department of Military Affairs and Public Safety; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate legislative rules relating to Protocol for Law Enforcement Response to Domestic Violence, (149 CSR 3) and Law Enforcement Training Standards, (149 CSR 2).

Be it enacted by the Legislature of West Virginia:
That article 6, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. AUTHORIZATION FOR THE DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.**

§64-6-1. Governor’s Committee on Crime, Delinquency and Correction.

(a) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section one thousand one hundred and two, article twenty-seven, chapter forty-eight, of this code, modified by the Governor’s Committee on Crime, Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 22, 2010, relating to the Governor’s Committee on Crime, Delinquency and Correction (protocol for law-enforcement response to domestic violence, 149 CSR 3), is authorized, with the following amendment:

On page nineteen, section seven, subsection three, by striking subdivision 7.3.5. in its entirety and re-designating the remaining subdivisions accordingly.

(b) The legislative rule filed in the state register on July 23, 2010, authorized under the authority of section three, article twenty-nine, chapter thirty, of this code, modified by the Governor’s Committee on Crime, Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on October 13, 2010, relating to the Governor’s Committee on Crime, Delinquency and Correction (law-enforcement training standards, 149 CSR 2), is authorized.
AN ACT to amend and reenact article 7, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Revenue; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the State Tax Department to promulgate a legislative rule relating to the commercial patent incentives tax credit; authorizing the State Tax Department to promulgate a legislative rule relating to the exchange of information agreement between the State Tax Department and the West Virginia Lottery; authorizing the State Tax Department to promulgate a legislative rule relating to the exchange of information agreement between the State
Tax Department and the Office of the State Fire Marshal; authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit life insurance, credit accident and sickness insurance and credit unemployment insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to suitability in annuity transactions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to insurance adjusters; authorizing the Insurance Commissioner to promulgate a legislative rule relating to long-term care insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to actuarial opinion and memorandum; authorizing the Insurance Commissioner to promulgate a legislative rule relating to property and casualty actuarial opinions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit personal property; authorizing the insurance Commissioner to promulgate a legislative rule relating to self-insurance pools for political subdivisions; authorizing the Insurance Commissioner to promulgate a legislative rule relating to valuation of life insurance companies; authorizing the Insurance Commissioner to promulgate a legislative rule relating to recognition of preferred mortality tables for use in determining minimum reserve liabilities; authorizing the Insurance Commissioner to promulgate a legislative rule relating to professional employer organizations; authorizing the Insurance Commissioner to promulgate a legislative rule relating to health maintenance organization point of service option; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; authorizing the Racing Commission to promulgate a legislative rule relating to greyhound racing; authorizing the Racing Commission to promulgate a legislative rule relating to pari-mutuel wagering; authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensed retailer operations; and authorizing the Alcohol Beverage Control Commission to promulgate a legislative rule relating to licensing of retail outlets.
Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. State Tax Department.

(a) The legislative rule filed in the state register on July 28, 2010, authorized under the authority of section ten, article thirteen-aa, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 5, 2010, relating to the State Tax Department (commercial patent incentives tax credit, 110 CSR 13Q), is authorized.

(b) The legislative rule filed in the state register on July 26, 2010, authorized under the authority of section five-s, article ten, chapter eleven of this code, relating to the State Tax Department (exchange of information agreement between the State Tax Department and the West Virginia Lottery, 110 CSR 50E), is authorized.

(c) The legislative rule filed in the state register on July 26, 2010, authorized under the authority of section five-s, article ten, chapter eleven of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 5, 2010, relating to the State Tax Department (exchange of information agreement between the State Tax Department and the Office of the State Fire Marshal, 110 CSR 50F), is authorized.
§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on September 28, 2010, relating to the Insurance Commissioner (credit life insurance, credit accident and sickness insurance and credit unemployment insurance, 114 CSR 6), is authorized with the following amendment:

On pages one and two, section 2, by striking out all of section 2. and inserting in lieu thereof a new section 2. to read as follows:

“§114-6-2. Definitions.

(1) “Commissioner” means the West Virginia Insurance Commissioner.

(2) “Credit Accident and Sickness Insurance” means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(3) “Credit Life Insurance” means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction.

(4) “Credit unemployment insurance” means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is unemployed as defined in the policy.
(5) "Creditor" means the lender of money or vendor or lesser goods, services, or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such lender, vendor, or lessor, and an affiliate, associate or subsidiary of them or any director, officer, or employee of any of them or any other person in any way associated with any of them.

(6) "Debtor" means a borrower of money or purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction.

"Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

(7) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction."

(b) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (suitability in annuity transactions, 114 CSR 11B), is authorized.

(c) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on October 20, 2010, relating to the Insurance Commissioner (insurance adjusters, 114 CSR 25), is authorized with the following amendments:

On page two, subsection 3.1., by striking out all of subsection 3.1. and inserting in lieu thereof a new subsection 3.1. to read as follows:
"3.1. No person shall in West Virginia act as or hold himself to be an adjuster unless licensed by the Commissioner. As used in the rule, the term "person" shall not include those persons located in an office of an insurer outside the State of West Virginia who adjust claims solely by telephone, fax, United States Mail and electronic mail and who do not physically enter the State of West Virginia in the course of adjusting such claims."

And,

On page four, subdivision 3.2.j., by striking out all of subdivision 3.2.j. and renumbering the remaining subdivisions.

(d) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on September 28, 2010, relating to the Insurance Commissioner (long-term care insurance, 114 CSR 32), is authorized with the following amendments:

On page 51, paragraph 29.4.c.1., by striking out all of paragraph 29.4.c.1. and inserting in lieu thereof a new paragraph 29.4.c.1. to read as follows:

"29.4.c.1. Within five (5) business days of receiving a written request for independent review, the insurer shall choose an independent review organization approved or certified by the state. The insurer shall vary its selection of authorized independent review organizations on a rotating basis."

On page fifty-two, paragraph 29.4.c.6., by striking out the word "8," and inserting in lieu thereof the word "3,";
And,

On page fifty-six, subsection 30.6., by striking out all of subsection 30.6.

(e) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (actuarial opinion and memorandum, 114 CSR 41), is authorized.

(f) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on December 1, 2010, relating to the Insurance Commissioner (property and casualty actuarial opinions, 114 CSR 41A), is authorized.

(g) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (credit personal property, 114 CSR 61), is authorized.

(h) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on December 1, 2010, relating to the Insurance Commissioner (self-insurance pools for political subdivisions, 114 CSR 65), is authorized with the following amendment:
On pages ten and eleven, subsection 8.1., by striking out all of subsection 8.1. and inserting in lieu thereof a new subsection 8.1. to read as follows:

"8.1. To the extent not inconsistent with this rule, each workers' compensation pool is subject to the requirements of West Virginia Code §§33-2-21 and 33-2-22 and West Virginia Code Chapter Twenty-Three and the rules promulgated thereunder, including but not limited to the payment of surcharges pursuant to West Virginia Code §§23-2C-3(f)(2) and 23-2C-3(f)(3)(B) and West Virginia Code St. R. Section 85-6-1 et seq.; the record retention requirements of West Virginia Code St. R. Section 85-18-13; and the data requirements of West Virginia Code St. R. Section 85-2-1 et seq.: Provided, That such a pool is subject to West Virginia Code St. R. Section 85-18-1 et seq.; as if the pool was a single self-insured employer: Provided, however, That no provision of Chapter Twenty-Three of this code or any rule promulgated thereunder requiring participation in the self-insured guarantee risk pool and the self-insured security risk pool, or providing for industrial council approval of self-insured status, termination of self-insured status or approval of security, shall apply."

(i) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (valuation of life insurance companies, 114 CSR 68), is authorized.

(j) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (recognition of preferred mortality tables for use in determining minimum reserve liabilities, 114 CSR 69A), is authorized.
(k) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (professional employer organizations, 114 CSR 85), is authorized.

(l) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section three, article two, chapter thirty-three of this code, relating to the Insurance Commissioner (health maintenance organization point of service option, 114 CSR 91), is authorized.

§64-7-3. Racing Commission.

(a) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on January 20, 2011, relating to the Racing Commission (thoroughbred racing, 178 CSR 1), is authorized with the following amendments:

On page forty-two, subdivision 26.4.q., by striking out subdivision 26.4.q. in its entirety and inserting in lieu thereof a new subdivision 26.4.q. to read as follows:

"26.4.q. No trainer shall move or permit to be moved any horse or horses under his or her custody, care or control into the association’s grounds without permission from the association’s racing secretary or his or her designee. No trainer shall move or permit to be moved any horse or horses under his or her custody, care or control out of the association’s grounds without first signing out the horse on a form prescribed by the association and made available at the stable gate: Provided, That for all horses stabled on the association grounds, permission is required from the
association’s racing secretary or his or her designee at the time of removal if the horse is entered to race or may be entered to race at another racetrack during a period of seven (7) days following the day of its removal from the association’s grounds. No trainer shall move or permit to be moved any horse or horses under his or her custody, care or control into the association’s grounds without presenting a current negative Coggins test for equine infectious anemia (EIA).”;

On page fifty-six, subdivision 42.3.a., by striking out the words “eighteen (118)” and inserting in lieu thereof the words “sixteen (116)”; And,

On page sixty-nine, subdivision 48.2.d., by striking out subdivision 48.2.d. in its entirety and inserting in lieu thereof a new subdivision 48.2.d. to read as follows:

“48.2.d. Practicing veterinarians shall not have contact with an entered horse on a race day except for the administration of furosemide (lasix®) under the guidelines set forth in subsection 49.7. of this rule unless approved by a Racing Commission veterinarian. If approval to have contact with an entered horse on race day for purposes other than the administration of furosemide (lasix®) is obtained from a Racing Commission veterinarian, or if reasonable efforts are made to contact a Racing Commission veterinarian and he or she is unavailable, a practicing veterinarian may have contact with the horse for purposes other than the administration of furosemide (lasix®): Provided, That the practicing veterinarian shall complete a form prescribed by the Racing Commission notifying the Racing Commission veterinarian of the contact. Such form shall be provided to the Racing Commission veterinarian one hour before post time.”
(b) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on January 20, 2011, relating to the Racing Commission (greyhound racing, 178 CSR 2), is authorized.

(c) The legislative rule filed in the state register on July 16, 2010, authorized under the authority of section six, article twenty-three, chapter nineteen of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on January 20, 2011, relating to the Racing Commission (pari-mutuel wagering, 178 CSR 5), is authorized, with the following amendment:

On page two, subsection 2.21, line 5, by striking out the word “totalizator” and inserting in lieu thereof the word “totalisator”.

§64-7-4. Alcohol Beverage Control Commission.

(a) The legislative rule filed in the state register on November 20, 2009, authorized under the authority of section six, article three-a, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-making Review Committee and refiled in the state register on January 20, 2011, relating to the Alcohol Beverage Commission (licensed retailer operations, 175 CSR 1), is authorized with the following amendment:

On pages seven and eight, paragraph 4.1.a.3., by striking out all of paragraph 4.1.a.3. and inserting in lieu thereof a new paragraph 4.1.a.3. to read as follows:
4.1.a.3. Column 2 - “Unit Size.” The product bottle size is listed in metric measurement.

Metric Conversion Table

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<thead>
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<th>Metric Size</th>
<th>Converted to Ounces</th>
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<td>50 ml.</td>
<td>1.7 oz.</td>
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<tr>
<td>200 ml.</td>
<td>6.8 oz.</td>
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<tr>
<td>375 ml.</td>
<td>12.7 oz.</td>
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<td>500 ml.</td>
<td>16.9 oz.</td>
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<td>750 ml.</td>
<td>25.4 oz.</td>
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<td>33.8 oz.</td>
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<tr>
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(b) The legislative rule filed in the state register on February 22, 2010, authorized under the authority of section six, article three-a, chapter sixty of this code, modified by the Alcohol Beverage Control Commission to meet the objections of the Legislative Rule-making Review Committee and refiled in the state register on January 19, 2011, relating to the Alcohol Beverage Commission (licensing of retail outlets, 175 CSR 5), is authorized.

CHAPTER 113


[Passed March 8, 2011; in effect from passage.]
[Approved by the Governor on March 18, 2011.]

AN ACT to amend and reenact article 8, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of
Transportation; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing the Commissioner of Highways to promulgate legislative rules relating to the use of state road rights of way and adjacent areas (157 CSR 6) the transportation of hazardous wastes upon the roads and highways (157 CSR 7), and Community Empowerment Transportation Act Program (157 CSR 10); authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to the Motor Vehicle Inspection Manual (91 CSR 12); and authorizing the Department of Transportation - State Rail Authority to promulgate a legislative rule relating to the valuation of used rolling stock and equipment (172 CSR 2).

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

That article 8, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.**

§64-8-1. Commissioner of Highways.

(a) The legislative rule filed in the state register on the sixteenth day of July, two thousand ten, authorized under the authority of section one, article twenty, chapter seventeen, of this code, relating to the Commissioner of Highways (use of state road rights of way and adjacent areas, 157 CSR 6), is authorized.
(b) The legislative rule filed in the state register on the sixteenth day of July, two thousand ten, authorized under the authority of section seven, article eighteen, chapter twenty-two, of this code, relating to the Commissioner of Highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized.

(c) The legislative rule filed in the state register on the twenty-seventh day of July, two thousand ten, authorized under the authority of section four, article twenty-eight, chapter seventeen, of this code, modified by the Commissioner of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-second day of November two thousand ten, relating to the Commissioner of Highways (Community Empowerment Transportation Act Program, 157 CSR 10), is authorized with the following amendments:

On page six, section eight, line five, by striking out the citation “§22-5-1” and inserting in lieu thereof the citation “§5-22-1”; and

On page six, section nine, line eight, by striking out the words “Committee on Government and Finance”.

§64-8-2. Division of Motor Vehicles.

The legislative rule filed in the state register on the twenty-sixth day of July, two thousand ten, authorized under the authority of section four, article sixteen, chapter seventeen-c, of this code, relating to the Division of Motor Vehicles (Motor Vehicle Inspection Manual, 91 CSR 12), is authorized.

§64-8-3. Department of Transportation.

The legislative rule filed in the state register on the thirteenth day of May, two thousand ten, authorized under the
AN ACT to amend and reenact article 9, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Board of Pharmacy to promulgate a legislative rule relating to the licensure and the
practice of pharmacy (15 CSR 1); authorizing the Board of Pharmacy to promulgate a legislative rule relating to controlled substances monitoring (15 CSR 8); authorizing the Board of Physical Therapy to promulgate a legislative rule titled general provisions (16 CSR 1); authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for physical therapists and physical therapist assistants (16 CSR 4); authorizing the Board of Physical Therapy to promulgate a legislative rule titled general provisions for athletic trainers (16 CSR 5); authorizing the Board of Physical Therapy to promulgate a legislative rule relating to fees for athletic trainers (16 CSR 6); authorizing the Board of Sanitarians to promulgate a legislative rule relating to an interim fee schedule (20 CSR 3); authorizing the Board of Sanitarians to promulgate a legislative rule relating to the practice of public health sanitation (20 CSR 4); authorizing the Secretary of State to promulgate a legislative rule relating to the combined voter registration and driver licensing fund (153 CSR 25); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians (3 CSR 1); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to qualifications, training, examination of instructors (3 CSR 2); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule relating to operational standards for schools of barbering and beauty culture (3 CSR 4); authorizing the Board of Barbers and Cosmetologists to promulgate a legislative rule titled schedule of fees (3 CSR 6); authorizing the Commissioner of Agriculture to promulgate a legislative rule titled the West Virginia Apiary Rule (61 CSR 2); authorizing the repeal of the Commissioner of Agriculture’s legislative rule relating to general groundwater protection for fertilizers and manures (61 CSR 6C); authorizing the Commissioner of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry (61 CSR 16); authorizing the Board of Veterinary Medicine to promulgate a
legislative rule relating to the organization, operation and licensing of veterinarians (26 CSR 1); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the registration of veterinary technicians (26 CSR 3); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to the standards of practice (26 CSR 4); authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians (26 CSR 5); authorizing the Board of Veterinary Medicine to promulgate a legislative rule titled schedule of fees (26 CSR 6); authorizing the Board of Optometry to promulgate a legislative rule titled rules of the West Virginia Board of Optometry (14 CSR 1); authorizing the Board of Optometry to promulgate a legislative rule relating to oral pharmaceutical prescriptive authority (14 CSR 2); authorizing the Board of Optometry to promulgate a legislative rule titled schedule of fees (14 CSR 5); authorizing the Board of Optometry to promulgate a legislative rule relating to examination and scoring policy (14 CSR 6); authorizing the Board of Optometry to promulgate a legislative rule relating to licensure by endorsement (14 CSR 8); authorizing the Board of Optometry to promulgate a legislative rule relating to contact lenses that contain and deliver pharmaceutical agents (14 CSR 9); authorizing the Board of Optometry to promulgate a legislative rule relating to continuing education (14 CSR 10); authorizing the Board of Optometry to promulgate a legislative rule relating to injectable pharmaceutical agents (14 CSR 11); authorizing the Board of Osteopathy to promulgate a legislative rule relating to osteopathic assistants (24 CSR 2); authorizing the Board of Osteopathy to promulgate a legislative rule relating to fees for services rendered by the Board (24 CSR 5); authorizing the Treasurer’s Office to promulgate a legislative rule relating to the establishment of imprest funds (112 CSR 3); and authorizing the State Election Commission to promulgate a legislative rule relating to the West Virginia Supreme Court of Appeals Public Financing Pilot Program (146 CSR 5).
Be it enacted by the Legislature of West Virginia:

That article 9, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Pharmacy.

(a) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section five, article nine, chapter sixty-a, of this code, relating to the Board of Pharmacy (licensure and the practice of pharmacy, 15 CSR 1), is authorized with the following amendments:

On page thirty-seven, subsection 21.1, by striking out all of subsection 21.1 and inserting in lieu thereof a new subsection 21.1 to read as follows:

"21.1. A prescription to be valid, shall be issued for a legitimate medical purpose by a practitioner acting within the course of legitimate professional practice, and shall bear the preprinted, stamped, typed, or manually printed name, address and telephone number of the prescribing practitioner. If it is a prescription for a controlled substance listed in Schedules II through V, then it shall also contain the prescriber’s DEA registration number, including any suffix. The National Provider Identification (NPI) number shall be required on all valid prescriptions beginning January 1, 2012."

And,

On page forty-seven, after subsection 26.1, by adding a new section 27 to read as follows:
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27.1. The purpose of this section is to establish rules for the West Virginia Official Prescription Program Act set forth at West Virginia Code Section §16-5W-1, et seq. for use in writing prescriptions by practitioners.

27.2. Definitions. As used in this rule:

a. “Program Vendor” means the private contractor or contractors selected to manage the production and delivery of official state prescription paper.

b. “West Virginia Official Prescription Paper” means prescription paper, which has been authorized by the state for use, and meets the following criteria:

1. Prevention of unauthorized copying;

2. Prevention of erasure or modification;

3. An ability to prevent counterfeit prescription pads; and

4. Capable of supporting automated validation through pharmacy claims processing systems using the official state prescription control number.

27.3. Minimum Requirements of West Virginia Official Prescription Paper. The prescription paper shall contain the following security features:

a. Shall meet all requirements issued by the Center for Medicare and Medicaid Services for a written prescription for controlled substances as required by Section 2002(b) of PL. 110-28 of the Iraq War Supplemental Appropriations Bill enacted by the United States Congress in 2007;
b. Shall contain six (6) quantity check-off boxes printed on the form and in the following quantities shall appear:

1. 1-24;
2. 25-49;
3. 50-74;
4. 75-100;
5. 101-150; and
6. 151 and over:

Provided, That if the blank has the quantity prescribed electronically printed in both numeric and word format, then the quantity check-off boxes shall not be necessary;

c. Shall contain space for the prescriber to indicate number of refills, if any, or to indicate no refills;

d. Shall provide space for the patient’s name and address, the prescribing practitioner’s signature;

e. Shall provide space for the preprinted, stamped, typed, or manually printed name, address and telephone number of the prescribing practitioner, and the practitioner’s DEA registration number and NPI number;

f. Shall contain the following statement printed on the bottom of the prescription blank: “This prescription may be filled with a generically equivalent drug product unless the words ‘Brand Medically Necessary’ are written in the practitioner’s own handwriting, on this prescription form.”;

and
g. Each blank must be numbered on the face with a unique identifying control number in both human readable and barcode format.

27.4. The Board will solicit open bids and select a vendor or vendors to provide West Virginia Official Prescription Paper and maintain appropriate records of such product supplied to practitioners based on ability of proposed program to prevent prescription fraud, price and ability to meet these requirements.

a. Practitioners licensed to practice in this State may purchase West Virginia Official Prescription Paper as per individual orders from the selected vendor(s). The cost of the Official Prescription Paper will be borne by the ordering practitioner/institution, unless the state is successful in securing offsetting funds such as federal grants, risk/reward programs or private funding applied for and received by the state for the express purpose of partially or fully funding the West Virginia Official Prescription Program.

b. Orders shall be placed through a vendor supplied secure on-line order capture system or on an order form to be supplied by the Vendor, and must contain the requesting practitioner’s name, specialty, primary address and other practice site address(s), Federal DEA registration number, if any, National Provider Identification number, the State professional practice license number, number of prescriptions requested, and shall be signed by the requesting practitioner.

c. Records of West Virginia Official Prescription Paper supplied to practitioners will be maintained by the vendor or vendors and will be subject to random and regular audits. Discrepancies shall be reported to the Board in a regular and timely manner.

27.5. On and after January 1, 2012 every written prescription written in West Virginia by a practitioner shall
be written on West Virginia Official Prescription Paper. A pharmacist may not fill a written prescription from a West Virginia practitioner unless issued upon an official state issued prescription form.

27.6. Practitioners; control and reporting of West Virginia Official Prescription Paper.

a. Adequate safeguards and security measures shall be undertaken by practitioners holding West Virginia Official Prescription Paper to assure against the loss, destruction, theft or unauthorized use of the forms. The forms may be used only by the practitioner to whom they are issued and are not transferable.

b. The Practitioner must also notify the vendor of any failure to receive Official Prescription Paper within a reasonable time after ordering them. Further, practitioners must immediately notify the Board and vendor in writing of the loss through destruction, theft or loss, or unauthorized use of any Official Prescription Paper blanks, including:

1. Estimated number of blanks affected;

2. Control numbers if available; and

3. Suspected reason for destruction, theft, or loss.

c. The program vendor must provide annual SAS70 or SSAE16 third party audits of the prescription paper printing/personalization facility used in the preparation and distribution of West Virginia Official Prescription Paper blanks upon request. The program vendor must be able to provide such report for each year and for two years prior to the term of the contract.”

(b) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section five,
article nine, chapter sixty-a, of this code, relating to the
Board of Pharmacy (controlled substances monitoring, 15
CSR 8), is authorized with the following amendments:

On page two, subsection 2.15, by striking out the words
“15-1-27 of the West Virginia Code of State Rules” and
inserting in lieu thereof the word “5”;

On page six, subdivision 7.3(b), by striking out all of
subdivision 7.3(b) and inserting in lieu thereof a new
subdivision 7.3(b) to read as follows:

“(b) Members of the West Virginia State Police expressly
authorized by the superintendent of the West Virginia State
Police to have access to the information;”

On page six, subdivision 7.3(e), after the word “(e)”, by
striking out the word “The” and inserting in lieu thereof the
word “the”;

On page six, subdivision 7.3(f), after the word “(f)” by
striking out the word “A” and inserting in lieu thereof the
word “a”;

On page six, subdivision 7.3(g), by striking out the word
“board” and inserting in lieu thereof the word “Board”;

On page six, subdivision 7.3(j), by striking out the word
“date” and inserting in lieu thereof the word “data”;

On page six, subsection 7.4, by striking out the word
“board” and inserting in lieu thereof the word “Board”;

And,

On page six, subsection 7.4, after the words “subsection
7.3” by inserting the words “(a) through (i)”.


(a) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty, chapter thirty, of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on December 21, 2010, relating to the Board of Physical Therapy (general provisions, 16 CSR 1), is authorized with the following amendments:

On page two, by striking 2.15a in its entirety and inserting in lieu thereof the following:

“2.15.a. A physical therapy aide works under the direct supervision of a physical therapist: Provided, That a physical therapist assistant may directly supervise a physical therapy aide in emergency situations necessary to provide patient safety.”

On page 3, by striking out section 5 in its entirety and inserting in lieu thereof the following:

§16-1-5. Issuance, Renewal or Reinstatement of License.

5.1. The Board reserves the right to evaluate the applicant according to the testing, licensure, and procedural requirements as initiated by the agency responsible for the ownership and development of the national exam.

5.2. Licenses expiring on December 31, of each particular year must be renewed by payment of applicable fee along with completed renewal application.

5.3. A license not renewed without specific request to place it in “inactive” status will automatically be placed on delinquent status.
5.4. Delinquent licensee is responsible for penalty fees including but not limited to: application fee, delinquent license fee, and the current year renewal fee. A licensee must also complete and show proof of Board approved continuing education requirements.

5.5. To reinstate an “inactive” license, the licensee must submit an application for renewal along with a non-refundable application fee and license renewal fee.

5.6. A volunteer license will be marked as a “volunteer” license and is restricted to practicing in accordance with §30-20-13.

5.7. Any change in personal contact and employer/supervisor information must be submitted in writing to the Board as changes occur.”

On page 4, by striking out subsection 6.1 in its entirety and inserting in lieu thereof the following:

“6.1. An individual possessing a temporary permit issued by the Board to practice Physical Therapy or act as a physical therapist assistant in the State of West Virginia shall practice under the on-site supervision of a Physical Therapist. All progress notes written by the Physical Therapist or physical therapist assistant with a temporary permit shall be cosigned by a Physical Therapist supervisor within twenty-four (24) hours.”

On page six, by inserting a new subsection 7.7, to read as follows:

“7.7. A licensee must report to the board any discipline received in another jurisdiction within 30 days of that discipline. The Board reserves the right to discipline up to and including revocation of a license until disciplinary
process in the other jurisdiction is completed. If the licensee fails to report discipline in another jurisdiction, they are subject to disciplinary procedures in our jurisdiction determined by the Board.”

On page seven, by striking subdivision 8.2.a., in its entirety and inserting in lieu thereof the following:

“8.2.a. When care is delivered in a hospital or other acute-care center, free-standing, outpatient, or independent practice setting, a Physical Therapist must provide on-site supervision, with the exception that general supervision is permitted in a hospital or other acute-care center, free-standing, outpatient, or independent practice setting 40% of the time once the physical therapist assistant performing treatment has at least 1000 hours of experience. The supervising physical therapist shall document when general supervision is utilized under this subdivision.”

On page seven, by striking out subdivision 8.2.b., in its entirety and inserting in lieu thereof the following:

“8.2.b. General supervision may be utilized when care is delivered in a skilled/unskilled nursing facility, distinct part skilled/unskilled nursing unit or swing-bed unit in an acute-care hospital, home health, or school system setting, and the following requirements must be observed and documented in the patient records when general supervision is used:”

On page seven, by striking out subparagraph 8.2.b.1 in its entirety and inserting in lieu thereof the following:

“8.2.b.1. A physical therapist must be accessible by telecommunications to the physical therapist assistant at all times that the physical therapist assistant is treating patients; and available to make a joint onsite visit with the physical
therapist assistant within 24 hours as prudent practice indicates.”

On page seven, by striking out subparagraph 8.2.b.2 in its entirety and inserting in lieu thereof the following:

“8.2.b.2. The physical therapist must visit the patient at least once every 10 physical therapist assistant visits, or within 30 calendar days, whichever occurs first.”

On page seven, by striking out subparagraph 8.2.b.3 in its entirety and inserting in lieu thereof the following:

“8.2.b.3. In the event that the supervising physical therapist changes, the new supervising physical therapist must discuss the patient’s diagnosis and plan of care with the previous supervising physical therapist before the next physical therapist assistant visit is made. Either physical therapist must document such communication.”

On page eight, by striking out subsection 8.5 in its entirety and inserting in lieu thereof the following:

“8.5. In an emergency situation, such as serious illness or injury of the therapist or therapist’s family member or death of a family member, which causes the unanticipated absence of the supervising physical therapist for not more than three consecutive days, and no more than twelve days per calendar year, a licensed physical therapist assistant may continue to render services, under the supervision of another physical therapist, to only those patients for which the licensed physical therapist assistant has previously participated in the intervention for established plans of care not to exceed the regularly scheduled operational hours of the particular day or days the supervising physical therapist is absent. When this provision is utilized, the ratio in subdivision 8.1.c. may be exceeded and the physical therapist shall document the dates and the emergency situation.”
On page 8, by striking out subsection 8.6 in its entirety and inserting in lieu thereof the following:

"8.6. In a temporary situation, which causes the absence of the supervising physical therapist up to one day, and no more than eighty hours in a calendar year, a licensed physical therapist assistant may continue to render services, under general supervision of the supervising physical therapist, to only those patients for which the licensed physical therapist assistant has previously participated in the intervention for established plans of care not to exceed the regularly scheduled operational hours of the particular day the supervising physical therapist is absent. When this provision is utilized, the level of supervision in subdivision 8.2.a. may be exceeded and the physical therapist shall document the hours, date and temporary situation."

On page 9, by inserting a new section 10 to read as follows:

"§16-1-10. Continuing Education.

10.1. A “unit” is one clock hour spent in a continuing education activity unless otherwise defined in this section.

10.2. All licensees desiring to remain “active” and in good standing must complete 24 units of Board approved continuing education within the two year licensing period. If the licensee does not complete the 24 units of Board approved continuing education within the license period, that licensee will be placed on delinquent status and will be subject to all fees associated with delinquent status.

10.2.a. For those applicants reinstating their license for a period of 6 months or less, only 6 units are required for that year."
10.2.b. Volunteer licensees need only to complete twenty (20) units of Board approved continuing education activities within a two year renewal cycle.

10.2.c. Accumulated CEU’s may not be carried over from one renewal period to another.

10.2.d. A new graduate does not need continuing education hours for the current year of graduation.

10.3. Completion of examinations, residencies, fellowships, tools, and courses for continuing education credit.

10.3.a. A maximum of 8 units per license period can be obtained from any combination of clinical instruction or competency tools.

10.3.b. Passing the following specialty examinations will qualify for twenty-four contact hours of continuing education in the year the examination is taken:

10.3.b.1 Specialty examinations and recertification administered by the American Board of Physical Therapy Specialties (ABPTS).

10.3.b.2. The Hand Therapy Certification Commission (HTCC) certification examination.

10.3.b.3. Continuing education course instructors can receive 1 unit per hour of class instruction time will be awarded for board approved continuing education courses in the year the course given. Credit awarded to the instructor for said course will be granted only one time.

10.3.c. The successful completion of an American Physical Therapy Association credentialed residency or
fellowship program will qualify for twenty-four contact hours of continuing education in the year the residency or fellowship is completed.

10.3.d. The successful completion of a practice review tool of the Federation of State Boards of Physical Therapy pertaining to continued competence will qualify for continuing education.

10.3.d.1. Eight contact hours of continuing education will be awarded for completion of a practice review tool.

10.3.d.2. Licensees may use a practice review tool identified in paragraph 3.d.1 of this section no more than every other renewal period.

10.3.e. Clinical instruction.

10.3.e.1. Providing clinical instruction to PT or PTA student(s) enrolled in a CAPTE approved physical therapist or physical therapist assistant program can qualify for up to a maximum 8 units per year.

10.3.e.2. Four weeks of clinical instruction is equal to 1 unit of continuing education.

10.3.f. Continuing education courses are subject to board approval.

10.3.f.1 One unit per hour of class instruction time will be awarded for board approved continuing education courses in the year the course is taken.

10.3.g. One unit per hour of class instruction time shall be awarded and automatically approved for CAPTE College/University, American Physical Therapy Association
10.3.h. One unit per hour of class instructions for CAPTE college or university physical therapy or doctorate physical therapy programs.

10.4. The board may grant a waiver of the continuing education requirements in the case of illness, disability or undue hardship.

10.4.a. A request for waiver form must be completed in full. In the case of illness or disability, a physician’s statement is required.

10.4.b. All completed forms must be received by the Board for consideration no later than the first day of October of the year preceding the renewal date.

10.4.c. A waiver may be granted for any period of time not to exceed one renewal cycle.

10.4.d. In the event that the illness, disability or hardship continues to the next renewal cycle, then a new waiver request is required.

10.4.e. Should a waiver be granted due to disability or illness, the section may require the individual to provide appropriate documentation from a physician or another qualified and appropriate practitioner to verify the individual’s competency and ability to practice physical therapy in the state of West Virginia prior to the return to active practice of physical therapy in West Virginia.”

(b) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty, chapter thirty, of this code, relating to the Board of
Physical Therapy (fees for physical therapists and physical therapist assistants, 16 CSR 4), is authorized.

(c) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section four, article twenty-a, chapter thirty, of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on September 20, 2010, relating to the Board of Physical Therapy (general provisions for athletic trainers, 16 CSR 5), is authorized.

(d) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section four, article twenty-a, chapter thirty, of this code, modified by the Board of Physical Therapy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on September 20, 2010, relating to the Board of Physical Therapy (fees for athletic trainers, 16 CSR 6), is authorized.


(a) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section six, article seventeen, chapter thirty, of this code, relating to the Board of Sanitarians (interim fee schedule, 20 CSR 3), is authorized.

(b) The legislative rule filed in the state register on July 29, 2010, authorized under the authority of section six, article seventeen, chapter thirty, of this code, relating to the Board of Sanitarians (practice of public health sanitation, 20 CSR 4), is authorized, with the following amendments:

On page three, following subdivision 4.1.c, by inserting a new subdivision 4.1.d. to read as follows:
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"4.1.d. Has not previously failed an examination for licensure in this state;"

And,

By re-designating the remaining subdivisions accordingly.

§64-9-4. Secretary of State.

The legislative rule filed in the state register on November 12, 2010, authorized under the authority of section twelve, article two, chapter three, of this code, relating to the Secretary of State (combined voter registration and driver licensing fund, 153 CSR 25), is authorized with the following amendments:

On page one, section two, following the words "For the purposes of this rule:", by striking out subsection 2.1 in its entirety and renumbering the following subsections of section two;

On page three, subdivision 4.2.2 following the words "under this subsection on a", by striking out the word "quarterly" and inserting in lieu thereof the word "annual";

On page three, subsection 4.3, following the words "collection and transmission of the completed forms:", by striking out the proviso in its entirety, and inserting in lieu thereof the following proviso "Provided, That the total reimbursement shall not exceed sixty (60) percent of the total annual revenue of the Fund. In any year in which the revenue is insufficient to pay the reimbursement rate of $1.00 per completed registration as provided in this subsection, the amount per registration application shall be reduced proportionally.";
And,

On page four, by striking out subsection 4.4 and subdivisions 4.4.1, 4.4.2, 4.4.3 and 4.4.4 in their entirety and renumbering the remaining sections of the rule.

§64-9-5. Board of Barbers and Cosmetologists.

(a) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on October 18, 2010, relating to the Board of Barbers and Cosmetologists (procedures, criteria and curricula for examinations and licensure of barbers, cosmetologists, manicurists and aestheticians, 3 CSR 1), is authorized with the following amendments:

On page two, by striking out the words "43.1" and inserting in lieu thereof the word "3.1.";

And,

On page three, subsection 4.2, after the word "obtain" by inserting the word "a".

(b) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on October 18, 2010, relating to the Board of Barbers and Cosmetologists (qualifications, training, examination of licensure of instructors, 3 CSR 2), is authorized, with the following amendments:
25 On page one, by striking out subdivision 2.1.1 in its entirety and inserting in lieu thereof the following:

27 “2.1.1 Have been licensed 5 years with 5 years of salon/shop experience.”;

29 On page one, subdivision 2.1.6 by striking out the percentage amount “70%” and inserting in lieu thereof the percentage amount “80%”;

32 And,

33 On page one, by striking out all of subdivisions 2.1.7. and 2.1.8. and inserting in lieu new subdivisions 2.1.7. and 2.1.8. to read as follows:

36 “2.1.7. Submit an application to the board;

38 2.1.8. Pay applicable certification, examination and registration fees.”

39 (c) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, modified by the Board of Barbers and Cosmetologists to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on October 18, 2010, relating to the Board of Barbers and Cosmetologists (operational standards for schools of barbering and beauty culture, 3 CSR 4), is authorized with the following amendments:

48 On page five, by striking out section caption “3-4-5. Enrollment” and inserting in lieu thereof a new section caption to read as follows:

51 “§3-4-5. Enrollment”;
And,

On page six, by striking out the section caption “3-4-8. Teaching Staff” and inserting in lieu thereof a new section caption to read as follows:

“§3-4-8 Teaching Staff”.

(d) The legislative rule filed in the state register on June 18, 2010, authorized under the authority of section six, article twenty-seven, chapter thirty, of this code, relating to the Board of Barbers and Cosmetologists (schedule of fees, 3 CSR 6), is authorized with the following amendment:

On page one, subsection 2.1, by striking out the words “$99.00” and inserting in lieu thereof the words “Based on the National Interstate Council Index with a cap of $107.00”.


(a) The legislative rule filed in the state register on July 26, 2010, authorized under the authority of section four, article thirteen, chapter nineteen, of this code, modified by the Commissioner of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on September 21, 2010, relating to the Commissioner of Agriculture (West Virginia Apiary Rule, 61 CSR 2), is authorized.

(b) The legislative rule filed in the state register on July 12, 2010, authorized under the authority of section five-c, article twelve, chapter twenty-two, of this code, relating to the Commissioner of Agriculture (general groundwater protection rules for fertilizers and manures, 61 CSR 6C), is authorized.
(c) The legislative rule filed in the state register on the July 20, 2010, authorized under the authority of section three, article two-B, chapter nineteen, of this code, relating to the Commissioner of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

§64-9-7. Board of Veterinary Medicine.

(a) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section six, article ten, chapter thirty, of this code, modified by the West Virginia, 1931, as amended, relating to authorizing the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the West Virginia, 1931, as amended, relating to the Board of Veterinary Medicine (organization and operation and licensing of veterinarians, 26 CSR 1), is authorized with the following amendments:

On page two, subdivision 2.4.4, by striking out the subdivision in its entirety;

On page twelve, subsection 8.1, by striking out the words “the supervision of a West Virginia licensed veterinarian” and inserting in lieu thereof the words “the indirect or general supervision of a West Virginia licensed supervising veterinarian. During the period of supervision of a temporary permittee, the supervising veterinarian must remain within one hour’s physical access to the location where the temporary permittee is rendering veterinary care.”

And,

On page twelve, subsection 8.2, in the last sentence of the subsection, by striking out the word “supervisory” and inserting in lieu thereof the word “supervising”.
(b) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section six, article ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Veterinary Medicine (registration of veterinary technicians, 26 CSR 3), is authorized.

(c) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section six, article ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Veterinary Medicine (standards of practice, 26 CSR 4), is authorized, with the following amendments:

On page four, subsection 3.6, in the title to the subsection, by striking out the words “position or trust” and inserting in lieu thereof the words “position of trust”.

(d) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section six, article ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Veterinary Medicine (certified animal euthanasia technicians, 26 CSR 5), is authorized, with the following amendment:

On page eight, subdivision 10.1.d., by striking out the words “Section 10” and inserting in lieu thereof the words “Section 13”.

(e) The legislative rule filed in the state register on July 27, 2010, authorized under the authority of section six, article
ten, chapter thirty of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Veterinary Medicine (schedule of fees, 26 CSR 6), is authorized.

§64-9-8. Board of Optometry.

(a) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (rules of the West Virginia Board of Optometry, 14 CSR 1), is authorized.

(b) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on January 3, 2011, relating to the Board of Optometry (oral pharmaceutical prescriptive authority, 14 CSR 2), is authorized.

(c) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (schedule of fees, 14 CSR 5), is authorized.

(d) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article
On page one, subsection 2.1., by striking out all of subsection 2.1. and inserting in lieu thereof a new subsection 2.1. to read as follows:

“2.1. The Board shall conduct the interview with a quorum of the Board being present.”;

On page one, subsection 3.2, after the word “The” by inserting the word “Board”;

And,

On page two, subsection 4.1., by striking out all of subsection 4.1. and inserting a new subsection 4.1. to read as follows:

“4.1. A Board quorum may evaluate the applicant’s successful or unsuccessful completion of the interview by consensus.”

(e) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (licensure by endorsement, 14 CSR 8), is authorized with the following amendments:

On page one, after subdivision 2.2.5., by inserting a new subdivision 2.2.6. to read as follows:
“2.2.6. At the option of the Board, an applicant for licensure by reciprocity may be required to take the National Board Examination;

On page one, subsection 3.2., by striking out the word “licensee” and inserting in lieu thereof the word “applicant”;

On page two, subsection 3.7, by striking out the word “person” and inserting in lieu thereof the word “applicant”;

On page two, subsection 3.8, after the words “Code of”, by inserting the word “State”;

And,

On page two, subsection 3.9., by striking out all of subsection 3.9. and inserting in lieu thereof a new subsection 3.9. to read as follows:

“3.9. The Board may require an applicant to interview with the Board.”

(f) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (contact lenses that contain and deliver pharmaceutical agents certificates, 14 CSR 9), is authorized with the following amendment:

On page one, subsection 3.3., after the words “Code of”, by inserting the word “State”.

(g) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section six, article
eight, chapter thirty, of this code, modified by the Board of Optometry to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 24, 2010, relating to the Board of Optometry (continuing education, 14 CSR 10), is authorized with the following amendments:

On page one, subsection 2.1., after the words “Code of” by inserting the word “State”;

On page one, subsection 3.2., after the word “hours” by inserting the words “of continuing education”;

On page one, subsection 3.6., after the word “outlined” by inserting the word “in”;

On page one, subsection 3.7., by striking out the word “hold” and inserting in lieu thereof the word “holds”;

On page two, subdivision 4.1 (d), by striking out the word “Postgraduate” and inserting in lieu thereof the word “postgraduate”;

On page two, subsection 5.1., after the words “Code of” by inserting the word “State”;

On page two, subsection 6.1., after the word “instruction” by striking out the words “by correspondence, Internet or other electronic means”;

And,

On page two, subsection 6.1, after the word “attendance” by changing the period to a comma and inserting the words “by correspondence, Internet or other electronic means.”

(h) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section fifteen,
article eight, chapter thirty, of this code, modified by the
Board of Optometry to meet the objections of the Legislative
Rule-Making Review Committee and refilled in the state
register on December 23, 2010, relating to the Board of
Optometry (injectable pharmaceutical agents certificate, 14
CSR 11), is authorized with the following amendments:

On page five, subsection 10.1., by striking out the word
‘not’;

And,

On page five, by striking out subsection 11.1 in its
entirety and inserting in lieu thereof the following:

“11.1 A certificate holder may not establish a pharmacy in
an optometric office or sell injectable pharmaceutical agents
prescribed in treatment unless there is a licensed pharmacist on
staff or present when the prescription is filled. Nothing in this
rule shall prohibit the optometrist from charging a usual and
customary fee for performing the injection.

11.2 Retrobulbar and Peribulbar injections are
prohibited.

11.3. The board shall establish a formulary of
pharmaceutical agents to be administered by injection.

11.3.1. The injection formulary shall be created from
those agents that certificate holders have been authorized
previously to administer or prescribe as topical agents or oral
medication categories listed in the oral formulary of the
Board in the W.Va. Code of State Rules, §14-2-7.2a through
§14-2-7.2g.

11.3.2. New drugs or drug indications may be added to
the formulary by a decision of the Board based on any of the
following criteria:
11.3.2.1. A new or existing drug has been approved by the Food and Drug Administration for the treatment of the eye or its appendages.

11.3.2.2. A new drug or new drug indication has gained accepted use in the eye care field. Such acceptance may be indicated by its inclusion in the curriculum of an optometry school accredited by the Accreditation Council on Optometric Education or its successor approved by the U.S. Department of Education or approved post-graduate continuing education, through peer-reviewed, evidence-based research and professional journal articles, or by inclusion in established standards of practice and care published by professional organizations.


(a) The legislative rule filed in the state register on July 30, 2010, authorized under the authority of section one, article fourteen-a, chapter thirty, of this code, modified by the Board of Osteopathy to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on November 29, 2010, relating to the Board of Osteopathy (osteopathic physician assistants, 24 CSR 2), is authorized with the following the following amendments:

On page nine, subsection 6.6., after the words “Board and the”, by striking out the word “board” and inserting in lieu thereof the word “Board”;

And,

On page eleven, subsection 8.6., after the words “and expire with, the”, by inserting the word “osteopathic”.

(b) The legislative rule filed in the state register on July 28, 2010, authorized under the authority of section three,
article fourteen-a, chapter thirty, of this code, modified by the
Board of Osteopathy to meet the objections of the Legislative
Rule-Making Review Committee and refiled in the state
register on November 29, 2010, relating to the Board of
Osteopathy (fees for services rendered by the Board, 24 CSR
5), is authorized.

§64-9-10. Treasurer’s Office.

The legislative rule filed in the state register on July 30,
2010, authorized under the authority of section two, article
two, chapter twelve, of this code, modified by the Treasurer’s
Office to meet the objections of the Legislative Rule-Making
Review Committee and refiled in the state register on July
30, 2010, relating to the Treasurer’s Office (establishment of
imprest funds, 112 CSR 3), is authorized.


The legislative rule filed in the state register on the July
29, 2010, authorized under the authority of section fourteen,
article twelve, chapter three, of this code, modified by the
State Election Commission to meet the objections of the
Legislative Rule-Making Review Committee and refiled in
the state register on January 14, 2011, relating to the State
Election Commission (West Virginia Supreme Court of
Appeals Public Campaign Financing Pilot Program, 146 CSR
5), is authorized, with the following amendment:

On page nine, subdivision 6.9.a., by striking out “per W.
Va. Code §3-12-9(f)” and inserting in lieu thereof “as
required by W. Va. Code §3-12-9(g)”.

AN ACT to amend and reenact article 10, chapter 64 of the code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the Department of Commerce; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Workforce West Virginia to promulgate a legislative rule related to the employer violator system, (96 CSR 3); authorizing the Division of Natural Resources to promulgate legislative rules relating to special motorboating regulations, (58 CSR 27), prohibitions when hunting and trapping, (58 CSR 47), and general hunting, (58 CSR 49); authorizing the Division of Labor to promulgate legislative rules relating to the Elevator Safety Act, (42 CSR 21), supervision of elevator mechanics and apprentices, (42
CSR 21A), the Crane Operator Certification Act, (42 CSR 24), and the Crane Operator Certification Act - practical examination, (42 CSR 25).

Be it enacted by the Legislature of West Virginia:

That article 10, chapter 64 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. AUTHORIZATION FOR BUREAU OF COMMERCE TO PROMULGATE LEGISLATIVE RULES.

§64-10-1. Workforce West Virginia.

The legislative rule filed in the state register on the twenty-fourth day of September, two thousand nine, authorized under the authority of section four, article one, chapter twenty-one-a, of this code, modified by Workforce West Virginia to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the eighteenth day of October, two thousand ten, relating to Workforce West Virginia (employer violator system, 96 CSR 3), is authorized.

§64-10-2. Division of Natural Resources.

(a) The legislative rule filed in the state register on the twenty-ninth day of June, two thousand ten, authorized under the authority of section twenty-three, article seven, chapter twenty, of this code, modified by the Division of Natural Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-eighth day of July, two thousand ten, relating to the Division of Natural Resources (special motorboating regulations, 58 CSR 27), is authorized.

(b) The legislative rule filed in the state register on the twenty-second day of July, two thousand ten, authorized under
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the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (prohibitions when hunting and trapping, 58 CSR 47), is authorized.

(c) The legislative rule filed in the state register on the twenty-second day of July, two thousand ten, authorized under the authority of section seven, article one, chapter twenty, of this code, relating to the Division of Natural Resources (general hunting, 58 CSR 49), is authorized.

§64-10-3. Division of Labor.

(a) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section eleven, article three-c, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-third day of September, two thousand ten, relating to the Division of Labor (Elevator Safety Act, 42 CSR 21), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of July, two thousand ten, authorized under the authority of section eleven, article three-c, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-third day of September, two thousand ten, relating to the Division of Labor (supervision of elevator mechanics and apprentices, 42 CSR 21A), is authorized.

(c) The legislative rule filed in the state register on the twenty-third day of July, two thousand ten, authorized under the authority of section three, article three-d, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-third day of September, two thousand ten, relating to the Division
of Labor (Crane Operator Certification Act, 42 CSR 24), is authorized with the following amendment:

On page five, subdivision 5.5(a) after the words “as required by”, by striking the words “paragraph 4.5.l(f)” and inserting in lieu thereof the words “subdivision 5.1(f)”;

And,

On page eight, subsection 7.3, by striking out “25-5” and inserting in lieu thereof “25-4”.

(d) The legislative rule filed in the state register on the twenty-third day of July, two thousand ten, authorized under the authority of section three, article three-d, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-third day of September, two thousand ten, relating to the Division of Labor (Crane Operator Certification Act - practical examination, 42 CSR 25), is authorized.

CHAPTER 116

(Com. Sub. for H. B. 3105 - By Delegates Lawrence, Smith, Ellem, Ferro, Pino, M. Poling and D. Campbell)

[Passed March 12, 2011; in effect ninety days from passage.]
[Approved by the Governor on April 5, 2011.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-26, relating
to immunity from civil and criminal liability for first responders who use forced entry in response to a 911 call.

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 §55-7-26, to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-26. First responders who use forced entry in response to 911 call; limited immunity from civil and criminal liability.

(a) “First responder” includes: law-enforcement officers, firefighters, emergency medical services personnel and others that respond to calls for emergency medical assistance.

(b) Neither a first responder nor his or her supervisor, agency, employer or supervising entity is liable for any civil damages or criminal liability resulting from a forcible entry of a home, business or other structure if the first responder:

(1) Is responding to a documented 911 call for emergency medical assistance;

(2) Has made reasonable efforts to summon an occupant of the home, business, or structure by knocking or otherwise notifying the occupant(s) of his or her presence;

(3) Has not received a response from an occupant within a reasonable period of time; and

(4) Has a good faith belief that it is necessary to make a forcible entry for the purposes of rendering emergency medical assistance or preventing imminent bodily harm.
(c) Nothing in this section shall affect the standard of care a first responder must employ when rendering aid after gaining entry.

CHAPTER 117

(Com. Sub. for S. B. 458 - By Senators Laird, Fanning, D. Facemire, Williams, McCabe and Plymale)

[Amended and again passed, in an effort to meet the objections of the Governor, March 12, 2011; in effect ninety days from passage.] [Approved by the Governor on March 31, 2011.]

AN ACT to amend and reenact §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931, as amended, all relating to updating the Logging Sediment Control Act; increasing licensure and certification fees; requiring the Division of Forestry to report certain information to the Tax Commissioner on a monthly basis; requiring the Director of the Division of Forestry to notify the Director of the Division of Water and Waste Management of the Department of Environmental Protection of licensure suspension or revocation within thirty days; modifying licensure and certification renewal and application procedures; revising certification training requirements; permitting the director the discretion to immediately suspend a timbering operator or operation, or any part of a timbering operation, in any part of the state; and requiring the Director of the Division of Forestry to convene a committee to review best management practices every five years.

Be it enacted by the Legislature of West Virginia:
That §19-1B-3, §19-1B-4, §19-1B-5, §19-1B-7, §19-1B-11 and §19-1B-12a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1B. SEDIMENT CONTROL DURING COMMERCIAL TIMBER HARVESTING OPERATIONS.

§19-1B-3. Definitions.

(a) “Best management practices” means sediment control measures, structural or nonstructural, used singly or in combination, to reduce soil runoff from land disturbances associated with commercial timber harvesting.

(b) “Chief” means the Director of the Division of Water and Waste Management of the Department of Environmental Protection, or his or her designee.

(c) “Director” means the Director of the Division of Forestry of the Department of Commerce or his or her designee.

(d) “Operator” means any person who conducts timbering operations.

(e) “Timbering operation,” or the plural, means activities directly related to the severing or removal of standing trees from the forest as a raw material for commercial processes or purposes. For the purpose of this article, timbering operations do not include the severing of evergreens grown for and severed for the traditional Christmas holiday season; the severing of trees incidental to ground-disturbing construction activities, including well sites, access roads and gathering lines for oil and natural gas operations; the severing of trees for maintaining existing, or during construction of, rights-of-way for public highways or public...
utilities or any company subject to the jurisdiction of the Federal Energy Regulatory Commission unless the trees so severed are being sold or provided as raw material for commercial wood product purposes; or the severing of trees by an individual on the individual’s own property for his or her individual use provided that the individual does not have the severing done by a person whose business is the severing or removal of trees.

(f) “Sediment” means solid particulate matter, usually soil or minute rock fragments, moved by wind, rainfall or snowmelt into the streams of the state.

§19-1B-4. Timbering license required; requirement for license; exemption; annual fee; rules.

(a) A person may not conduct timbering operations, purchase timber or buy logs for resale until he or she has obtained a license and met the requirements of this article.

(b) Exemptions.—A person who severs or removes, or hires or contracts with another to sever or remove, standing trees from his or her own land is exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by or for this owner have an aggregate stumpage value that does not exceed $15,528. A person hired or contracted to sever or remove standing trees from the land of another is exempted from the timbering operations licensure requirement of this section during any calendar year in which all trees severed or removed by the hired or contracted person have an aggregate stumpage value that does not exceed $15,528.

(c) An applicant for a timbering operation license shall submit an application and the fee of $150 for each biennial
renewal of the license. The application shall contain the following information:

(1) Name, address and telephone number of the applicant and if the applicant is a business entity other than a sole proprietor, the names and addresses of the principals, officers and resident agent of the business entity;

(2) The applicant’s West Virginia business registration number or a copy of the current West Virginia business registration certificate. The Division of Forestry shall submit this information and a list of all applicants to the Tax Commissioner each month of the calendar year to ensure compliance with payment of severance, income withholding and all other applicable state taxes; and

(3) Any other information as required by the director.

(d) The director shall propose rules for legislative approval pursuant to the provisions of article three, chapter twenty-nine-a of this code, regarding the acquisition, suspension and revocation a license under this article. The rules are the proper subject of emergency legislative rules that may be promulgated in accordance with the provision of section fifteen, article three, section twenty-nine-a of this code.

(e) The director shall prescribe a form providing the contents and manner of posting notice at the timbering operation. The notice shall include, at a minimum, the operator’s name and license number.

§19-1B-5. Compliance orders; suspension of timbering operation license.

(a) Upon a finding by the chief that failure to use a particular best management practice is causing or contributing, or has the potential to cause or contribute, to
soil erosion or water pollution, the chief shall notify the
director of the location of the site, the problem associated
with the site, and any suggested corrective action. Upon the
failure of the director to take appropriate action within three
days of providing notice to the director, the chief may seek
relief through the conference panel in accordance with
section eleven of this article.

(b) Upon notification of the chief or upon a finding by
the director that failure to use a particular best management
practice is causing or contributing, or has the potential to
cause or contribute, to soil erosion or water pollution, the
director shall issue a written compliance order requiring the
person conducting the timbering operation to take corrective
action. The order shall mandate compliance within a
reasonable and practical time not to exceed ten days. The
person subject to the order may appeal the order within
forty-eight hours of its issuance to the conference panel in
accordance with section eleven of this article.

(c) The director has the discretion to immediately
suspend a timbering operator or operation, or any part of a
timbering operation, in any part of the state if:

(1) The director believes that the observed damage or
circumstances on a timbering operation are sufficient to
endanger life or result in uncorrectable soil erosion or water
pollution, or if the;

(2) The operator is not licensed pursuant to this article;
or

(3) A certified logger is not supervising the timbering
operation.

(d) The timbering operation, the operator, or both shall
remain suspended until the corrective action mandated in the
compliance order is instituted. The director shall not lift the suspension until compliance is satisfactory or until overruled on appeal. Failure to comply with any compliance order is a violation of this article. The timbering operator or operation subject to the compliance order may appeal to the conference panel in accordance with the provisions of section eleven of this article.

(e) For a second violation within any two-year period, the director may suspend the license of any operator conducting a timbering operation or the certification of any certified logger supervising a timbering operation for no less than thirty nor more than ninety days if the person is found in violation of this article or article eleven, chapter twenty-two of this code. One or more violations for the same incident is only one violation for purposes of this subsection.

(f) For a third violation within any two-year period, the director may revoke the license of any operator conducting timbering operations or the certification of any certified logger if the person is found in violation of this article or article eleven, chapter twenty-two of this code. One or more violations for the same incident is only one violation for purposes of this subsection. A revoked license is not subject to reissue during the current licensing period.

(g) The director shall notify the chief of any order issued or any suspension or revocation of a license pursuant to this section within thirty days of the director’s action.

§19-1B-7. Certification of persons supervising timbering operations; timbering operations to be supervised; promulgation of rules.

(a) Any individual supervising any licensed timbering operation, or any individual supervising any timbering operation that is not exempted from the licensing requirements set forth in section four of this article, must be certified pursuant to this section.
(b) The director is responsible for the development of standards and criteria for education, training and examination that must be successfully completed for persons to be certified to supervise any timbering operation. The certified logger shall attend a training program every four years after certification. The program for certified loggers shall provide for education and training in the safe conduct of timbering operations, in first aid procedures and in the use of best management practices to prevent soil erosion on timbering operations. The goals of this program will be to assure that timbering operations are conducted in accordance with applicable state and federal safety regulations in a manner that is environmentally sound and safe.

(c) The director shall provide programs using the resources of the division, other appropriate state agencies, educational entities and other qualified persons. Each inspector under the jurisdiction of the chief shall attend a certification program free of charge and complete the certification requirements of this section.

(d) The director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, to effectuate the purposes of this article.

(e) Upon a person’s successful completion of the certification requirements, the director shall provide proof of the completion by issuing a numbered certificate and a wallet-sized card to that person. The division shall maintain a record of each certificate issued and the person to whom it was issued.

(f) The certified logger shall submit a fee of $150 for the initial certification application and the renewal application every two years thereafter.
(g) Every timbering operation that is required to be licensed under section four of this article must have at least one person certified pursuant to this section supervising the operation at any time the timbering operation is being conducted. All timbering operators shall be guided by the West Virginia forest practice standards and the West Virginia silvicultural best management practices to reduce sediment movement during a timber operation.

(h) The director shall, at no more than five-year intervals, convene a committee to review the best management practices to ensure that they reflect and incorporate the most current technologies. The committee shall, at a minimum, include a person researching silvicultural best management practices, a person in the field of silviculture, two loggers certified under this article, a representative of the Division of Water and Waste Management of the Department of Environmental Protection and a representative of an environmental organization. The director shall chair the committee and may amend the best management practices according to the suggestions of the committee for the next certification cycle.

§19-1B-11. Creation of conference panels; authority.

(a) Each forestry region in this state shall contain an informal conference panel composed of three persons to decide appeals of the director’s orders. One member of the panel shall be selected by the director, one member shall be selected by the chief and one member shall be selected by agreement between the chief and the director. If a vacancy exists on the panel, the vacancy shall be filled by whomever made the initial selection. The members of the panel shall serve without compensation.

(b) Upon appeal of a decision under this section or upon petition by the chief, pursuant to the provisions of
subsection (a), section five of this article, the panel shall
hold an informal conference affirming, modifying or
vacating an order of the director, or issuing an order in the
name of the director. The panel shall forthwith notify the
parties of its decision and as soon as practicable send written
notice of its decision to the parties. The decision of the
panel is final.

(c) A party aggrieved by a decision of a panel may
appeal to the circuit court of the county wherein the cause
for the order arose. The appeal must be filed with the circuit
court within twenty days of the date of decision of the panel
and shall be heard de novo by the court. The court may
reverse, vacate or modify the decision of the panel. The
decision of the circuit court is final unless reversed, vacated
or modified on appeal to the Supreme Court of Appeals in
the manner provided by law.

§19-1B-12a. Criminal penalties.

(a) A person who knowingly or willingly commits one
of the following violations is guilty of a misdemeanor and,
upon conviction thereof, shall be fined not less than $250
and not more than $500 for each violation:

(1) Conducts timbering operations or purchases timber
or buys logs for resale in this state without holding a valid
license from the Director of the Division of Forestry, as
required by section four of this article;

(2) Conducts timbering operations or severs trees for
sale at a location in this state, without providing the Director
of the Division of Forestry with notice of the location where
the timbering or harvesting operations are to be conducted,
as required by section six of this article;
(3) Conducts a timbering operation in this state that is not supervised by a certified logger who holds a valid certificate from the Director of the Division of Forestry, as required by section seven of this article; or

(4) Continues to conduct timbering operations in violation of an existing suspension or revocation order that has been issued by the Director of the Division of Forestry or a conference panel under sections five, ten or eleven of this article.

(b) For the purposes of this section, each day that a person conducts timbering operations in this state without a license as required by this article, without the supervision of a certified logger as required by this article, without providing notice of the location to the director as required by this article, or in violation of an outstanding suspension or revocation order shall constitute a separate offense.

(c) In addition to any other law-enforcement agencies that have jurisdiction over criminal violations, any forester or forest technician employed by the Division of Forestry, who, as a part of his or her official duties is authorized by the Director of the Division of Forestry to inspect timbering operations, is authorized to issue citations for any of the listed violations in this article that he or she has witnessed. The limited authority granted to employees of the Division of Forestry to issue citations to enforce the provisions of this section does not include the power to place any individual or person under arrest.