

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4046**

4  
5 (By Delegates Morgan, Swartzmiller, Hartman, Givens, Manypenny  
6 and Staggers)

7 (Originating in the Committee on Judiciary)

8 [January 27, 2012]

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

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

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20 be repealed; that §5A-1-11 of said code be amended and reenacted;  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

1 all to read as follows:

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

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

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

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

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

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

18           (c) The coordinator shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ensuing fiscal years.

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

7 ~~(h) The state Americans with disabilities coordinator shall~~  
8 ~~continue to exist until the first day of July, two thousand nine,~~  
9 ~~unless sooner terminated, continued or reestablished pursuant to~~  
10 ~~the provisions of article ten, chapter four of this code.~~

11 **CHAPTER 9. HUMAN SERVICES.**

12 **ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND**  
13 **RESPONSIBILITIES GENERALLY.**

14 **§9-2-1a. Department of Health and Human Resources.**

15 The Department of Health and Human Resources shall be charged  
16 with the administration of this chapter. ~~Pursuant to the~~  
17 ~~provisions of article ten, chapter four of this code, the~~  
18 ~~Department of Health and Human Resources shall continue to exist~~  
19 ~~until the first day of July, two thousand six, unless sooner~~  
20 ~~terminated, continued or reestablished.~~

21 **CHAPTER 18. EDUCATION.**

22 **ARTICLE 10A. REHABILITATION SERVICES.**

23 **§18-10A-2. Division of rehabilitation services.**

24 (a) The Division of Rehabilitation Services is hereby  
25 transferred to the department of education and the arts created in

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

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

18 ~~Pursuant to the provisions of article ten, chapter four of~~  
19 ~~this code, the Division of Rehabilitation Services shall continue~~  
20 ~~to exist until the first day of July, two thousand four.~~

21 **CHAPTER 19. AGRICULTURE.**

22 **ARTICLE 1. DEPARTMENT OF AGRICULTURE.**

23 **§19-1-3a. Marketing and Development Division; duties.**

24 ~~In recognition that article ten, chapter four of this code~~  
25 ~~requires a preliminary performance review of the rural resource~~



1 ~~a member of this compact until the first day of July, two thousand~~  
2 ~~six, unless sooner terminated, continued or reestablished by act of~~  
3 ~~the Legislature.~~

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

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

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

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

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

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

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

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

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

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

25 (6) One member who is representative of the coal industry, to



1 be appointed by the Governor;

2 (7) One member of the Senate, to be appointed by the President  
3 of the Senate;

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

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

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

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

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

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

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

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

24 (g) Committee members may be reimbursed for actual and  
25 necessary expenses incurred for each day or portion of a day

1 engaged in the discharge of committee duties in a manner consistent  
2 with guidelines of the Travel Management Office of the Department  
3 of Administration.

4 (h) On or before January 1 ~~2004~~, and of each ~~subsequent~~ year  
5 ~~thereafter~~ the committee shall submit to the Governor and to the  
6 Legislature a report of its recommendations for improving the  
7 effectiveness of the commercial vehicle weight and safety  
8 enforcement program.

9 ~~(i) The commercial vehicle weight and safety enforcement~~  
10 ~~advisory committee shall continue to exist until the first day of~~  
11 ~~July, two thousand seven, pursuant to the provisions of article~~  
12 ~~ten, chapter four of this code, unless sooner terminated, continued~~  
13 ~~or reestablished pursuant to the provisions of that article.~~

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

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

16 **§47A-1-1. Legislative findings; creation, membership, powers and**  
17 **duties of board; termination of board.**

18 (a) The Legislature ~~hereby~~ finds and declares that:

19 (1) Changes in the permissible charges on loans, credit sales  
20 or transactions, forbearance or other similar transactions requires  
21 specialized knowledge of the needs of the citizens of West Virginia  
22 for credit for personal and commercial purposes and knowledge of  
23 the availability of such credit at reasonable rates to the citizens  
24 of this state while affording a competitive return to persons  
25 extending such credit;

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

7           (3) The prescribing of such maximum interest rates and finance  
8 charges can be accomplished most effectively and flexibly by a  
9 board comprised of the heads of designated government agencies,  
10 university schools of business and administration and members of  
11 the public.

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

25           (c) The West Virginia Lending and Credit Rate Board shall be

1 comprised of:

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

4 (2) The West Virginia State Treasurer;

5 (3) The West Virginia Banking Commissioner;

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

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

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

25 (d) The West Virginia Lending and Credit Rate Board is hereby

1 authorized and directed to meet after December 31, 1983, on the  
2 first Tuesday of April and on the first Tuesday of October of each  
3 year or more or less frequently as required by the circumstances  
4 and to prescribe by order a maximum rate of interest and finance  
5 charge for the next succeeding six months, effective on June 1 and  
6 on December 1, for any loans, credit sales or transactions,  
7 forbearance or similar transactions made pursuant to this section.  
8 In fixing said maximum rates of interest and finance charge, the  
9 board shall take into consideration prevailing economic conditions,  
10 including the monthly index of long-term United States government  
11 bond yields for the preceding calendar month, yields on  
12 conventional commercial short-term loans and notes throughout West  
13 Virginia and throughout the United States and on corporate  
14 interest-bearing securities of high quality, the availability of  
15 credit at reasonable rates to the citizens of this state which  
16 afford a competitive return to persons extending ~~such~~ credit and  
17 ~~such~~ other factors as the board may determine.

18 (e) Any petition proposing a change in the prescribed maximum  
19 rates of interest and finance charges must be filed in the office  
20 of the Banking Commissioner no later than ~~the~~ February 15 in order  
21 to be voted on at the board meeting on the first Tuesday of April  
22 and no later than August 15 in order to be voted on at the board  
23 meeting on the first Tuesday of October. Whenever any change in  
24 the prescribed maximum rates of interest and finance charges is  
25 proposed the board shall schedule a hearing, at least fifteen days

1 prior to the board meeting at which the proposed rates of interest  
2 and finance charge will be voted on by the members of the board,  
3 and shall give all interested parties the opportunity to testify  
4 and to submit information at such public hearing that is relevant.  
5 Notice of the scheduled public hearing shall be issued and  
6 disseminated to the public at least twenty days prior to the  
7 scheduled date of the hearing.

8 (f) The board shall prescribe by order issued not later than  
9 April 20 and not later than October 20, in accordance with the  
10 provisions of subsection (d) of this section, the maximum rates of  
11 interest and finance charge for the next succeeding six months for  
12 any loan, credit sale, forbearance or similar transaction made  
13 pursuant to this section and shall cause ~~such~~ the maximum rate of  
14 interest and finance charge to be issued and disseminated to the  
15 public, ~~such maximum rate of interest and finance charge~~ to be  
16 effective on June 1 and December 1 for the next succeeding six  
17 months.

18 (g) Notwithstanding the other provisions of this chapter, the  
19 West Virginia Lending and Credit Rate Board shall not be required  
20 to meet if no petition has been filed with the board requesting a  
21 hearing and interest rates and economic conditions have not changed  
22 sufficiently to indicate that any change in the existing rate order  
23 would be required, and there are not at least two board members who  
24 concur that a meeting of the board is necessary. If the board does  
25 not meet, the maximum rates of interest and finance charges

1 prescribed by the board in the existing rate order shall remain in  
2 full force and effect until the next time the board meets and  
3 prescribes different maximum rates of interest and finance charges.

4 (h) If circumstances and economic conditions require, the  
5 chairperson or any three board members, at any time, may call an  
6 emergency interim meeting of the West Virginia Lending and Credit  
7 Rate Board, at which time the chairperson shall give ten days'  
8 notice of the scheduled emergency meeting to the public. All  
9 interested parties shall have the opportunity to be heard and to  
10 submit information at ~~such~~ the emergency meeting that is relevant.  
11 Any and all emergency rate board orders shall be effective within  
12 thirty days from the date of ~~such~~ the emergency meeting.

13 (i) Each member of the board, except those whose regular  
14 salary is paid by the State of West Virginia, shall receive \$75 per  
15 diem while actually engaged in the performance of the duties of the  
16 board. Each member shall be reimbursed for all reasonable and  
17 necessary expenses actually incurred during the performance of  
18 their duties, except that in the event the expenses are paid by a  
19 third party the members shall not be reimbursed by the state. The  
20 reimbursement shall be paid out of the special revenue account of  
21 the Division of Banking upon a requisition upon the State Auditor,  
22 properly certified by the Banking Commissioner.

23 (j) In setting the maximum interest rates and finance charges,  
24 the board may set varying rates based on the type of credit  
25 transaction, the term of transaction, the type of debtor, the type

1 of creditor and other factors relevant to ~~determination of such~~  
2 determining the rates. In addition, the board may set varying  
3 rates for ranges of principal balances within a single category of  
4 credit transactions.

5 ~~(k) Pursuant to the provisions of article ten, chapter four of~~  
6 ~~this code, the West Virginia lending and credit rate board shall~~  
7 ~~continue to exist until the first day of July, two thousand five."~~