

**Senate Bill No. 396**

(By Senators Kessler (Mr. President) and M. Hall,

By Request of the Executive)

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[Introduced January 21, 2014; referred to the Committee on  
Government Organization.]

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10 A BILL to repeal §5-1C-2, §5-1C-3, §5-1C-4 and §5-1C-5 of the Code  
11 of West Virginia, 1931, as amended; to repeal §5B-2-2 and  
12 §5B-2-3 of said code; to repeal §15-8-1, §15-8-2, §15-8-3,  
13 §15-8-4, §15-8-5, §15-8-6, §15-8-7, §15-8-8, §15-8-9,  
14 §15-8-10, §15-8-11 and §15-8-12 of said code; to repeal  
15 §16-5J-5 of said code; to repeal §16-5P-7 of said code; to  
16 repeal §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, §16-29H-5,  
17 §16-29H-6, §16-29H-7, §16-29H-8, §16-29H-9 and §16-29H-10 of  
18 said code; to repeal §16-42-1, §16-42-2, §16-42-3, §16-42-4,  
19 §16-42-5 and §16-42-6 of said code; to repeal §18-2J-1,  
20 §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7  
21 of said code; to repeal §18B-1C-3 of said code; to repeal  
22 §18B-14-11 of said code; to repeal §18B-16-6 of said code; to

1 repeal §20-2B-2a of said code; to repeal §21-3A-10 of said  
2 code; to repeal §23-1-1a of said code; to repeal §29-12B-4 and  
3 §29-12B-5 of said code; to repeal §29-12C-1 and §29-12C-2 of  
4 said code; to repeal §31-16-1, §31-16-2, §31-16-3 and §31-16-4  
5 of said code; to repeal §33-16G-1, §33-16G-2, §33-16G-3,  
6 §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8 and  
7 §33-16G-9 of said code; to repeal §33-48-2 and §33-48-3 of  
8 said code; to repeal §47A-1-1, §47A-1-2, §47A-1-3 and §47A-1-4  
9 of said code; to repeal §55-15-1, §55-15-2, §55-15-3,  
10 §55-15-4, §55-15-5 and §55-15-6 of said code; to repeal  
11 §62-11E-1, §62-11E-2 and §62-11E-3 of said code; to amend and  
12 reenact §15-5-28 of said code; to amend and reenact §18A-3-2c  
13 of said code; and to amend and reenact §33-16D-16 of said  
14 code, all relating to eliminating unnecessary boards,  
15 councils, committees, panels, task forces and commissions;  
16 repealing the Science and Technology Advisory Council;  
17 repealing the Council for Community and Economic Development;  
18 repealing the Statewide Mutual Aid Committee; repealing the  
19 Sheriffs' Bureau; repealing the Clinical Laboratories Quality  
20 Assurance Advisory Board; repealing the Council on Aging;  
21 repealing the Governor's Office of Health Enhancement and  
22 Lifestyle Planning; repealing the Comprehensive Behavioral

1 Health Commission; repealing the Governor's Advisory Council  
2 for Educational Technology; repealing the Principal Standards  
3 Advisory Council; repealing the West Virginia Consortium for  
4 Undergraduate Research and Engineering; repealing the  
5 Governor's Commission on Graduate Study in Science,  
6 Technology, Engineering and Mathematics; repealing the West  
7 Virginia Rural Health Advisory Panel; repealing the Ohio River  
8 Management Fund Advisory Board; repealing the Occupational  
9 Safety and Health Review Commission; repealing the Workers'  
10 Compensation Board of Managers; repealing the State Medical  
11 Malpractice Advisory Panel; repealing the Patient Injury  
12 Compensation Plan Study Board; repealing the Steel Advisory  
13 Commission; repealing the West Virginia Small Employer Group  
14 Health Benefit Plan Policy Advisory Committee; repealing the  
15 West Virginia Health Benefit Exchange Governing Board;  
16 repealing the West Virginia Health Insurance Plan Board;  
17 repealing the West Virginia Lending and Credit Rate Board;  
18 repealing the Alternative Dispute Resolution Commission; and  
19 repealing the Sexually Violent Predator Management Task Force.

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

21 That §5-1C-2, §5-1C-3, §5-1C-4 and §5-1C-5 of the Code of West  
22 Virginia, 1931, as amended, be repealed; that §5B-2-2 and §5B-2-3

1 of said code be repealed; that §15-8-1, §15-8-2, §15-8-3, §15-8-4,  
2 §15-8-5, §15-8-6, §15-8-7, §15-8-8, §15-8-9, §15-8-10, §15-8-11 and  
3 §15-8-12 of said code be repealed; that §16-5J-5 of said code be  
4 repealed; that §16-5P-7 of said code be repealed; that §16-29H-1,  
5 §16-29H-2, §16-29H-3, §16-29H-4, §16-29H-5, §16-29H-6, §16-29H-7,  
6 §16-29H-8, §16-29H-9 and §16-29H-10 of said code be repealed; that  
7 §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5 and §16-42-6 of  
8 said code be repealed; that §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4,  
9 §18-2J-5, §18-2J-6 and §18-2J-7 of said code be repealed; that  
10 §18B-1C-3 of said code be repealed; that §18B-14-11 of said code be  
11 repealed; that §18B-16-6 of said code be repealed; that §20-2B-2a  
12 of said code be repealed; that §21-3A-10 of said code be repealed;  
13 that §23-1-1a of said code be repealed; that §29-12B-4 and  
14 §29-12B-5 of said code be repealed; that §29-12C-1 and §29-12C-2 of  
15 said code be repealed; that §31-16-1, §31-16-2, §31-16-3 and  
16 §31-16-4 of said code be repealed; that §33-16G-1, §33-16G-2,  
17 §33-16G-3, §33-16G-4, §33-16G-5, §33-16G-6, §33-16G-7, §33-16G-8  
18 and §33-16G-9 of said code be repealed; that §33-48-2 and §33-48-3  
19 of said code be repealed; that §47A-1-1, §47A-1-2, §47A-1-3 and  
20 §47A-1-4 of said code be repealed; that §55-15-1, §55-15-2,  
21 §55-15-3, §55-15-4, §55-15-5 and §55-15-6 of said code be repealed;  
22 that §62-11E-1, §62-11E-2 and §62-11E-3 of said code be repealed;

1 that §15-5-28 of said code be amended and reenacted; that §18A-3-2c  
2 of said code be amended and reenacted; and that §33-16D-16 of said  
3 code be amended and reenacted, all to read as follows:

4 **CHAPTER 15. PUBLIC SAFETY.**

5 **ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

6 **§15-5-28. Statewide mutual aid system.**

7 (a) The Legislature hereby finds that emergencies transcend  
8 political jurisdictional boundaries and that intergovernmental  
9 coordination is essential for the protection of lives and property  
10 and for the best use of available assets, both public and private.  
11 The purpose of this section is to create a system of intrastate  
12 mutual aid between participating political subdivisions in the  
13 state. The system shall provide for mutual assistance among the  
14 participating political subdivisions in the prevention of, response  
15 to and recovery from any disaster that results in a formal state of  
16 emergency in a participating political subdivision, subject to that  
17 participating political subdivision's criteria for declaration.  
18 The system shall provide for mutual cooperation among the  
19 participating subdivisions in conducting disaster-related  
20 exercises, testing or other training activities outside actual  
21 declared emergency periods. This section provides no immunity,  
22 rights or privileges for any individual responding to a state of

1 emergency that is not requested or authorized to respond by a  
2 participating political subdivision. Participating political  
3 subdivisions will be ensured, to the fullest extent possible,  
4 eligibility for state and federal disaster funding.

5 ~~(b) The Statewide Intrastate Mutual Aid Committee is hereby~~  
6 ~~created. The committee shall consist of eleven members from~~  
7 ~~various different public safety entities and other governmental~~  
8 ~~entities who shall be appointed by the Governor. The Director of~~  
9 ~~the Division of Homeland Security and Emergency Management, or his~~  
10 ~~or her designee, shall chair the committee. This committee shall~~  
11 ~~be multidisciplinary and representative of emergency management and~~  
12 ~~response disciplines as well as local government. It shall be the~~  
13 ~~committee's responsibility to hold, at a minimum, annual meetings~~  
14 ~~to review the progress and status of statewide mutual aid, assist~~  
15 ~~in developing methods to track and evaluate activation of the~~  
16 ~~system and to examine issues facing participating political~~  
17 ~~subdivisions regarding the implementation of this legislation. The~~  
18 ~~committee may prepare an annual report on the condition and~~  
19 ~~effectiveness of mutual aid in the state, make recommendations for~~  
20 ~~correcting any deficiencies and submit that report to the~~  
21 ~~appropriate legislative committee or other governing body. Members~~  
22 ~~of the committee shall serve a maximum two-year term.~~

1       ~~(e)~~ (b) Upon the enactment of this legislation, all political  
2 subdivisions within the state are members of the statewide mutual  
3 aid system: *Provided*, That a political subdivision within the  
4 state may elect not to participate or to withdraw from the system  
5 upon the enactment of an appropriate resolution by its governing  
6 body declaring that it elects not to participate in the statewide  
7 mutual aid system. A copy of any such resolution shall be provided  
8 to the Division of Homeland Security and Emergency Management.

9       ~~(d)~~ (c) This section does not preclude participating political  
10 subdivisions from entering into supplementary agreements with  
11 another political subdivision and does not affect any other  
12 agreement to which a political subdivision may currently be a party  
13 to, or decide to be a party to.

14       ~~(e)~~ (d) "Emergency responder", as used in this article, shall  
15 mean anyone with special skills, qualifications, training,  
16 knowledge and experience in the public or private sectors that  
17 would be beneficial to a participating political subdivision in  
18 response to a locally declared emergency as defined in any  
19 applicable law or ordinance or authorized drill or exercises; and  
20 who is requested and authorized to respond. Under this definition,  
21 an emergency responder may be required to possess a license,  
22 certificate, permit or other official recognition for his or her

1 expertise in a particular field or area of knowledge. An emergency  
2 responder could include, but is in no way limited to, the  
3 following: Law-enforcement officers, firefighters, emergency  
4 medical services personnel, physicians, nurses, other public health  
5 personnel, emergency management personnel, public works personnel,  
6 local emergency debris removal teams, those persons with  
7 specialized equipment operations skills or training or any other  
8 skills needed to provide aid in a declared emergency.

9 ~~(f)~~ (e) It shall be the responsibility of each participating  
10 political subdivision with jurisdiction over and responsibility for  
11 emergency management within that certain subdivision to do all of  
12 the following:

13 (1) Identify potential hazards that could affect the  
14 participant using an identification system common to all  
15 participating jurisdictions.

16 (2) Conduct joint planning, intelligence sharing and threat  
17 assessment development with contiguous participating political  
18 subdivisions, and conduct joint training at least biennially.

19 (3) Identify and inventory the current services, equipment,  
20 supplies, personnel and other resources related to planning,  
21 prevention, mitigation, response and recovery activities of the  
22 participating political subdivision.



1           (4) Adopt and implement the National Incident Management  
2 System approved by the State of West Virginia.

3           ~~(g)~~ (f) A participating political subdivision may request  
4 assistance of other participating political subdivisions in  
5 preventing, mitigating, responding to and recovering from disasters  
6 that result in locally declared emergencies or in concert with  
7 authorized drills or exercises as allowed under this section.  
8 Requests for assistance shall be made to the Division of Homeland  
9 Security and Emergency Management through the designated county  
10 emergency management director by the chief executive officer of a  
11 participating political subdivision, or his or her designee for  
12 response. Requests may be verbal or in writing. Verbal requests  
13 will be followed up with a written request as soon as is practical  
14 or such number of days as the state, in its discretion, may  
15 dictate.

16           ~~(h)~~ (g) The obligation of a participating political  
17 subdivision to provide assistance in the prevention of, response to  
18 and recovery from a locally declared emergency or in authorized  
19 drills or exercises is subject to the following conditions:

20           (1) A participating political subdivision requesting  
21 assistance must have either declared a state of emergency in the  
22 manner outlined in this section or authorized drills and exercises;

1           (2) A responding participating political subdivision may  
2 withhold resources to the extent necessary to provide reasonable  
3 protection and services for its own jurisdiction;

4           (3) Emergency response personnel of a responding participating  
5 political subdivision shall continue under the command and control  
6 of their responding jurisdiction to include medical protocols,  
7 standard operating procedures and other protocols, but shall be  
8 under the operational control of the appropriate officials within  
9 the National Incident Management System of the participating  
10 political subdivision receiving the assistance; and

11          (4) Assets and equipment of a responding participating  
12 political subdivision shall continue under the control of the  
13 responding jurisdiction, but shall be under the operational control  
14 of the appropriate officials within the National Incident  
15 Management System of the participating political subdivision  
16 receiving the assistance.

17          ~~(f)~~ (h) If a person or entity holds a license, certificate or  
18 other permit issued by a participating political subdivision or the  
19 state evidencing qualification in a professional, mechanical or  
20 other skill and the assistance of that person or entity is  
21 requested by a participating political subdivision, the person or  
22 entity shall be deemed to be licensed, certified or permitted in

1 the political subdivision requesting assistance for the duration of  
2 the declared emergency or authorized drills or exercises and  
3 subject to any limitations and conditions the chief executive of  
4 the participating political subdivision receiving the assistance  
5 may prescribe by executive order or otherwise.

6 ~~(j)~~ (I) (1) Any requesting political subdivision shall  
7 reimburse the participating political subdivision rendering aid  
8 under this system, ~~and in accordance with procedures developed by~~  
9 ~~the Statewide Intrastate Mutual Aid Committee~~ provided the request  
10 for aid is authorized by the Division of Homeland Security and  
11 Emergency Management. A participating political subdivision  
12 providing assistance may determine to donate assets of any kind to  
13 a receiving participating political subdivision. ~~Requests for~~  
14 ~~reimbursement shall be in accordance with procedures developed by~~  
15 ~~the Statewide Intrastate Mutual Aid Committee.~~

16 (2) Should a dispute arise between parties to the system  
17 regarding reimbursement, involved parties will make every effort to  
18 resolve the dispute within thirty days of written notice of the  
19 dispute by the party asserting noncompliance. In the event that  
20 the dispute is not resolved within ninety days of the notice of the  
21 claim, either party may request the dispute be solved through  
22 arbitration. Any arbitration under this provision shall be

1 conducted under the commercial arbitration rules of the American  
2 Arbitration Association.

3 ~~(k) The Statewide Intrastate Mutual Aid Committee shall~~  
4 ~~develop comprehensive guidelines and procedures that address,~~  
5 ~~including, but not limited to, the following: Projected or~~  
6 ~~anticipated costs, checklists for requesting and providing~~  
7 ~~assistance, recordkeeping for all participating political~~  
8 ~~subdivisions, reimbursement procedures and other necessary~~  
9 ~~implementation elements along with the necessary forms for requests~~  
10 ~~and other records documenting deployment and return of assets.~~

11 ~~(l)~~ (j) Personnel of a participating political subdivision  
12 responding to or rendering assistance for a request who sustain  
13 injury or death in the course of, and arising out of, their  
14 employment are entitled to all applicable benefits normally  
15 available to personnel while performing their duties for their  
16 employer. Responders shall receive any additional state and  
17 federal benefits that may be available to them for line-of-duty  
18 deaths.

19 ~~(m)~~ (k) All activities performed under this section are deemed  
20 hereby to be governmental functions. For the purposes of  
21 liability, all persons responding under the operational control of  
22 the requesting political subdivision are deemed to be employees of

1 the requesting participating political subdivision.

2       ~~(n)~~ (1) Whenever the law-enforcement officials of any  
3 political subdivision are rendering outside aid pursuant their  
4 lawful authority, and with the approval of the Director of the West  
5 Virginia Division of Homeland Security and Emergency Management,  
6 and under the authority of a state of emergency as officially  
7 proclaimed by the Governor, such law-enforcement officials shall  
8 have the same authority, powers, duties, rights, privileges and  
9 immunities as if they were performing their law-enforcement duties  
10 in the political subdivisions in which they are normally employed.  
11 The authority vested in the law-enforcement official, in accordance  
12 with this section, shall vest upon reporting in person to the  
13 Emergency Management Agency official in charge and on duty at the  
14 county or city of destination assignment. The law-enforcement  
15 official shall act under the authority, supervision and control of  
16 the highest ranking law-enforcement official within the assigned  
17 outside jurisdiction. Law enforcement and powers of arrest  
18 authority will not attach to the law-enforcement official while in  
19 transit from his or her jurisdiction of origin en route to his or  
20 her assigned jurisdiction under intrastate mutual aid assistance.

21                                   **CHAPTER 18A. SCHOOL PERSONNEL.**

22 **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL**

1                   **DEVELOPMENT.**2 **§18A-3-2c. Training through the Principals Academy.**3           (a) *Principal training and professional development required.*4 -- After the effective date of this section and subject to the  
5 provisions of subsection (c) of this section, every principal shall  
6 complete training and professional development through the  
7 Principals Academy as provided in subsection (b) of this section.8           (b) *Principal training and professional development through*  
9 *the academy.* -- The academy and the persons required to complete  
10 training and professional development through the academy shall  
11 adhere to the following guidelines:12           (1) All persons assigned as a principal for the first time in  
13 a West Virginia school after July 1, 2002, shall complete  
14 specialized training and professional development for newly  
15 appointed principals through the academy within the first twelve  
16 months following assignment;17           (2) All principals of schools which have been designated as  
18 seriously impaired, in accordance with section five, article two-e,  
19 chapter eighteen of this code, shall complete specialized training  
20 and professional development through the academy specifically  
21 designed to assist the principal to improve school performance  
22 commencing as soon as practicable following receipt of the

1 designation;

2       (3) All principals who are subject to an improvement plan, in  
3 accordance with section twelve, article two of this chapter, shall  
4 complete specialized training and professional development through  
5 the academy specifically designed for principals subject to an  
6 improvement plan. The specialized training and professional  
7 development shall be completed within twelve months from the date  
8 that the principal is first subject to the improvement plan;

9       (4) All principals who transfer to a school with a  
10 significantly different grade configuration shall complete  
11 specialized training and professional development for principals in  
12 schools with the grade configuration to which they transferred  
13 through the academy within the first twelve months following  
14 transfer; and

15       (5) All persons serving as school principals shall complete  
16 training and professional development through the academy designed  
17 to build the qualities, proficiencies and skills required of all  
18 principals as determined by the state board.

19       (c) *Academy and requirements to complete training and*  
20 *professional development subject to funding.* -- The requirement  
21 that principals complete training and professional development  
22 through the academy shall be subject to the availability of funds

1 for the principals academy from legislative appropriation and from  
2 other sources. If these funds are insufficient to provide for the  
3 total cost of the training and professional development required by  
4 subsection (b) of this section, then the academy shall provide  
5 training and professional development for the persons described in  
6 subdivisions (1) through (5), ~~of~~ subsection (b) according to the  
7 priority in which the subdivisions appear in that subsection. If  
8 such funds are insufficient to provide for the training and  
9 professional development of all the persons described in one or  
10 more of subdivisions (1) through (5), subsection (b) of this  
11 section, the academy is authorized to determine which persons  
12 described within the subdivision or subdivisions shall be admitted  
13 and which shall not be admitted: *Provided*, That the principals  
14 academy shall make every effort to ensure that all principals  
15 receive training and professional development through the academy  
16 at least once every six years effective July 1, 2002, and  
17 thereafter: *Provided, however*, That nothing in this section shall  
18 be construed to require any specific level of funding by the  
19 Legislature.

20 ~~(d) Principals standards advisory council. -- To assist the~~  
21 ~~state board in the performance of the duties described in~~  
22 ~~subsection (e) of this section, there is hereby created a~~



1 ~~"Principals Standards Advisory Council", which shall consist of~~  
2 ~~nine persons, as follows: The executive director of the center for~~  
3 ~~professional development, who shall serve as the ex officio chair;~~  
4 ~~three principals, one from an elementary school and one from a~~  
5 ~~middle school or a junior high school selected by the West Virginia~~  
6 ~~association of elementary and middle school principals, and one~~  
7 ~~from a high school selected by the West Virginia association of~~  
8 ~~secondary school principals; one county school superintendent~~  
9 ~~selected by the West Virginia association of school administrators;~~  
10 ~~and two representatives from higher education who teach in~~  
11 ~~principal preparation programs selected by the teacher education~~  
12 ~~advisory council; and two citizen representatives who are~~  
13 ~~knowledgeable on issues addressed in this section, appointed by the~~  
14 ~~governor. Members of the principals standards advisory council who~~  
15 ~~are public employees shall be granted release time from their~~  
16 ~~employment for attending meetings of the council. Members may be~~  
17 ~~reimbursed for reasonable and necessary expenses actually incurred~~  
18 ~~in the performance of their official duties by the center for~~  
19 ~~professional development. The terms of all members appointed to~~  
20 ~~the principals standards advisory council under the prior enactment~~  
21 ~~of this section shall terminate on the thirty-first day of August,~~  
22 ~~two thousand two. The principals standards advisory council as~~

1 ~~amended on the effective date of this section shall become~~  
2 ~~effective on the first day of September, two thousand two.~~

3       ~~(e)~~ (d) *Establishment of standards.* -- On or before October 1,  
4 1996, the state board shall approve and promulgate rules regarding  
5 the minimum qualities, proficiencies and skills that will be  
6 required of principals after January 1, 1997. The state board  
7 shall promulgate and may from time to time amend such rules. ~~after~~  
8 ~~consultation with the principals standards advisory council created~~  
9 ~~in subsection (d) of this section~~ The rules promulgated by the  
10 state board shall address at least the following:

11       (1) Staff relations, including, but not limited to, the  
12 development and use of skills necessary to make a positive use of  
13 faculty senates, manage faculty and staff with courtesy and mutual  
14 respect, coach and motivate employees, and build consensus as a  
15 means of management;

16       (2) School community leadership qualities, including, but not  
17 limited to, the ability to organize and leverage community  
18 initiative, communicate effectively, work effectively with local  
19 school improvement councils, manage change, resolve conflict and  
20 reflect the highest personal values;

21       (3) Educational proficiencies, including, but not limited to,  
22 knowledge of curriculum, instructional techniques, student learning

1 styles, student assessment criteria, school personnel performance,  
2 evaluation skills and family issues; and

3 (4) Administrative skills, including, but not limited to,  
4 organizational, fiscal, public policy and total quality management  
5 skills and techniques.

6 ~~(f)~~ (e) *Waivers.* -- Any person desiring to be relieved of the  
7 requirements of all or any part of this section may apply in  
8 writing to the state board for a waiver. Upon a showing of  
9 reasonable cause why relief should be granted, the state board may  
10 grant a waiver, upon such terms and conditions as the state board  
11 shall determine proper, as to all or any part of this section.

12 ~~(g)~~ (f) *Failure to comply.* -- Any person who fails or refuses  
13 to complete training and professional development through the  
14 academy, as required by the provisions of this section, and who  
15 fails to obtain a waiver, as described in subsection (f) of this  
16 section, shall be ineligible to be employed as, or serve in the  
17 capacity of, a principal.

18 ~~(h)~~ (g) *Tracking of requirement.* -- On or before January 1,  
19 1997, the state board shall establish a system to track the  
20 progress of each person required to complete training through the  
21 academy and shall regularly advise such persons of their progress.

22 ~~(i)~~ (h) *Payment of reasonable and necessary expenses and*

1 *stipends*. -- The Center for Professional Development shall  
2 reimburse persons attending the academy for reasonable and  
3 necessary expenses. A person may not be required to complete  
4 training and professional development through the Principals  
5 Academy before September 15 and after June 1 of the school year.  
6 The Center for Professional Development shall utilize alternative  
7 methods of instructional delivery and scheduling, including  
8 electronic delivery, as considered appropriate to minimize the  
9 amount of time principals completing training and professional  
10 development through the academy are required to be away from their  
11 school duties. Nothing in this section shall be construed to  
12 require any specific level of funding by the Legislature.

13

**CHAPTER 33. INSURANCE.**14 **ARTICLE 16D. MARKETING AND RATE PRACTICES.**

15 **§33-16D-16. Authorization of uninsured small group health benefit**  
16 **plans.**

17 (a) Upon filing with and approval by the commissioner, any  
18 carrier licensed pursuant to this chapter which accesses a health  
19 care provider network to deliver services may offer a health  
20 benefit plan and rates associated with the plan to a small employer  
21 subject to the conditions of this section and subject to the  
22 provisions of this article. The health benefit plan is subject to

1 the following conditions:

2       (1) The health benefit plan may be offered by the carrier only  
3 to small employers which have not had a health benefit plan  
4 covering their employees for at least six consecutive months before  
5 the effective date of this section. After the passage of six  
6 months from the effective date of this section, the health benefit  
7 plan under this section may be offered by carriers only to small  
8 employers which have not had a health benefit plan covering their  
9 employees for twelve consecutive months;

10       (2) If a small employer covered by a health benefit plan  
11 offered pursuant to this section no longer meets the definition of  
12 a small employer as a result of an increase in eligible employees,  
13 that employer shall remain covered by the health benefit plan until  
14 the next annual renewal date;

15       (3) The small employer shall pay at least fifty percent of its  
16 employees' premium amount for individual employee coverage;

17       (4) The commissioner shall promulgate emergency rules under  
18 the provisions of article three, chapter twenty-nine-a of this code  
19 on or before September 1, 2004, to place additional restrictions  
20 upon the eligibility requirements for health benefit plans  
21 authorized by this section in order to prevent manipulation of  
22 eligibility criteria by small employers and otherwise implement the

1 provisions of this section;

2 (5) Carriers must offer the health benefit plans issued  
3 pursuant to this section through one of their existing networks of  
4 health care providers;

5 (A) The West Virginia Health Care Authority shall, on or  
6 before May 1, 2004, and each year thereafter, by regular mail,  
7 provide a written notice to all known in-state health care  
8 providers that:

9 (i) Informs the health care provider regarding the provisions  
10 of this section; and

11 (ii) Notifies the health care provider that if the health care  
12 provider does not give written refusal to the West Virginia Health  
13 Care Authority within thirty days from receipt of the notice or the  
14 health care provider has not previously filed a written notice of  
15 refusal to participate, the health care provider must participate  
16 with and accept the products and provider reimbursements authorized  
17 pursuant to this section;

18 (B) The carrier's network of health care providers, as well as  
19 any health care provider which provides health care goods or  
20 services to beneficiaries of any departments or divisions of the  
21 state, as identified in article twenty-nine-d, chapter sixteen of  
22 this code, shall accept the health care provider reimbursement

1 rates set pursuant to this section unless the health care provider  
2 gives written refusal to the West Virginia Health Care Authority  
3 between May 1 and June 1 that the provider will not participate in  
4 this program for the next calendar year. Notwithstanding any  
5 provision of this code to the contrary, health care providers may  
6 not be mandated to participate in this program except under the  
7 opt-out provisions of subdivision (5), subsection (a) of this  
8 section and therefore the health care provider shall annually have  
9 the ability to file with the West Virginia Health Care Authority  
10 written notice that the health care provider will not participate  
11 with products issued pursuant to this section. Once a health care  
12 provider has filed a notice of refusal with the West Virginia  
13 Health Care Authority, the notice shall remain effective until  
14 rescinded by the provider and the provider shall not be required to  
15 renew the notice each year;

16 (C) The West Virginia Health Care Authority is responsible for  
17 receiving the responses, if any, from the health care providers  
18 that have elected not to participate and for providing a list to  
19 the commissioner of those health care providers that have elected  
20 not to participate;

21 (D) Those health care providers that do not file a notice of  
22 refusal shall be considered to have accepted participation in this

1 program and to accept Public Employees Insurance Agency health care  
2 provider reimbursement rates for their services as set by this  
3 section;

4 (E) Health care provider reimbursement rates used by the  
5 carrier for a health benefit plan offered pursuant to this section  
6 shall have no effect on provider rates for other products offered  
7 by the carrier and most-favored-nation clauses do not apply to the  
8 rates;

9 (6) With respect to the health benefit plans authorized by  
10 this section, the carrier shall reimburse network health care  
11 providers at the same health care provider reimbursement rates in  
12 effect for the managed care and health maintenance organization  
13 plans offered by the West Virginia Public Employees Insurance  
14 Agency. Beginning in the year 2004, and in each year thereafter,  
15 the health care provider reimbursement rates set under this section  
16 may not be lowered from the level of the rates in effect on the  
17 July 1 of that year for the managed care and health maintenance  
18 plans offered by the Public Employees Insurance Agency. While it  
19 is the intent of this paragraph to govern rates for plans offered  
20 pursuant to this section for annual periods, this paragraph in no  
21 way prevents the Public Employees Insurance Agency from making  
22 provider reimbursement rate adjustments to Public Employees



1 Insurance Agency plans during the course of each year. If there is  
2 a dispute regarding the determination of appropriate rates pursuant  
3 to this section, the Director of the Public Employees Insurance  
4 Agency shall, in his or her sole discretion, specify the  
5 appropriate rate to be applied;

6 (A) The health care provider reimbursement rates as authorized  
7 by this section shall be accepted by the health care provider as  
8 payment in full for services or products provided to a person  
9 covered by a product authorized by this section;

10 (B) Except for the health care provider rates authorized under  
11 this section, a carrier's payment methodology, including copayments  
12 and deductibles and other conditions of coverage, remains  
13 unaffected by this section;

14 (C) The provisions of this section do not require the Public  
15 Employees Insurance Agency to give carriers access to the  
16 purchasing networks of the Public Employees Insurance Agency. The  
17 Public Employees Insurance Agency may enter into agreements with  
18 carriers offering health benefit plans under this section to permit  
19 the carrier, at its election, to participate in drug purchasing  
20 arrangements pursuant to article sixteen-c, chapter five of this  
21 code, including the multistate drug purchasing program. This  
22 paragraph provides authorization of the agreements pursuant to

1 section four of said article;

2       (7) Carriers may not underwrite products authorized by this  
3 section more strictly than other small group policies governed by  
4 this article;

5       (8) With respect to health benefit plans authorized by this  
6 section, a carrier shall have a minimum anticipated loss ratio of  
7 seventy-seven percent to be eligible to make a rate increase  
8 request after the first year of providing a health benefit plan  
9 under this section;

10       (9) Products authorized under this section are exempt from the  
11 premium taxes assessed under sections fourteen and fourteen-a,  
12 article three of this chapter;

13       (10) A carrier may elect to nonrenew any health benefit plan  
14 to an eligible employer if, at any time, the carrier determines, by  
15 applying the same network criteria which it applies to other small  
16 employer health benefit plans, that it no longer has an adequate  
17 network of health care providers accessible for that eligible small  
18 employer. If the carrier makes a determination that an adequate  
19 network does not exist, the carrier has no obligation to obtain  
20 additional health care providers to establish an adequate network;

21       (11) Upon thirty days' advance notice to the commissioner, a  
22 carrier may, at any time, elect to nonrenew all health benefit

1 plans issued pursuant to this section. If a carrier nonrenews all  
2 its business issued pursuant to this section for any reason other  
3 than the adequacy of the provider network, the carrier may not  
4 offer this health benefit plan to any eligible small employer for  
5 a period of at least two years after the last eligible small  
6 employer is nonrenewed; and

7 (12) The Insurance Commissioner may not approve any health  
8 benefit plan issued pursuant to this section until it has obtained  
9 any necessary federal governmental authorizations or waivers. The  
10 Insurance Commissioner shall apply for and obtain all necessary  
11 federal authorizations or waivers.

12 (b) Health benefit plans authorized by this section are not  
13 intended to violate the prohibition set out in subsection (a),  
14 section four of this article.

15 ~~(c) The commissioner shall appoint a policy advisory committee~~  
16 ~~to provide advice to the commissioner regarding providing health~~  
17 ~~insurance to uninsureds and to monitor the effectiveness of this~~  
18 ~~section. The committee shall contain members the commissioner~~  
19 ~~considers appropriate, but shall have members representing at least~~  
20 ~~the following interest groups: Labor, hospital providers, physician~~  
21 ~~providers, private business, local government, insurance carriers~~  
22 ~~and the uninsured.~~

1       ~~(d)~~ (c) Carriers offering health benefit plans pursuant to  
2 this section shall annually or before December 1 of each year  
3 report in a form acceptable to the commissioner the number of  
4 health benefit plans written by the carrier and the number of  
5 individuals covered under the health benefit plans.

6       ~~(e)~~ (d) To the extent that provisions of this section differ  
7 from those contained elsewhere in this chapter, the provisions of  
8 this section control.

NOTE: This bill eliminates boards, councils, tasks forces, and committees that are no longer necessary, including the Science and Technology Advisory Council; Council for Community and Economic Development; Statewide Mutual Aid Committee; Sheriffs' Bureau; Clinical Laboratories Quality Assurance Advisory Board; Council on Aging; Governor's Office of Health Enhancement and Lifestyle Planning; Comprehensive Behavioral Health Commission; Governor's Advisory Council for Educational Technology; Principal Standards Advisory Council; West Virginia Consortium for Undergraduate Research and Engineering; Governor's Commission on Graduate Study in Science, Technology, Engineering, and Mathematics; West Virginia Rural Health Advisory Panel; Ohio River Management Fund Advisory Board; Occupational Safety and Health Review Commission; Workers' Compensation Board of Managers; State Medical Malpractice Advisory Panel; Patient Injury Compensation Plan Study Board; Steel Advisory Commission; West Virginia Small Employer Group Health Benefit Plan Policy Advisory Committee; West Virginia Health Benefit Exchange Governing Board; West Virginia Health Insurance Plan Board; West Virginia Lending and Credit Rate Board; Alternative Dispute Resolution Commission; and Sexually Violent Predator Management Task Force.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.