ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA

Regular Session, 2004
Constitutional Amendment, 2004
First Extraordinary Session, 2004
Second Extraordinary Session, 2004

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AN ACT to amend and reenact §33-3-7 of the code of West Virginia, 1931, as amended, relating to licensing foreign insurers; and exemption from certain other statutory provisions.

Be it enacted by the Legislature of West Virginia:

That §33-3-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-7. Issuance of license to transact insurance; kinds of insurance authorized to be transacted.

(a) Upon receiving the application and supporting documents required by section four of this article, if the commissioner is satisfied that an insurer has complied with the terms of its charter and the provisions of this chapter and other laws of this state and that such insurer is solvent and will transact insurance in a legal, proper and just manner, he or she may issue to such insurer a license authorizing it to transact insurance in this state. Such license may authorize an insurer which otherwise qualifies therefore to transact life and/or accident and sickness insurance or an insurer other than a life insurer to transact any of the kinds of insurance other than life for which it otherwise qualifies. However, as to any life insurer which, immediately prior to the effective date of this chapter, lawfully held a license granting to it the right to transact in West
Virginia additional kinds of insurance other than life and accident and sickness, the commissioner may continue to license said insurer to transact the same kinds of insurance as those specified in such prior license so long as such insurer is otherwise in compliance with this chapter.

(b) A foreign insurer that obtains a license pursuant to the provisions of this section may transact the business of insurance in this state without obtaining the certificate of authority from the secretary of state otherwise required by the provisions of section 1501, article fifteen, chapter thirty-one-d of this code.

CHAPTER 141

(Com. Sub. for H. B. 4303 — By Delegates H. White, G. White, Azinger, Frich and Hrutkay)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §33-12-26 of the code of West Virginia, 1931, as amended; to amend and reenact §33-3-33 of said code; to amend and reenact §33-12-3, §33-12-8, §33-12-10, §33-12-11, §33-12-18, §33-12-23, §33-12-27, §33-12-28, §33-12-30, §33-12-31 and §33-12-32 of said code; to amend and reenact §33-12C-24 of said code; to amend and reenact §33-37-1, §33-37-2, §33-37-3, §33-37-4, §33-37-6 and §33-37-7 of said code; and to amend said code by adding thereto a new section, designated §33-37-8, all relating to insurance generally; bringing provisions into compliance with Gramm-Leach-Bliley; eliminating the residency restriction reporting requirement for surplus lines licensees remitting the insurance policy surcharge; defining subjects of insurance for which a license is required; increasing continuing education
requirements; allowing nonresidents to obtain a limited license for automobile rental coverage; licensing of managing general agents; providing for certain penalties for violations by managing general agents; requiring fees for licensor; eliminating renewal of service representative permits; repealing insurance vending machines; repealing and eliminating countersignature requirements, effective thirty-first day of December, two thousand; and, making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §33-12-26 of the code of West Virginia, 1931, as amended, be repealed; that §33-3-33 of said code be amended and reenacted; that §33-12-3, §33-12-8, §33-12-10, §33-12-11, §33-12-18, §33-12-23, §33-12-27, §33-12-28, §33-12-30, §33-12-31 and §33-12-32 of said code be amended and reenacted; that §33-12C-24 of said code be amended and reenacted; that §33-37-1, §33-37-2, §33-37-3, §33-37-4, §33-37-6 and §33-37-7 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-37-8, all to read as follows:

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part volunteer fire departments; special fund created; allocation of proceeds; effective date.

(a) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments, certain retired teachers and the teachers retirement reserve fund, there is hereby authorized and imposed on and after the first
day of July, one thousand nine hundred ninety-two, on the
policyholder of any fire insurance policy or casualty insurance
policy issued by any insurer, authorized or unauthorized, or by
any risk retention group, a policy surcharge equal to one
percent of the taxable premium for each such policy. For
purposes of this section, casualty insurance may not include
insurance on the life of a debtor pursuant to or in connection
with a specific loan or other credit transaction or 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. The policy surcharge may not
be subject to premium taxes, agent commissions or any other
assessment against premiums.

(b) The policy surcharge shall be collected and remitted to
the commissioner by the insurer, or in the case of surplus lines
coverage, by the surplus lines licensee, or if the policy is issued
by a risk retention group, by the risk retention group. The
amount required to be collected under this section shall be
remitted to the commissioner on a quarterly basis on or before
the twenty-fifth day of the month succeeding the end of the
quarter in which they are collected, except for the fourth quarter
for which the surcharge shall be remitted on or before the first
day of March of the succeeding year.

(c) Any person failing or refusing to collect and remit to the
commissioner any policy surcharge and whose surcharge
payments are not postmarked by the due dates for quarterly
filing is liable for a civil penalty of up to one hundred dollars
for each day of delinquency, to be assessed by the commis-
sioner. The commissioner may suspend the insurer, broker or
risk retention group until all surcharge payments and penalties
are remitted in full to the commissioner.

(d) One half of all money from the policy surcharge shall
be collected by the commissioner who shall disburse the money
received from the surcharge into a special account in the state treasury, designated the “fire protection fund”. The net proceeds of this portion of the tax and the interest thereon, after appropriation by the Legislature, shall be distributed quarterly on the first day of the months of January, April, July and October to each volunteer fire company or department on an equal share basis by the state treasurer.

(1) Before each distribution date, the state fire marshal shall report to the state treasurer the names and addresses of all volunteer and part-volunteer fire companies and departments within the state which meet the eligibility requirements established in section eight-a, article fifteen, chapter eight of this code.

(2) The remaining fifty percent of the moneys collected shall be transferred to the teachers retirement system to be disbursed according to the provisions of sections twenty-six-j, twenty-six-k and twenty-six-l, article seven-a, chapter eighteen of this code. Any balance remaining after the disbursements authorized by this subdivision have been paid shall be paid by the teachers retirement system into the teachers retirement system reserve fund.

(e) The allocation, distribution and use of revenues provided in the fire protection fund are subject to the provisions of sections eight-a and eight-b, article fifteen, chapter eight of this code.

ARTICLE 12. INSURANCE PRODUCERS AND SOLICITORS.

§33-12-3. License required.
§33-12-8. Continuing education required.
§33-12-10. Fees.
§33-12-11. Countersignature.
§33-12-18. Individual insurance producer to deal only with licensed insurer or solicitor; appointment as individual insurance producer required.
§33-12-23. Payment of commissions.
§33-12-27. Payment of commissions under assigned risk plan.
§33-12-28. Service representative permit.
§33-12-30. Termination of contractual relationship prohibited.
§33-12-31. Termination of contractual relationship; continuation of certain commissions; exceptions.
§33-12-32. Limited licenses for rental companies.

§33-12-3. License required.

(a) A person may not sell, solicit or negotiate insurance covering subjects of insurance resident, located or to be performed in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this article.

(b) No person shall in West Virginia act as or hold himself or herself out to be an individual insurance producer or insurance agency or solicitor unless then licensed therefor pursuant to this article.

(c) No individual insurance producer, insurance agency or solicitor or any representative or employee thereof shall solicit or take application for, negotiate, procure or place for others any kind of insurance or receive or share, directly or indirectly, any commission or other valuable consideration arising from the sale, solicitation or negotiation of any insurance contract for which that person is not then licensed.

(d) No insurer shall accept any business from or pay any commission to any individual insurance producer who does not then hold an appointment as an individual insurance producer for such insurer pursuant to this article.

§33-12-8. Continuing education required.

The purpose of this provision is to provide continuing education under guidelines set up under the insurance commis-
sioner’s office, with the guidelines to be set up under the board
of insurance agent education.

(a) This section applies to individual insurance producers
licensed to engage in the sale of the following types of insur-
ance:

(1) Life. — Life insurance coverage on human lives, includ-
ing benefits of endowment and annuities, and may include
benefits in the event of death or dismemberment by accident
and benefits for disability income;

(2) Accident and health or sickness. — Insurance coverage
for sickness, bodily injury or accidental death and may include
benefits for disability income;

(3) Property. — Property insurance coverage for the direct
or consequential loss or damage to property of every kind;

(4) Casualty. — Insurance coverage against legal liability,
including that for death, injury or disability or damage to real
or personal property;

(5) Variable life and variable annuity products. — Insur-
ance coverage provided under variable life insurance contracts
and variable annuities;

(6) Personal lines. — Property and casualty insurance
coverage sold to individuals and families for primarily noncom-
mercial purposes; and

(7) Any other line of insurance permitted under state laws
or regulations.

(b) This section does not apply to:

(1) Individual insurance producers holding limited line
credit insurance licenses for any kind or kinds of insurance
offered in connection with loans or other credit transactions or
insurance for which an examination is not required by the
commissioner, nor does it apply to any limited or restricted
license as the commissioner may exempt; and

(2) Individual insurance producers selling credit life or
credit accident and health insurance.

c (1) The board of insurance agent education as estab-
lished by section seven of this article shall develop a program
of continuing insurance education and submit the proposal for
the approval of the commissioner on or before the thirty-first
day of December of each year. No program may be approved by
the commissioner that includes a requirement that any individ-
ual insurance producer complete more than twenty-four hours
of continuing insurance education biennially. No program may
be approved by the commissioner that includes a requirement
that any of the following individual insurance producers
complete more than six hours of continuing insurance education
biennially:

(A) Individual insurance producers who sell only preneed
burial insurance contracts; and

(B) Individual insurance producers who engage solely in
telemarketing insurance products by a scripted presentation
which scripted presentation has been filed with and approved by
the commissioner.

(C) The biennium mandatory continuing insurance educa-
tion provisions of this section become effective on the reporting
period beginning the first day of July, two thousand six.

(2) The commissioner and the board, under standards
established by the board, may approve any course or program
of instruction developed or sponsored by an authorized insurer,
accredited college or university, agents’ association, insurance
(d) Individual insurance producers licensed to sell insurance and who are not otherwise exempt shall satisfactorily complete the courses or programs of instructions the commissioner may prescribe.

(e) Every individual insurance producer subject to the continuing education requirements shall furnish, at intervals and on forms as may be prescribed by the commissioner, written certification listing the courses, programs or seminars of instruction successfully completed by the person. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs or seminars of instruction.

(f) Any individual insurance producer failing to meet the requirements mandated in this section and who has not been granted an extension of time, with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance shall have his or her license automatically suspended and no further license may be issued to the person for any kind or kinds of insurance until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(g) The commissioner shall notify the individual insurance producer of his or her suspension pursuant to subsection (f) of this section by certified mail, return receipt requested, to the last address on file with the commissioner pursuant to subsection (e), section nine of this article. Any individual insurance producer who has had a suspension order entered against him
or her pursuant to this section may, within thirty calendar days of receipt of the order, file with the commissioner a request for a hearing for reconsideration of the matter.

(h) Any individual insurance producer who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically canceled and is subject to the education and examination requirements of section five of this article.

(i) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for insurers. The commissioner shall charge a fee of twenty-five dollars to continuing education providers for each continuing education course submitted for approval which shall be used to maintain the continuing education system. The commissioner may, at his or her discretion, designate an outside administrator to provide all of or part of the administrative duties of the continuing education system subject to direction and approval by the commissioner. The fees charged by the outside administrator shall be paid by the continuing education providers. In addition to fees charged by the outside administrator, the outside administrator shall collect and remit to the commissioner the 25-dollar course submission fee.

§33-12-10. Fees.

The fee for an individual insurance producer’s license shall be twenty-five dollars, the fee for a solicitor’s license shall be twenty-five dollars and the fee for an insurance agency producer license shall be two hundred dollars. The commissioner shall receive the following fees from individual insurance producers, solicitors and insurance agency producers: For letters of certification, five dollars; for letters of clearance, ten...
§33-12-11. Countersignature.

No contract of insurance covering a subject of insurance, resident, located or to be performed in this state, shall be executed, issued or delivered by any insurer unless the contract or, in the case of an interstate risk, a countersignature endorsement carrying full information as to the West Virginia risk, is signed or countersigned in writing by a licensed resident agent of the insurer, except that excess line insurance shall be countersigned by a duly licensed excess line broker. This section does not apply to: Reinsurance; credit insurance; any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce or covering any liability or other risks incident to the ownership, maintenance or operation thereof; any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto. Countersignature of a duly licensed resident agent of the company originating a contract of insurance participated in by other companies as cosureties or coindemnitors shall satisfy all countersignature requirements in respect to such contract of insurance: Provided, That the countersignature requirements of this section shall no longer be required for any contract of insurance executed, issued or delivered on or after the thirty-first day of December, two thousand four.

§33-12-18. Individual insurance producer to deal only with licensed insurer or solicitor; appointment as individual insurance producer required.

(a) An individual insurance producer may not act as an agent of an insurer unless the individual insurance producer
(2) If a partnership licensed as an insurance agency producer, each partner satisfies the commissioner that he or she meets the licensing qualifications as set forth in section six of this article;

(3) If a corporation licensed as an insurance agency producer, each officer, employee or any one or more stockholders owning, directly or indirectly, the controlling interest in the corporation satisfies the commissioner that he or she meets the licensing qualifications as set forth in section six of this article. The requirements set forth in this subdivision do not apply to clerical employees or other employees not directly engaged in the selling or servicing of insurance;

(4) If a limited liability company licensed as an insurance agency producer, each officer, employee or any one or more members owning, directly or indirectly, the controlling interest in a limited liability company satisfies the commissioner that he or she meets the licensing qualifications as set forth in section six of this article. The requirements set forth in this subdivision do not apply to clerical employees or other employees not directly engaged in the selling or servicing of insurance; and

(5) If any other business entity licensed as an insurance agency producer, approval is granted by the commissioner.

(c) Subsections (a) and (b) of this section do not apply to reinsurance nor to limited line credit insurance, limited lines insurance, any contract of insurance covering the rolling stock of any railroad or covering any vessel, aircraft or motor carrier used in interstate or foreign commerce, any liability or other risks incident to the ownership, maintenance or operation thereof, any contract of insurance covering any property in interstate or foreign commerce or any liability or risks incident thereto.
(d) An insurance company or insurance producer may not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(e) A person may not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this article and is not so licensed.

(f) Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this article at the time of the sale, solicitation or negotiation and was so licensed at that time.

§33-12-27. Payment of commissions under assigned risk plan.

An insurer participating in a plan for assignment of personal injury liability insurance or property damage liability insurance on owner's automobiles or operators, which plan has been approved by the commissioner, may pay a commission to a qualified individual insurance producer who is licensed to act as individual insurance producer for any insurer participating in the plan when the individual insurance producer is designated by the insured as the individual insurance producer of record under an automobile assigned risk plan pursuant to which a policy is issued under the plan and section eleven of this article is not applicable thereto.

§33-12-28. Service representative permit.

Individual nonresidents of West Virginia, employed on salary by an insurer, who enter the state to assist and advise resident individual insurance producers in the solicitation, negotiation, making or procuring of contracts of insurance on
risks resident, located or to be performed in West Virginia shall obtain a service representative permit. The commissioner may, upon receipt of a properly prepared application, issue the permit without requiring a written examination therefor. On or after the first day of July, two thousand four, no service representative license will be issued which is not a renewal of an existing license. The fee for a service representative permit shall be twenty-five dollars and the permit shall expire at midnight on the thirty-first day of March next following the date of issuance. Issuance of a service representative permit may not entitle the holder to countersign policies. The representative may not in any manner sell, solicit, negotiate, make or procure insurance in this state except when in the actual company of the licensed resident individual producer whom he or she has been assigned to assist. All fees collected under this section shall be used for the purposes set forth in section thirteen, article three of this chapter.

§33-12-30. Termination of contractual relationship prohibited.

No insurance company may cancel, refuse to renew or otherwise terminate a written contractual relationship with any individual insurance producer who has been employed or appointed pursuant to that written contract by an insurance company as a result of any analysis of a loss ratio resulting from claims paid under the provisions of an endorsement for uninsured and underinsured motor vehicle coverage issued pursuant to the provisions of section thirty-one, article six of this chapter, nor may any provision of that contract, including the provisions for compensation therein, operate to deter or discourage the individual insurance producer from selling and writing endorsements for optional uninsured or underinsured motor vehicle coverage.

§33-12-31. Termination of contractual relationship; continuation of certain commissions; exceptions.
(a) In the event of a termination of a contractual relationship between a duly licensed individual insurance producer and an automobile insurer of private passenger automobiles who is withdrawing from writing private passenger automobile insurance within the state, the insurer shall pay the individual insurance producer a commission, equal to the commission the individual insurance producer would have otherwise been entitled to under his or her contract with the insurer, for a period of two years from the date of termination of the contractual relationship for those renewal policies that cannot otherwise be canceled or nonrenewed pursuant to law, which policies the individual insurance producer continues to service. The insurer must continue the appointment of the individual insurance producer for the duration of time the individual insurance producer continues to service. The requirement shall not obligate the withdrawing insurer to accept any new private passenger automobile insurance within the state.

(b) Subsection (a) of this section does not apply to an individual insurance producer who is an employee of the insurer or an individual insurance producer as defined by article twelve-a of this chapter or an individual insurance producer who by contractual agreement either represents only one insurer or group of affiliated insurers or who is required by contract to submit risks to a specified insurer or group of affiliated insurers prior to submitting them to others.

§33-12-32. Limited licenses for rental companies.

(a) Purpose. — This section authorizes the insurance commissioner to issue limited licenses for the sale of automobile rental coverage.

(b) Definitions. — The following words when used in this section shall have the following meanings:
1. “Authorized insurer” means an insurer that is licensed by the commissioner to transact insurance in West Virginia.

2. “Automobile rental coverage” or “rental coverage” is insurance offered incidental to the rental of a vehicle as described in this section.

3. “Limited license” means the authorization by the commissioner for a person to sell rental coverage as an individual insurance producer of an authorized insurer pursuant to the provisions of this section without the necessity of individual insurance producer prelicensing education, examination or continuing education.

4. “Limited licensee” is an individual resident of this state or nonresident of this state who obtains a limited license.

5. “Rental agreement” means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental company for rental or lease.

6. “Rental company” means any person or entity in the business of providing private motor vehicles to the public under a rental agreement for a period not to exceed ninety days.

7. “Renter” means any person obtaining the use of a vehicle from a rental company under the terms of a rental agreement for a period not to exceed ninety days.

8. “Vehicle” or “rental vehicle” means a motor vehicle of the private passenger type including passenger vans, minivans and sport utility vehicles and of the cargo type, including cargo vans, pick-up trucks and trucks with a gross vehicle weight of twenty-six thousand pounds or less and which do not require the operator to possess a commercial driver’s license.

9. “Rental period” means the term of the rental agreement.
(c) The commissioner may issue a limited license for the sale of automobile rental coverage to an employee of a rental company, who has satisfied the requirements of this section.

(d) As a prerequisite for issuance of a limited license under this section, there shall be filed with the commissioner a written application for a limited license, signed by the applicant, in a form or forms and supplements thereto and containing any information as the commissioner may prescribe. The limited licensee shall pay to the insurance commissioner an annual fee of twenty-five dollars.

(e) The limited licensee shall be appointed by the licensed insurer or insurers for the sale of automobile rental coverage. The employer of the limited licensee shall maintain at each insurance sales location a list of the names and addresses of employees which are selling insurance at the location.

(f) In the event that any provision of this section or applicable provisions of the insurance code is violated by a limited licensee or other employees operating under his or her direction, the commissioner may:

(1) After notice and a hearing, revoke or suspend a limited license issued under this section in accordance with the provisions of section thirteen, article two of this chapter; or

(2) After notice and hearing, impose any other penalties, including suspending the transaction of insurance at specific locations where applicable violations of the insurance code have occurred, as the commissioner considers to be necessary or convenient to carry out the purposes of this section.

(g) Any limited license issued under this section shall also authorize any other employee working for the same employer and at the same location as the limited licensee to act individually, on behalf and under the supervision of the limited licensee.
with respect to the kinds of coverage authorized in this section. In order to sell insurance products under this section at least one employee who has obtained a limited license must be present at each location where insurance is sold. All other employees working at that location may offer or sell insurance consistent with this section without obtaining a limited license. However, the limited licensee shall directly supervise and be responsible for the actions of all other employees at that location related to the offer or sale of insurance as authorized by this section. No limited licensee under this section may advertise, represent or otherwise hold himself or herself or any other employees out as licensed insurers or individual insurance producers.

(h) No automobile rental coverage insurance may be issued by a limited licensee pursuant to this section unless:

(1) The rental period of the rental agreement does not exceed ninety consecutive days; and

(2) At every rental location where rental agreements are executed, brochures or other written material are readily available to the prospective renter that:

(A) Summarize, clearly and correctly, the material terms of coverage offered to renters, including the identity of the insurer;

(B) Disclose that the coverage offered by the rental company may provide a duplication of coverage provided by a renter’s personal automobile insurance policy, homeowner’s insurance policy, personal liability insurance policy or other source of coverage;

(C) State that the purchase by the renter of the kinds of coverage specified in this section is not required in order to rent a vehicle; and
(D) Describe the process for filing a claim in the event the renter elects to purchase coverage.

(3) Any evidence of coverage on the face of the rental agreement is disclosed to every renter who elects to purchase the coverage.

(4) The limited licensee to sell automobile rental coverage may offer or sell insurance only in connection with and incidental to the rental of vehicles, whether at the rental office or by preselection of coverage in a master, corporate, group rental or individual agreements in any of the following general categories:

(A) Personal accident insurance covering the risks of travel, including, but not limited to, accident and health insurance that provides coverage, as applicable, to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses resulting from an accident that occurs during the rental period;

(B) Liability insurance (which may include uninsured and underinsured motorist coverage whether offered separately or in combination with other liability insurance) that provides coverage, as applicable, to renters and other authorized drivers of rental vehicles for liability arising from the operation of the rental vehicle;

(C) Personal effects insurance that provides coverage, applicable to renters and other vehicle occupants of the loss of, or damage to, personal effects that occurs during the rental period;

(D) Roadside assistance and emergency sickness protection programs; and
(E) Any other travel or auto-related coverage that a rental company offers in connection with and incidental to the rental of vehicles.

(i) Each rental company for which an employee has received a limited license pursuant to this section shall conduct a training program in which its employees being trained shall receive basic instruction about the kinds of coverage specified in this section and offered for purchase by prospective renters of rental vehicles: Provided, That limited licensees and employees working hereunder are not subject to the agent prelicensing education, examination or continuing education requirements of this article.

(j) Notwithstanding any other provision of this section or any rule adopted by the commissioner, neither the rental company, the limited licensee, nor the other employees working with the limited licensee at the rental company shall be required to treat moneys collected from renters purchasing such insurance when renting vehicles as funds received in a fiduciary capacity, provided that the charges for coverage shall be itemized and be ancillary to a rental transaction. The sale of insurance not in conjunction with a rental transaction is not permitted.

ARTICLE 12C. SURPLUS LINE.

§33-12C-24. Countersignature requirements.

Surplus lines insurance shall be countersigned by a duly licensed resident surplus lines licensee: Provided, That the countersignature requirements imposed by this section shall no longer be required for any surplus line of insurance executed, issued or delivered after the thirty-first day of December, two thousand four.
ARTICLE 37. MANAGING GENERAL AGENTS.

§33-37-1. Definitions.
§33-37-2. Licensure.
§33-37-6. Penalties and liabilities.

§33-37-1. Definitions.

1 For the purposes of this article:

2 (a) “Actuary” means a person who is a member in good
3 standing of the American academy of actuaries.

4 (b) “Home state” means the District of Columbia or any
5 state or territory of the United States in which a managing
6 general agent is incorporated or maintains its principal place of
7 business. If neither the state in which the managing general
8 agent is incorporated, nor the state in which the managing
9 general agent maintains its principal place of business has
10 adopted this article or a substantially similar law governing
11 managing general agents, the managing general agent may
12 declare another state in which it conducts business to be its
13 “home state”.

14 (c) “Insurer” means any person, firm, association or
15 corporation duly licensed in this state as an insurance company
16 pursuant to article three of this chapter. Insurer includes, but is
17 not limited to, any domestic insurer as defined in section six,
18 article one of this chapter and any foreign insurer as defined in
19 section seven of said article, including any stock insurer, mutual
20 insurer, reciprocal insurer, farmers’ mutual fire insurance
21 company, fraternal benefit society, hospital service corporation,
22 medical service corporation, dental service corporation, health
23 service corporation, health care corporation, health maintenance
organization, captive insurance company or risk retention group.

(d) "Managing general agent" (MGA) means any person, firm, association or corporation who:

(1) Manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office); and

(2) Acts as an agent for such insurer whether known as a managing general agent, manager or other similar term who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following activities related to the business produced:

(A) Adjusts or pays claims in excess of ten thousand dollars per claim; or

(B) Negotiates reinsurance on behalf of the insurer.

(3) Notwithstanding the above, the following persons are not considered managing general agents for the purposes of this article:

(A) An employee of the insurer;

(B) A U. S. manager of the United States branch of an alien insurer;

(C) An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to the holding
company regulatory act, and whose compensation is not based on the volume of premiums written; and

(D) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney.

(e) “Person” means an individual or a business entity.

(f) “Underwrite” means the authority to accept or reject risk on behalf of the insurer.

§33-37-2. Licensure.

(a) No domestic insurer may permit a person to act, and no person may act, in the capacity of a managing general agent for an insurer domiciled in this state unless such person is licensed in this state to act as a managing general agent.

(b) No foreign or alien insurer may permit a person to act, and no person may act, in the capacity of a managing general agent representing an insurer unless the person is licensed in this state to act as a managing general agent.

(c) No person may act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed insurance producer in this state.

(d) The commissioner may license as a managing general agent any individual or business entity that has complied with the requirements of this article and any regulations concerning licensure that may be promulgated by the commissioner. The commissioner may refuse to issue a license, subject to the right of the applicant to demand a hearing on the application, if the commissioner believes the applicant, any person named on the application or any member, principal, officer or director of the
applicant is not trustworthy or competent to act as a managing
general agent, or that any of the foregoing has given cause for
revocation or suspension of such license, or has failed to
comply with any prerequisite for issuance of such license.

(c) Any person seeking a license pursuant to subsection (d)
of this section shall apply for the license in a form acceptable
to the commissioner and shall pay to the commissioner a
nonrefundable application fee in an amount prescribed by the
commissioner. The application fee shall be not less than five
hundred dollars nor more than one thousand dollars. Every
licensed managing general agent shall pay to the commissioner
a nonrefundable annual renewal fee in an amount prescribed by
the commissioner. The renewal fee shall be not less than two
hundred dollars nor more than one thousand dollars. Between
the first day of May and the first day of June of the renewal
year, each licensed managing general agent shall submit to the
commissioner the renewal fee and a renewal application form
as prescribed by the commissioner. All fees shall be collected
by the commissioner, paid into the state treasury and placed to
the credit of the special revenue account provided for in section
thirteen, article three of this chapter. Each license issued
pursuant to this article expires at midnight on the thirtieth day
of June next following the day of issuance.

(f) The commissioner may require a bond in an amount
acceptable to him or her for the protection of the insurer.

(g) The commissioner may require a managing general
agent to maintain an errors and omissions policy that is
acceptable to the commissioner.

(h) Except where prohibited by state or federal law, by
submitting an application for license, the applicant shall be
deemed to have appointed the secretary of state as the agent for
service of process on the applicant in any action or proceeding
arising in this state out of or in connection with the exercise of
the license. The appointment of the secretary of state as agent
for service of process shall be irrevocable during the period
within which a cause of action against the applicant may arise
out of transactions with respect to subjects of insurance in this
state. Service of process on the secretary of state shall conform
to the provisions of section twelve, article four of this chapter.

(i) A person seeking licensure shall provide evidence, in a
form acceptable to the commissioner, of its appointments or
contracts as a managing general agent. The commissioner may
refuse to renew the license of a person that has not been
appointed by, or otherwise authorized to act for, an insurer as
a managing general agent.


No person, firm, association or corporation acting in the
capacity of a managing general agent may place business with
an insurer unless there is in force a written contract between the
parties which sets forth the responsibilities of each party and
where both parties share responsibility for a particular function,
specifies the division of such responsibilities and which
contains the following minimum provisions:

(a) The insurer may terminate the contract for cause upon
written notice to the managing general agent. The insurer may
suspend the underwriting authority of the managing general
agent during the pendency of any dispute regarding the cause
for termination.

(b) The managing general agent will render accounts to the
insurer detailing all transactions and remit all funds due under
the contract to the insurer on not less than a monthly basis.

(c) All funds collected for the account of an insurer will be
held by the managing general agent in a fiduciary capacity with
an FDIC-insured financial institution. This account shall be used for all payments on behalf of the insurer. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses.

(d) Separate records of business written by the managing general agent shall be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer. The commissioner shall have access to all books, bank accounts and records of the managing general agent in a form usable to the commissioner.

(e) The contract may not be assigned, in whole or part, by the managing general agent.

(f) The contract shall contain appropriate underwriting guidelines including:

(1) The maximum annual premium volume;
(2) The basis of the rates to be charged;
(3) The types of risks which may be written;
(4) Maximum limits of liability;
(5) Applicable exclusions;
(6) Territorial limitations;
(7) Policy cancellation provisions; and
(8) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies.
(g) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(1) All claims must be reported to the company in a timely manner; and

(2) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:

(A) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company, whichever is less;

(B) Involves a coverage dispute;

(C) May exceed the managing general agents claims settlement authority;

(D) Is open for more than six months; or

(E) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.

(3) All claims files will be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, such files shall become the sole property of the insurer or its estate. The managing general agent shall have reasonable access to and the right to copy the files on a timely basis.

(4) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.
(h) Where electronic claims files are in existence, the contract must address the timely transmission of the data contained in such files.

(i) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to section four of this article.

(j) The managing general agent may use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use.

(k) The managing general agent may not:

(1) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;

(2) Commit the insurer to participate in insurance or reinsurance syndicates;

(3) Appoint any individual insurance producer without assuring that the individual insurance producer is lawfully licensed to transact the type of insurance for which he or she is appointed;
(4) Without prior approval of the insurer, pay or commit the
insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent of the insurer’s policyholder’s surplus as of the thirty-first day of December of the last completed calendar year;

(5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;

(6) Except as provided in subsection (g), section four of this article, permit its subproducer to serve on the insurer’s board of directors;

(7) Jointly employ an individual who is employed with the insurer; or

(8) Appoint a sub managing general agent.


(a) The insurer shall have on file an independent audited financial statement or reports for the two most recent fiscal years that provide that the managing general agent has a positive net worth. If the managing general agent has been in existence for less than two fiscal years the managing general agent shall include financial statements or reports, certified by an officer of the managing general agent and prepared in accordance with generally accepted accounting procedures, for any completed fiscal years, and for any month during the current fiscal year for which financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis shall include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:
(1) Amounts shown on the consolidated audited financial report shall be shown on the worksheet;

(2) Amounts for each entity shall be stated separately; and

(3) Explanations of consolidating and eliminating entries shall be included.

(b) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary in a form consistent with the requirements for actuarial certifications as imposed upon the insurer by statute or rule of the commissioner attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This required actuary's opinion is in addition to any other required loss reserve certification.

(c) The insurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the managing general agent.

(d) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer who shall not be affiliated with the managing general agent.

(e) Within thirty days of entering into or terminating a contract with a managing general agent, the insurer shall provide written notification to the commissioner. Notices of entering into a contract with a managing general agent shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act and any other information the commissioner may request.
(f) An insurer shall review its books and records each quarter to determine if any producer as defined by subsection (c), section one of this article has become, by operation of subsection (d) of said section, a managing general agent as defined in that subsection. If the insurer determines that a producer has become a managing general agent pursuant to the above, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer must fully comply with the provisions of this article within thirty days thereafter.

(g) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its managing general agents. This subsection does not apply to relationships governed by the Insurance Holding Company Systems Regulatory Act or the Business Transacted with Producer Controlled Property/Casualty Insurer Act.

§33-37-6. Penalties and liabilities.

(a) If the commissioner finds that the managing general agent or any other person has violated any provision of this article, or any rule or order promulgated thereunder, after a hearing conducted in accordance with section thirteen, article two of this chapter, the commissioner may order:

(1) For each separate violation, a penalty in an amount not exceeding ten thousand dollars;

(2) Revocation or suspension of the producer's license;

(3) Reimbursement by the managing general agent of the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer and its policyholders and creditors caused by a violation of this article committed by the managing general agent; and
(4) If it was found that because of any such violation that
the insurer has suffered any loss or damage, the commissioner
may maintain a civil action brought by or on behalf of the
insurer and its policyholders and creditors for recovery of
compensatory damages for the benefit of the insurer and its
policyholders and creditors or other appropriate relief.

(b) If an order of rehabilitation or liquidation of the insurer
has been entered pursuant to article ten of this chapter and the
receiver appointed under that order determines that the manag-
ing general agent or any other person has not materially
complied with this article, or any rule or order promulgated
thereunder, and the insurer suffered any loss or damage
therefrom, the receiver may maintain a civil action for recovery
of damages or other appropriate sanctions for the benefit of the
insurer.

(c) Nothing contained in this section shall affect the right of
the commissioner to impose any other penalties provided for in
this chapter.

(d) Nothing contained in this article is intended to or shall
in any manner limit or restrict the rights of policyholders,
claimants and creditors.

(e) The decision, determination or order of the commis-
sioner pursuant to subsection (a) of this section shall be subject
to judicial review pursuant to section fourteen, article two of
this chapter.


The commissioner is authorized to promulgate reasonable
rules for the implementation and administration of the provi-
sions of this article pursuant to chapter twenty-nine-a of this
code.

This article shall take effect on the first day of July, two thousand four. No insurer may continue to use the services of a managing general agent on and after the first day of July, two thousand four, except in compliance with this article.

CHAPTER 142

(S. B. 517 — By Senator Minard)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §33-7-9 of the code of West Virginia, 1931, as amended; and to amend and reenact §33-13-30a of said code, all relating to the valuation of annuities; establishing minimum standards for the valuation of life insurance policies; and modifying the standard nonforfeiture law for individual deferred annuities.

Be it enacted by the Legislature of West Virginia:

That §33-7-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and §33-13-30a of said code be amended and reenacted, all to read as follows:

Article
13. Life Insurance.

ARTICLE 7. ASSETS AND LIABILITIES.

(a) **Title.** — This section shall be known as the standard valuation law.

(b) **Reserve valuation.** — The commissioner shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurance company doing business in this state and may certify the amount of the reserves specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of the reserves. In calculating the reserves, he or she may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein required of any foreign or alien company, he or she may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard herein provided and if the official of the state or jurisdiction accepts as sufficient and for all valid legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(c) **Actuarial opinion of reserves.** — This subsection shall become operative on the first day of January, one thousand nine hundred ninety-six.

(1) **General.** — Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with
applicable laws of this state. The commissioner, by regulation, shall define the specifics of this opinion and add any other item considered to be necessary to its scope.

(2) Actuarial analysis of reserves and assets supporting the reserves. —

(A) Every life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subdivision (1) of this subsection an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including, but not limited to, the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including, but not limited to, the benefits under and expenses associated with the policies and contracts.

(B) The commissioner may provide, by regulation, for a transition period for establishing any higher reserves which the qualified actuary may consider necessary in order to render the opinion required by this subsection.

(3) Requirement for opinion under subdivision (2). — Each opinion required by subdivision (2) of this subsection shall be governed by the following provisions:

(A) A memorandum in form and substance acceptable to the commissioner as specified by regulation shall be prepared to support each actuarial opinion.

(B) If the insurance company fails to provide a supporting memorandum at the request of the commissioner within a
period specified by regulation or the commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the regulations or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the commissioner.

(4) Requirement for all opinions. — Every opinion shall be governed by the following provisions:

(A) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after the thirty-first day of December, one thousand nine hundred ninety-five.

(B) The opinion shall apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by regulation.

(C) The opinion shall be based on standards adopted, from time to time, by the actuarial standards board and on such additional standards as the commissioner may by regulation prescribe.

(D) In the case of an opinion required to be submitted by a foreign or alien company, the commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(E) For the purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in such regulations.
(F) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the actuary’s opinion.

(G) Disciplinary action by the commissioner against the company or the qualified actuary shall be defined in regulations by the commissioner.

(H) Any memorandum in support of the opinion and any other material provided by the company to the commissioner in connection therewith shall be kept confidential by the commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by regulations promulgated hereunder: Provided, That the memorandum or other material may otherwise be released by the commissioner: (i) With the written consent of the company; (ii) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material; or (iii) in accordance with section nineteen, article two of this chapter. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited by the company before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

(d) Computation of minimum standards. — Except as otherwise provided in subsections (e), (f) and (m) of this
section, the minimum standard for the valuation of all policies and contracts issued prior to the effective date of this section shall be that provided by the laws in effect immediately prior to the effective date. Except as otherwise provided in subsections (e), (f) and (m) of this section, the minimum standard for the valuation of all policies and contracts issued on or after the effective date of this section shall be the commissioners reserve valuation methods defined in subsections (g), (h), (k) and (m) of this section, three and one-half percent interest or in the case of life insurance policies and contracts, other than annuity and pure endowment contracts, issued on or after the first day of June, one thousand nine hundred seventy-four, four percent interest for policies issued prior to the sixth day of April, one thousand nine hundred seventy-seven, five and one-half percent interest for single premium life insurance policies and four and one-half percent interest for all other policies issued on and after the sixth day of April, one thousand nine hundred seventy-seven, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies:

(A) The commissioner's 1941 standard ordinary mortality table for policies issued prior to the operative date of subsection (4a), section thirty, article thirteen of this chapter;

(B) The commissioner's 1958 standard ordinary mortality table for policies issued on or after the operative date of subsection (4a), section thirty, article thirteen of this chapter and prior to the operative date of subsection (4c) of said section: Provided, That for any category of policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and
(C) For policies issued on or after the operative date of subsection (4c), section thirty, article thirteen of this chapter:

(i) The commissioner's 1980 standard ordinary mortality table; or

(ii) At the election of the company for any one or more specified plans of life insurance, the commissioner's 1980 standard ordinary mortality table with ten-year select mortality factors; or

(iii) Any ordinary mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(2) For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in the policies: The 1941 standard industrial mortality table for policies issued prior to the operative date of subdivision (4), subsection (b), section thirty, article thirteen of this chapter and for policies issued on or after the operative date, the commissioner's 1961 standard industrial mortality table or any industrial mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies.

(3) For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in policies: The 1937 standard annuity mortality table or, at the option of the company, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the commissioner.
(4) For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in the policies: The group annuity mortality table for 1951, any modification of the table approved by the commissioner or, at the option of the company, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.

(5) For total and permanent disability benefits in or supplementary to ordinary policies or contracts: For policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-six, the tables of period two disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that are approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the policies; for policies or contracts issued on or after the first day of January, one thousand nine hundred sixty-one, and prior to the first day of January, one thousand nine hundred sixty-six, either such tables or, at the option of the company, the Class (3) disability table (1926); and for policies issued prior to the first day of January, one thousand nine hundred sixty-one, the Class (3) disability table (1926).

Any table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.

(6) For accidental death benefits in or supplementary to policies issued on or after the first day of January, one thousand nine hundred sixty-six, the 1959 accidental death benefits table or any accidental death benefits table adopted after the year one thousand nine hundred eighty by the national association of
insurance commissioners, that is approved by rules promulgated
by the commissioner for use in determining the minimum
standard of valuation for such policies, for policies issued on or
after the first day of January, one thousand nine hundred sixty-
one, and prior to the first day of January, one thousand nine
hundred sixty-six, either such table or, at the option of the
company, the intercompany double indemnity mortality table;
and for policies issued prior to the first day of January, one
thousand nine hundred sixty-one, the intercompany double
indemnity mortality table. Either table shall be combined with
a mortality table for calculating the reserves for life insurance
policies.

(7) For group life insurance, life insurance issued on the
substandard basis and other special benefits: Tables as may be
approved by the commissioner.

(e) Computation of minimum standard for annuities. —
Except as provided in subsection (f) of this section, the mini-
mum standard for the valuation of all individual annuity and
pure endowment contracts issued on or after the operative date
of this subsection, as defined herein, and for all annuities and
pure endowments purchased on or after the operative date under
group annuity and pure endowment contracts shall be the
commissioner's reserve valuation methods defined in subsec-
tions (g) and (h) of this section and the following tables and
interest rates:

(1) For individual annuity and pure endowment contracts
issued prior to the sixth day of April, one thousand nine
hundred seventy-seven, excluding any disability and accidental
death benefits in the contracts: The 1971 individual annuity
mortality table or any modification of this table approved by the
commissioner and six percent interest for single premium
immediate annuity contracts and four percent interest for all
other individual annuity and pure endowment contracts;
(2) For individual single premium immediate annuity contracts issued on or after the sixth day of April, one thousand nine hundred seventy-seven, excluding any disability and accidental death benefits in such contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by rule promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner and seven and one-half percent interest;

(3) For individual annuity and pure endowment contracts issued on or after the sixth day of April, one thousand nine hundred seventy-seven, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in the contracts: The 1971 individual annuity mortality table or any individual annuity mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for the contracts or any modification of these tables approved by the commissioner and five and one-half percent interest for single premium deferred annuity and pure endowment contracts and four and one-half percent interest for all other individual annuity and pure endowment contracts;

(4) For all annuities and pure endowments purchased prior to the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts: The 1971 group annuity mortality table or any modification of this table approved by the commissioner and six percent interest;
(5) For all annuities and pure endowments purchased on or after the sixth day of April, one thousand nine hundred seventy-seven, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under the contracts: The 1971 group annuity mortality table or any group annuity mortality table adopted after the year one thousand nine hundred eighty by the national association of insurance commissioners that is approved by regulation promulgated by the commissioner for use in determining the minimum standard of valuation for annuities and pure endowments or any modification of these tables approved by the commissioner and seven and one-half percent interest.

After the third day of June, one thousand nine hundred seventy-four, any company may file with the commissioner a written notice of its election to comply with the provisions of this subsection after a specified date before the first day of January, one thousand nine hundred seventy-nine, which shall be the operative date of this subsection for the company provided, if a company makes no election, the operative date of this section for the company shall be the first day of January, one thousand nine hundred seventy-nine.

(f) Computation of minimum standard by calendar year of issue. —

(1) Applicability of this section. — The interest rates used in determining the minimum standard for the valuation of:

(A) All life insurance policies issued in a particular calendar year, on or after the operative date of subdivision (4), subsection (c), section thirty, article thirteen of this chapter, as amended;

(B) All individual annuity and pure endowment contracts issued in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two;
(C) All annuities and pure endowments purchased in a particular calendar year on or after the first day of January, one thousand nine hundred eighty-two, under group annuity and pure endowment contracts; and

(D) The net increase, if any, in a particular calendar year after the first day of January, one thousand nine hundred eighty-two, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this subsection.

(2) *Calendar year statutory valuation interest rates.* —

(A) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one quarter of one percent:

(i) For life insurance, 
\[ I = 0.03 + W(R_1 - 0.03) + \frac{W}{2}(R_2 - 0.09); \]

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options, 
\[ I = 0.03 + W(R_1 - 0.03) \]
where \( R_1 \) is the lesser of \( R \) and 0.09, \( R_2 \) is the greater of \( R \) and 0.09, \( R \) is the reference interest rate defined in this subsection and \( W \) is the weighting factor defined in this section;

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue-year basis, except as stated in subparagraph (ii) of this paragraph, the formula for life insurance stated in subparagraph (i) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years and the formula for single premium immediate annuities stated in subparagraph (ii) of this paragraph shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;
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353 (iv) For other annuities with no cash settlement options and
354 for guaranteed interest contracts with no cash settlement
355 options, the formula for single premium immediate annuities
356 stated in subparagraph (ii) of this paragraph shall apply;

357 (v) For other annuities with cash settlement options and
358 guaranteed interest contracts with cash settlement options,
359 valued on a change in fund basis, the formula for single
360 premium immediate annuities stated in subparagraph (ii) of this
361 paragraph shall apply.

362 (B) However, if the calendar year statutory valuation
363 interest rate for any life insurance policies issued in any
364 calendar year determined without reference to this sentence
365 differs from the corresponding actual rate for similar policies
366 issued in the immediately preceding calendar year by less than
367 one half of one percent, the calendar year statutory valuation
368 interest rate for such life insurance policies shall be equal to the
369 corresponding actual rate for the immediately preceding
370 calendar year. For purposes of applying the immediately
371 preceding sentence, the calendar year statutory valuation
372 interest rate for life insurance policies issued in a calendar year
373 shall be determined for the year one thousand nine hundred
374 eighty (using the reference interest rate defined for the year one
375 thousand nine hundred seventy-nine) and shall be determined
376 for each subsequent calendar year regardless of when subdivi-
377 sion (4), subsection (c), section thirty, article thirteen of this
378 chapter, as amended, becomes operative.

379 (3) Weighting factors. —

380 (A) The weighting factors referred to in the formulas stated
381 above are given in the following tables:

382 (i) Weighting Factors for Life Insurance:
Guarantee Duration (Years) | Weighting Factors
---|---
10 or less | .50
More than 10, but not more than 20 | .45
More than 20 | .35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

(ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80;

(iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in subparagraph (ii) of this paragraph, shall be as specified in clauses (I), (II) and (III) of this subparagraph, according to the rules and definitions in clauses (IV), (V) and (VI) of this subparagraph:

(I) For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years) | Weighting Factor for Plan Type
---|---
A | B | C
5 or less: | .80 | .60 | .50
More than 5, but not more than 10: | .75 | .60 | .50
More than 10, but not more than 20: | .65 | .50 | .45
More than 20: | .45 | .35 | .35
(II) For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in subparagraph (i) of this paragraph increased by:

<table>
<thead>
<tr>
<th>Weighting Factor for Plan Type</th>
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<tr>
<td>A</td>
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<td>.15</td>
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(III) For annuities and guaranteed interest contracts valued on an issue-year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in clause (I) of this subparagraph or derived in clause (II) of this subparagraph increased by:

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<th>Weighting Factor for Plan Type</th>
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(IV) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guaranteed duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.
(V) Plan type as used in the above tables is defined as follows:

Plan Type A:

At any time policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) as an immediate life annuity; or (4) no withdrawal permitted;

Plan Type B:

Before expiration of the interest rate guarantee, policyholder may withdraw funds only: (1) With an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) without such adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five years;

Plan Type C:

Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five years either: (1) Without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

(VI) A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue-year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement
options must be valued on an issue-year basis. As used in this section, an issue-year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) Reference interest rate. —

(A) Reference interest rate referred to in subparagraph (ii), paragraph (A), subdivision (2) of this subsection shall be defined as follows:

(i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year next preceding the year of issue, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.

(ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or year of purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody's Investors Service, Inc.

(iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options,
valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc.

(iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in subparagraph (ii) of this paragraph, with guarantee duration of ten years or less, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc.

(v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of issue or purchase, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc.

(vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in subparagraph (ii) of this paragraph, the average over a period of twelve months, ending on the thirtieth day of June of the calendar year of the change in the fund, of the monthly average of the composite yield on seasoned corporate bonds as published by Moody’s Investors Service, Inc.
(5) Alternative method for determining reference interest rates. —

In the event that the monthly average of the composite yield on seasoned corporate bonds is no longer published by Moody's investors service, inc., or in the event that the national association of insurance commissioners determines that the monthly average of the composite yield on seasoned corporate bonds as published by Moody's investors service, inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the national association of insurance commissioners and approved by regulation promulgated by the commissioner, may be substituted.

(g) Reserve valuation method. — Life insurance and endowment benefits.

Except as otherwise provided in subsections (h), (k) and (m) of this section, reserves according to the commissioners reserve valuation method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums for the benefits that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subdivision (1) of this subsection over subdivision (2) of this subsection, as follows:
(1) A net level annual premium equal to the present value, at the date of issue, of such benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one per annum payable on the first and each subsequent anniversary of such policy on which a premium falls due: Provided, That such net level annual premium shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age at issue of such policy.

(2) A net one-year term premium for such benefits provided for in the first policy year: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the contract premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the reserve according to the commissioners' reserve valuation method as of any policy anniversary occurring on or before the assumed ending date defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than such excess premium shall, except as otherwise provided in subsection (k) of this section, be the greater of the reserve as of such policy anniversary calculated as described in the preceding paragraph and the reserve as of the policy anniversary calculated as described in that paragraph, but with:

(i) The value defined in subdivision (1) of that paragraph being reduced by fifteen percent of the amount of such excess first-year premium; (ii) all present values of benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date; (iii) the policy being assumed to mature on the date as an endowment; and (iv) the cash surrender value provided on such date being considered as an endowment benefit. In making the
above comparison, the mortality and interest bases stated in subsections (d) and (f) of this section shall be used.

Reserves according to the commissioners' reserve valuation method for: (i) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums; (ii) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U. S. C. §408) as now or hereafter amended; (iii) disability and accidental death benefits in all policies and contracts; and (iv) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraphs of this section.

(h) Reserve valuation method. — Annuity and pure endowment benefits. This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code (26 U. S. C. §408) as now or hereafter amended.

Reserves according to the commissioners' annuity reserve method for benefits under annuity or pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future
guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by such contracts at the end of each respective contract year over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of such contract, that become payable prior to the end of such respective contract year.

The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine nonforfeiture values.

(i) Minimum reserves. —

(1) In no event shall a company’s aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the effective date of this section be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (g), (h), (k) and (l) of this section and the mortality table or tables and rate or rates of interest used in calculating nonforfeiture benefits for such policies.

(2) In no event shall the aggregate reserves for all policies, contracts and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (c) of this section.

(j) Optional reserve calculation. —

Reserves for all policies and contracts issued prior to the effective date of this section may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all policies and contracts than the
Reserves for any category of policies, contracts or benefits as established by the commissioner issued on or after the effective date of this section may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the commissioner, adopt any lower standard of valuation, but not lower than the minimum herein provided: Provided, That for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required by subsection (c) of this section shall not be considered to be the adoption of a higher standard of valuation.

(k) *Reserve calculation.* — Valuation net premium exceeding the gross premium charged.

If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract shall be the greater of either the reserve calculated according to the mortality table, rate of interest and method actually used for
such policy or contract or the reserve calculated by the method actually used for such policy or contract but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium. The minimum valuation standards of mortality and rate of interest referred to in this section are those standards stated in subsections (d) and (f) of this section: Provided, That for any life insurance policy issued on or after the first day of January, one thousand nine hundred eighty-five, for which the gross premium in the first policy year exceeds that of the second year and for which no comparable additional benefit is provided in the first year for such excess and which provides an endowment benefit or a cash surrender value or a combination thereof in an amount greater than such excess premium, the foregoing provisions of this subsection shall be applied as if the method actually used in calculating the reserve for such policy were the method described in subsection (g) of this section, ignoring the second paragraph of said subsection.

The minimum reserve at each policy anniversary of such a policy shall be the greater of the minimum reserve calculated in accordance with subsection (g) of this section, including the second paragraph of said section, and the minimum reserve calculated in accordance with this subsection.

(l) Reserve calculation. — Indeterminate premium plans.

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in subsections
(g), (h) and (k) of this section, the reserves which are held under any such plan must:

1. Be appropriate in relation to the benefits and the pattern of premiums for that plan; and

2. Be computed by a method which is consistent with the principles of this standard valuation law as determined by regulations promulgated by the commissioner.

(m) Minimum standards for health (disability, accident and sickness) plans. —

The commissioner shall promulgate a rule containing the minimum standards applicable to the valuation of health (disability, sickness and accident) plans.

(n) The commissioner shall promulgate a rule on or before the first day of November, one thousand nine hundred ninety-five, prescribing the guidelines and standards for statements of actuarial opinion which are to be submitted in accordance with subsection (c) of this section and for memoranda in support thereof; guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from subdivision (2) of said subsection of the standard valuation law; and rules applicable to the appointment of an appointed actuary.

(o) Effective date. — All acts and parts of acts inconsistent with the provision of this section are hereby repealed as of the effective date of this section. This section shall take effect the first day of January, one thousand nine hundred ninety-six.

(p) Modification of the standard valuation law for certain types of contracts. —
(1) The commissioner may, by rule, establish alternative methods of calculating reserve liabilities, which methods shall be used to calculate reserve liabilities for the types of policies, annuities or other contracts identified in the rule: Provided, That the method specified in the rule shall be one which, in the opinion of the commissioner and in light of the methods applied to the contracts by the insurance regulators of other states, is appropriate to the contracts. This power shall be in addition to, and in no way diminish, rule-making power granted to the commissioner elsewhere in this code.

(2) The legislative rule filed in the state register on the twentieth day of August, one thousand nine hundred ninety-six, (valuation of life insurance policies, 114 CSR 49) is hereby disapproved and is not authorized for promulgation: Provided, That for purposes of determining the legal effects of the aforementioned rule, this provision shall be considered to have taken effect on the thirty-first day of December, one thousand nine hundred ninety-seven. This disapproval shall in no way limit the commissioner’s power to promulgate in the future a rule similar or identical to the rule here disapproved.

ARTICLE 13. LIFE INSURANCE.


(a) This section shall be known as the “Standard Nonforfeiture Law for Individual Deferred Annuities”.

(b) This section may not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or
hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

(c) In the case of contracts issued on or after the operative date of this section, no contract of annuity, except as stated in subsection (b) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions which, in the opinion of the commissioner, are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of the value as is specified in subsections (e), (f), (g), (h) and (j) of this section;

(2) If a contract provides for a lump sum settlement at maturity or at any other time that, upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of the amount as is specified in subsections (e), (f), (h) and (j) of this section. The company shall reserve the right to defer the payment of the cash surrender benefit for a period of six months after demand therefor with surrender of the contract;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits; and
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42 (4) A statement that any paid-up annuity, cash surrender or
deaht benefits that may be available under the contract are not
44 less than the minimum benefits required by any statute of the
state in which the contract is delivered and an explanation of
the manner in which the benefits are altered by the existence of
at any additional amounts credited by the company to the contract,
any indebtedness to the company on the contract or any prior
withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any
deferred annuity contract may provide that if no considerations
have been received under a contract for a period of two full
years and the portion of the paid-up annuity benefit at maturity
on the plan stipulated in the contract arising from considera-
tions paid prior to the period would be less than twenty dollars
monthly, the company may at its option terminate the contract
by payment in cash of the then present value of the portion of
the paid-up annuity benefit, calculated on the basis of the
mortality table, if any, and interest rate specified in the contract
for determining the paid-up annuity benefit and by the payment
shall be relieved of any further obligation under the contract.

(d) (1) The minimum values as specified in subsections (e),
(f), (g), (h) and (j) of this section of any paid-up annuity, cash
surrender or death benefits available under an annuity contract
shall be based upon minimum nonforfeiture amounts as defined
in this subdivision:

(A) With respect to contracts providing for flexible
considerations, the minimum nonforfeiture amount at any time
at or prior to the commencement of any annuity payments shall
be equal to an accumulation up to the time at a rate of interest
of three percent per annum of percentages of the net consider-
tations (as hereinafter defined) paid prior to the time, decreased
by the sum of:
(i) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per annum; and

(ii) The amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract;

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less than an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent;

Notwithstanding any other provision of this section, any contract issued on or after the first day of July, two thousand three, and before the first day of July, two thousand six, the interest rate at which net considerations, prior withdrawals and partial surrenders shall be accumulated for the purpose of determining nonforfeiture amounts may not be less than one and one-half percent per annum;
(B) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(i) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years;

(ii) The annual contract charge shall be the lesser of: (1) Thirty dollars; or (2) ten percent of the gross annual consideration;

(C) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars;

(D) This subdivision applies to contracts issued before the first day of July, two thousand four, and may be applied by a company on a contract-by-contract basis to contracts issued on or after the first day of July, two thousand four, and before the first day of July, two thousand six;

(2) The minimum values as specified in subsections (e), (f), (g), (h) and (j) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subdivision;
(A) (i) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in paragraph (B) of this subdivision of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of subparagraphs (I) through (IV) below:

(I) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in paragraph (B) of this subdivision;

(II) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in paragraph (B) of this subdivision;

(III) Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in subparagraph (ii), paragraph (B) of this subdivision; and

(IV) The amount of any indebtedness to the company on the contract, including interest due and accrued;

(ii) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during that contract year;

(B) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and the following, which shall be specified in the contract if the interest rate will be reset:

(i) The five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than fifteen months prior to the contract
issue date or redetermination date under subparagraph (iv) of
this paragraph;

(ii) Reduced by one hundred twenty-five basis points;

(iii) Where the resulting interest rate is not less than one
percent; and

(iv) The interest rate shall apply for an initial period and
may be redetermined for additional periods. The
redetermination date, basis and period, if any, shall be stated in
the contract. The basis is the date or average over a specified
period that produces the value of the five-year constant maturity
treasury rate to be used at each redetermination date;

(C) During the period or term that a contract provides
substantive participation in an equity indexed benefit, it may
increase the reduction described in subparagraph (ii), paragraph
(B) of this subdivision by up to an additional one hundred basis
points to reflect the value of the equity index benefit. The
present value at the contract issue date, and at each
redetermination date thereafter, of the additional reduction may
not exceed the market value of the benefit. The commissioner
may require a demonstration that the present value of the
additional reduction does not exceed the market value of the
benefit. Lacking a determination that is acceptable to the
commissioner, the commissioner may disallow or limit the
additional reduction;

(D) The commissioner may adopt rules to implement the
provisions of this subsection and to provide for further adjust-
ments to the calculation of minimum nonforfeiture amounts for
contracts that provide substantive participation in an equity
index benefit and for other contracts that the commissioner
determines their adjustments are justified;
(E) This subdivision shall apply to contracts outstanding on
the first day of July, two thousand four, and may be applied by
a company on a contract-by-contract basis to any contract
issued after the first day of July, two thousand four, and before
the first day of July, two thousand six.

(e) Any paid-up annuity benefit available under a contract
shall be such that its present value on the date annuity payments
are to commence is at least equal to the minimum nonforfeiture
amount on that date. The present value shall be computed using
the mortality table, if any, and the interest rate specified in the
contract for determining the minimum paid-up annuity benefits
guaranteed in the contract.

(f) For contracts which provide cash surrender benefits, the
cash surrender benefits available prior to maturity may not be
less than the present value as of the date of surrender of that
portion of the maturity value of the paid-up annuity benefit
which would be provided under the contract at maturity arising
from consideration paid prior to the time of cash surrender
reduced by the amount appropriate to reflect any prior with-
drawals from or partial surrenders of the contract, the present
value being calculated on the basis of an interest rate not more
than one percent higher than the interest rate specified in the
contract for accumulating the net considerations to determine
the maturity value, decreased by the amount of any indebted-
ness to the company on the contract, including interest due and
accrued, and increased by any existing additional amounts
credited by the company to the contract. In no event shall any
cash surrender benefit be less than the minimum nonforfeiture
amount at that time. The death benefit under the contracts shall
be at least equal to the cash surrender benefit.

(g) For contracts which do not provide cash surrender
benefits, the present value of any paid-up annuity benefit
available as a nonforfeiture option at any time prior to maturity
may not be less than the present value of that portion of the
maturity value of the paid-up annuity benefit provided under
the contract arising from considerations paid prior to the time
the contract is surrendered in exchange for, or changed to, a
delayed paid-up annuity, the present value being calculated for
the period prior to the maturity date on the basis of the interest
rate specified in the contract for accumulating the net consider-
ations to determine the maturity value and increased by any
existing additional amounts credited by the company to the
contract. For contracts which do not provide any death benefits
prior to the commencement of any annuity payments, the
present values shall be calculated on a basis of the interest rate
and the mortality table specified in the contract for determining
the maturity value of the paid-up annuity benefit. However, in
no event shall the present value of a paid-up annuity benefit be
less than the minimum nonforfeiture amount at that time.

(h) For the purpose of determining the benefits calculated
under subsections (f) and (g) of this section, in the case of
annuity contracts under which an election may be made to have
annuity payments commence at optional maturity dates, the
maturity date is considered to be the latest date for which
election is permitted by the contract, but is not considered to be
later than the anniversary of the contract next following the
annuitant's seventieth birthday or the tenth anniversary of the
contract, whichever is later.

(i) Any contract which does not provide cash surrender
benefits or does not provide death benefits at least equal to the
minimum nonforfeiture amount prior to the commencement of
any annuity payments shall include a statement in a prominent
place in the contract that the benefits are not provided.

(j) Any paid-up annuity, cash surrender or death benefits
available at any time, other than on the contract anniversary
under any contract with fixed scheduled considerations, shall be
calculated with allowance for the lapse of time and the payment
of any scheduled considerations beyond the beginning of the
contract year in which cessation of payment of considerations
under the contract occurs.

(k) For any contract which provides, within the same
contract by rider or supplemental contract provision, both
annuity benefits and life insurance benefits that are in excess of
the greater of cash surrender benefits or a return of the gross
considerations with interest, the minimum nonforfeiture
benefits shall be equal to the sum of the minimum nonforfeiture
benefits for the annuity portion and the minimum nonforfeiture
benefits, if any, for the life insurance portion computed as if
each portion were a separate contract. Notwithstanding the
provisions of subsections (e), (f), (g), (h) and (j) of this section,
additional benefits payable: (1) In the event of total and
permanent disability; (2) as reversionary annuity or deferred
reversionary annuity benefits; or (3) as other policy benefits
additional to life insurance, endowment and annuity benefits
and considerations for all the additional benefits shall be
disregarded in ascertaining the minimum nonforfeiture
amounts, paid-up annuity, cash surrender and death benefits
that may be required by this section. The inclusion of the
additional benefits may not be required in any paid-up benefits
unless the additional benefits separately would require mini-
imum nonforfeiture amounts, paid-up annuity, cash surrender
and death benefits.

(l) After the effective date of this section, any company
may file with the commissioner a written notice of its election
to comply with the provisions of this section after a specified
date before the second anniversary of the effective date of this
section. After the filing of the notice, then upon the specified
date which shall be the operative date of this section for the
company, this section shall become operative with respect to
annuity contracts thereafter issued by the company. If a
company makes no election, the operative date of this section
for the company is the second anniversary of the effective date
of this section.

(m) (1) During the period from the first day of July, two
thousand four, through the first day of July, two thousand six,
an insurer may elect on a contract-by-contract basis to apply the
provisions of either subdivision (1) or (2), subsection (d) of this
section to any annuity contract issued during that period of
time;

(2) The provisions of subdivision (1), subsection (d) of this
section expires the first day of July, two thousand six.

CHAPTER 143

(Com. Sub. for H. B. 2914 — By Delegates H. White,
Hrutkay and R. M. Thompson)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal §33-10-27 of the code of West Virginia, 1931, as
amended; to repeal §33-24-15, §33-24-16, §33-24-17, §33-24-18,
§33-24-19, §33-24-21, §33-24-22, §33-24-23, §33-24-24, §33-24-
25, §33-24-26, §33-24-27, §33-24-28, §33-24-29, §33-24-30,
§33-24-31, §33-24-32, §33-24-33, §33-24-34, §33-24-35, §33-24-
36, §33-24-37, §33-24-38, §33-24-39, §33-24-40, §33-24-41 and
§33-24-42 of said code; to amend and reenact §33-10-1, §33-10-
2, §33-10-3, §33-10-4, §33-10-10, §33-10-11, §33-10-13, §33-10-
14, §33-10-18, §33-10-19a, §33-10-26, §33-10-28, §33-10-29,
§33-10-30, §33-10-36, §33-10-38 and §33-10-39 of said code; to
amend said code by adding thereto ten new sections, designated
§33-10-4a, §33-10-4b, §33-10-4c, §33-10-4d, §33-10-4e, §33-10-
26a, §33-10-26b, §33-10-26c, §33-10-26d and §33-10-40; and to amend and reenact §33-24-14 of said code, all relating to the rehabilitation and liquidation of insurers subject to the regulatory authority of the West Virginia insurance commissioner; revising delinquency proceedings; clarifying what parties will be affected upon the effective date of the revisions; expanding the liquidators’ powers; expediting hearings and appeals; modifying current state law relative to liquidation proceedings so as to create conformity with recent federal case law; and making numerous technical changes.

Be it enacted by the Legislature of West Virginia:

That §33-10-27 of the code of West Virginia, 1931, as amended, be repealed; that §33-24-15, §33-24-16, §33-24-17, §33-24-18, §33-24-19, §33-24-21, §33-24-22, §33-24-23, §33-24-24, §33-24-25, §33-24-26, §33-24-27, §33-24-28, §33-24-29, §33-24-30, §33-24-31, §33-24-32, §33-24-33, §33-24-34, §33-24-35, §33-24-36, §33-24-37, §33-24-38, §33-24-39, §33-24-40, §33-24-41 and §33-24-42 of said code be repealed; that §33-10-1, §33-10-2, §33-10-3, §33-10-4, §33-10-10, §33-10-11, §33-10-13, §33-10-14, §33-10-18, §33-10-19a, §33-10-26, §33-10-28, §33-10-29, §33-10-30, §33-10-36, §33-10-38 and §33-10-39 of said code be amended and reenacted; that said code be amended by adding thereto ten new sections, designated §33-10-4a, §33-10-4b, §33-10-4c, §33-10-4d, §33-10-4e, §33-10-26a, §33-10-26b, §33-10-26c, §33-10-26d and §33-10-40; and that §33-24-14 of said code be amended and reenacted, all to read as follows:

Article
10. Rehabilitation and Liquidation.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-1. Definitions.
§33-10-2. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.
§33-10-3. Court's seizure order.
§33-10-4. Injunctions and other orders.
§33-10-4a. Commencement of formal delinquency proceeding.
§33-10-4b. Return of summons and summary hearing.
§33-10-4c. Proceedings for expedited trial, continuances, discovery, evidence.
§33-10-4d. Decision and appeals.
§33-10-4e. Confidentiality.
§33-10-10. Order of rehabilitation.
§33-10-13. Order of conservation or ancillary liquidation of foreign or alien insurers.
§33-10-14. Conduct of delinquency proceedings against domestic or alien insurers.
§33-10-18. Proof of claims.
§33-10-19a. Priority of distribution.
§33-10-26. Voidable preferences and liens.
§33-10-26a. Fraudulent transfers prior to petition.
§33-10-26b. Recoupment from affiliates.
§33-10-26c. Fraudulent transfer after petition.
§33-10-26d. Claims of holders of void or voidable rights.
§33-10-29. Allowance of certain claims.
§33-10-30. Time within which claims to be filed.
§33-10-36. Early access to distribution.
§33-10-38. Unclaimed and withheld funds; termination of proceedings.
§33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor.
§33-10-40. Applicability of amendments.

§33-10-1. Definitions.

1 For the purpose of this article, the following definitions shall apply:

3 (a) "Impairment" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the insurer's annual statement, the assets of an insurer are less than the sum of all of its liabilities and required reserves including any minimum capital or surplus or both required of that insurer by this chapter so as to maintain its authority to transact the kinds of business or insurance it is so authorized to transact.
(b) "Insolvency" or "insolvent" means a financial situation in which, based upon the financial information which would be required by this chapter for the preparation of the insurer's annual statement, the assets of the insurer are less than the sum of all of its liabilities and required reserves.

(c) "Insurer" means any person, firm, corporation, association or aggregation of persons doing an insurance business and which is or has been subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by, the commissioner or the equivalent insurance supervisory official of another state. For purposes of this article, all persons, corporations, associations or entities to whom this article applies and which are subject to delinquency proceedings commenced in this state shall be considered "insurers".

(d) "Delinquency proceeding" means any proceeding commenced against an insurer pursuant to this article for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer and any summary proceeding under section thirty-six of this article. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.

(e) "State" means any state, district or territory of the United States.

(f) "Foreign country" means any other jurisdiction not in any state.

(g) "Domiciliary state" means the state in which an insurer is incorporated or organized, or in the case of an alien insurer as defined in section eight, article one of this chapter, the state in which such insurer, having become authorized to do business in such state, has at the commencement of delinquency proceedings, the largest amount of its assets held in trust and assets held on deposit for the benefit of its policyholders or policyholders and creditors in the United States or its state of entry.
(h) "Ancillary state" means any state other than a domiciliary state.

(i) "Reciprocal state" means any state other than this state in which in substance and effect the provisions of the uniform insurers liquidation act, as defined in section twenty-one of this article, are in force, and in which provisions are in force requiring that the insurance commissioner or equivalent insurance supervisory official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(j) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or a limited class or classes of persons and as to such specifically encumbered property, the term includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and assets held on deposit for the security or benefit of all policyholders or all policyholders and creditors in more than a single state shall be considered general assets.

(k) "Preferred claim" means any claim with respect to which the terms of this article accord priority of payments from the general assets of the insurer.

(l) "Special deposit claim" means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any general assets.

(m) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claim or claims against general assets. The term also includes claims which more than four months prior to the commencement of delinquency proceedings...
in the state of the insurer’s domicile have become liens upon specific assets by reason of judicial process.

(n) “Receiver” means receiver, liquidator, rehabilitator or conservator as the context may require.

(o) “Guaranty association” means the West Virginia insurance guaranty association created by article twenty-six of this chapter, the West Virginia life and health insurance guaranty association act created by article twenty-six-a of this chapter and any other similar entity now or hereafter created by the Legislature of this state for the payment of claims of insolvent insurers.

(p) “Foreign guaranty association” means any entities now in existence in or hereafter created by the Legislature of any other state that are similar to the entities described in subsection (o) of this section.

(q) “Surplus” means the amount by which an insurer’s assets exceed its liabilities and required reserves based upon the financial information which would be required by this chapter for the preparation of the insurer’s annual statement.

(r) “Affiliate” or a person “affiliated with” a specific person means 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.

(s) “Control” 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 that control does not, in fact, exist.

(t) "Transfer" means the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor.

§33-10-2. Jurisdiction, venue and appeal of delinquency proceedings; exclusive remedy.

(a) The circuit courts of this state or the judges thereof in vacation are vested with exclusive original jurisdiction of delinquency proceedings under this article, and are authorized to make all necessary and proper orders to carry out the purposes of this article.

(b) The venue of delinquency proceedings against a domestic insurer shall be in the circuit court of the county of the insurer's principal place of business. The venue of such proceedings against foreign insurers, alien insurers or domestic insurers in which their principal place of business is outside of the state of West Virginia shall be in the circuit court of Kanawha County.

(c) With the exception of administrative supervision pursuant to article thirty-four of this chapter, delinquency proceedings pursuant to this article shall constitute the sole and exclusive method of liquidating, rehabilititating, reorganizing or conserving an insurer and no court shall entertain a petition for the commencement of such proceedings unless the same has been filed in the name of the state on the relation of the insurance commissioner.
(d) An appeal shall lie to the West Virginia Supreme Court of Appeals from an order granting or refusing rehabilitation, liquidation or conservation and from every other order in delinquency proceedings having the character of a final order as to the particular portion of the proceedings embraced therein. Appeals from orders granting or refusing rehabilitation, liquidation or conservation shall be prosecuted pursuant to section four-d of this article.

(e) At any time after an order is made under section ten or eleven of this article, the commissioner may remove the principal office of the insurer proceeded against to Kanawha County. In the event of such removal, the court wherein the proceeding was originally commenced shall, upon the application of the commissioner, direct its clerk to transmit all the pleadings, motions and other papers filed therein with such clerk to the clerk of the circuit court of Kanawha County. The proceeding shall thereafter be subject to the jurisdiction of the Kanawha County circuit court and conducted in the same manner as though it had been commenced in the Kanawha County circuit court.

§33-10-3. Court’s seizure order.

(a) The commissioner may file in the appropriate circuit court of this state, as provided in section two of this article, a petition alleging, with respect to a domestic insurer:

(1) That there exist any grounds that would justify a court order for a formal delinquency proceeding against an insurer under this act;

(2) That the interests of policyholders, creditors or the public will be endangered by delay; and

(3) The contents of an order considered necessary by the commissioner.
(b) Upon a filing under subsection (a) of this section, the
court may issue forthwith, ex parte and without a hearing, the
requested order which shall direct the commissioner to take
possession and control of all or a part of the assets, books,
accounts, documents and other records of an insurer and of the
premises occupied by it for transaction of its business; and until
further order of the court enjoin the insurer and its officers,
managers, agents and employees from disposition of its
property and from the transaction of its business except with the
written consent of the commissioner.

(c) The court shall specify in the order what its duration
shall be, which shall be the time as the court considers neces-
sary for the commissioner to ascertain the condition of the
insurer. On motion of either party or on its own motion, the
court may, from time to time, hold hearings as it considers
desirable after notice that it considers appropriate and may
extend, shorten or modify the terms of the seizure order. The
court shall vacate the seizure order if the commissioner fails to
commence a formal delinquency proceeding under this article
after having had a reasonable opportunity to do so. An order of
the court pursuant to a formal proceeding under this article shall
ipso facto vacate the seizure order.

(d) Entry of a seizure order under this section will not
constitute an anticipatory breach of any contract of the insurer.

(e) An insurer subject to an ex parte order under this section
may petition the court at any time after the issuance of the order
for a hearing and review of the order. The court shall hold the
hearing and review not more than fifteen days after the request.
Subject to the approval of the court, a hearing under this
subsection may be held privately in chambers if the insurer
proceeded against so requests.
42 (f) If, at any time after the issuance of such an order, it appears to the court that any person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given. An order that notice be given will not stay the effect of any order previously issued by the court.

§33-10-4. Injunctions and other orders.

1 (a) Upon application by the commissioner for an order under this article:

2 (1) The court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until further order of the court.

3 (2) The court may at any time during a proceeding under this article issue other injunctions or orders as may be considered necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy against the insurer or against its assets or any part thereof.

4 (3) The court may order any managing general agent or attorney in fact to release to the commissioner any books, records, accounts, documents or other writings relating to the business of such person: Provided, That any of the same or the property of an agent or attorney shall be returned when no longer necessary to the commissioner or at any time the court after notice and hearing shall so direct.

5 (b) Any person having possession of and refusing to deliver any of the books, records or assets of an insurer against whom
a seizure order has been issued by the court shall be guilty of a
misdemeanor and punishable by fine not exceeding one
thousand dollars or imprisoned not more than one year, or both
fine and imprisonment.

(c) Whenever the commissioner makes any seizure as
provided in section three of this article, it shall be the duty of
the sheriff of any county of this state, and of the police depart-
ment of any municipality therein, to furnish the commissioner,
upon demand, with such deputies, patrolmen or officers as may
be necessary to assist the commissioner in making and enforc-
ing any seizure.

(d) Notwithstanding any other provision of law, no bond
shall be required of the commissioner as a prerequisite for the
issuance of any injunction or restraining order pursuant to this
section.

§33-10-4a. Commencement of formal delinquency proceeding.

(a) Any formal delinquency proceeding against a person
shall be commenced by filing a petition in the name of the
commissioner.

(b) The petition shall state the grounds upon which the
proceeding is based and the relief requested, and may include
a prayer for restraining orders and injunctive relief as described
in section four of this article.

(c) Any petition that prays for a temporary restraining order
must be verified by the commissioner or the commissioner’s
designee, but need not plead or prove irreparable harm or
inadequate remedy by law. The commissioner shall provide
only such notice as the court may require.

(d) If any temporary restraining order is prayed for:
(1) The court may issue an initial order containing the relief requested;

(2) The order shall state the time and date of its issuance;

(3) The court shall set a time and date for the return of summons, not more than ten days from the time and date of the issuance of the initial order, at which time the person proceeded against may appear before the court for a summary hearing;

(4) The order shall not continue in effect beyond the time and date set for the return of summons, unless the court shall expressly enter one or more orders extending the restraining order; and

(5) The verified petition shall be filed with the clerk of the circuit court and maintained as confidential, except for good cause shown, until service of the petition and summons is effected.

If no temporary restraining order is requested, the court shall cause a summons to be issued. The summons shall specify a return date not more than thirty days after issuance and that an answer to the petition must be filed at or before the return date.

Service of process required pursuant to this article shall be upon the person named in the petition in accordance with the West Virginia rules of civil procedure.

§33-10-4b. Return of summons and summary hearing.

(a) The court shall hold a summary hearing at the time and date for the return of summons.

(b) If a person is not served with the petition and summons and fails to appear for the summary hearing, the court shall:
(1) Continue the summary hearing not more than ten days;

(2) Require the commissioner to make additional or alternative attempts at service of the petition and summons upon the person; and

(3) Extend any restraining order.

(c) Upon a showing of good faith efforts to effect service upon a person who has failed to appear for a continued summary hearing, the court shall order notice of the petition to be published. The order and notice shall specify a return date not less than ten nor more than twenty days after the publication and that the restraining order has been extended to the continued hearing date.

(d) If a person fails to appear for a summary hearing after service of the summons, the court shall enter judgment in favor of the commissioner against that person.

(e) A person who appears for the summary hearing shall file its answer at the hearing and the court shall:

(1) Determine whether to extend any temporary restraining orders pending final judgment; and

(2) Set the case for trial on a date not more than ten days from the summary hearing.

(f) The court shall grant no continuance for filing an answer.

§33-10-4c. Proceedings for expedited trial, continuances, discovery, evidence.

(a) The court shall hear the case at the time and date set forth for trial without a jury and without unnecessary delays. To the extent not inconsistent with other laws or applicable rules,
the court shall give priority to the matter over all other matters. To the extent otherwise authorized by law or applicable rules, the court may assign the matter to other judges if necessary to comply with the need for expedited proceedings under this article.

(b) Continuances for trial shall be granted only in extreme circumstances.

(c) The court shall receive as self-authenticated any of the following when offered by the commissioner:

(1) Certified copies of the financial statements made by the person; and

(2) Certified copies of examination reports of the person made by or on behalf of the commissioner.

(d) The facts contained in any such examination report shall be presumed to be true as of the date of the hearing if the examination was made as of a date not more than two hundred seventy days before the petition was filed. This presumption shall be rebuttable and shall shift the burden of production and persuasion.

(e) Discovery shall be limited to grounds alleged in the petition, and shall be concluded on an expedited basis.

§33-10-4d. Decision and appeals.

(a) The court shall enter judgment within fifteen days or as soon as practicable after the conclusion of the evidence.

(b) The judgment shall be final when entered. Any appeal shall be prosecuted on an expedited basis and must be filed within five days of entry. No request for reconsideration, review or appeal and no posting of a bond shall dissolve or stay the judgment.
§33-10-4e. Confidentiality.

(a) In all proceedings and judicial reviews under section four of this article, all records of the insurer, other documents and all insurance department files and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential and all papers filed with the clerk of the circuit court shall be held by the clerk in a confidential file, except as is necessary to obtain compliance with any order entered in connection with the proceedings, unless and until:

(1) The circuit court, after hearing argument in chambers, shall order otherwise;

(2) The insurer requests that the matter be made public; or

(3) The commissioner applies for an order under section ten or eleven of this article.

(b) The commissioner may share documents, materials or other information in his or her possession or control pertaining to an insurer that is the subject of a proceeding under this article with other state insurance departments, the national association of insurance commissioners, and federal banking agencies in accordance with section nineteen, article two of this chapter. No waiver of any applicable privilege or claim of confidentiality shall occur as a result of disclosure by the commissioner under this section or as a result of sharing documents, materials or other information pursuant to this subsection.

§33-10-10. Order of rehabilitation.

(a) An order to rehabilitate a domestic insurer or the United States branch of an alien insurer having trusteeed assets in this state shall direct the commissioner forthwith to take possession of the assets of the insurer and to conduct the business thereof,
and to take such steps toward removal of the causes and
conditions which have made rehabilitation necessary as the
court may direct.

(b) If at any time the commissioner deems that further
efforts to rehabilitate the insurer would be useless, he or she
may apply to the court for an order of liquidation.

c) The commissioner, or any interested person upon due
notice to the commissioner, at any time may apply to the court
for an order terminating the rehabilitation proceedings and
permitting the insurer to resume possession of its property and
the conduct of its business, but no such order shall be granted
except when, after a full hearing, the court has determined that
the purposes of the proceeding have been fully accomplished.


(a) An order to liquidate the business of a domestic insurer
shall direct the commissioner forthwith to take possession of
the assets of the insurer, to liquidate its business, to deal with
the insurer’s property and business in his or her own name as
insurance commissioner or in the name of the insurer, as the
court may direct, and to give notice to all creditors who may
have claims against the insurer to present their claims.

(b) The commissioner may apply for and secure an order
dissolving the corporate existence of a domestic insurer upon
his or her application for an order of liquidation of the insurer
or at any time after such order has been granted.

§33-10-13. Order of conservation or ancillary liquidation of
foreign or alien insurers.

(a) An order to conserve the assets of a foreign or alien
insurer shall require the commissioner forthwith to take
possession of the assets of the insurer within this state and to
conserve it, subject to the further direction of the court.

(b) An order to liquidate the assets in this state of a foreign
insurer shall require the commissioner forthwith to take
possession of the assets of the insurer within this state and to
liquidate it subject to the orders of the court and with due regard
to the rights and powers of the domiciliary receiver, as provided
in this article.

§33-10-14. Conduct of delinquency proceedings against domestic
or alien insurers.

(a) Whenever under this article a receiver is to be appointed
in delinquency proceedings for a domestic or alien insurer, the
court shall appoint the insurance commissioner as the receiver.
The court shall order the commissioner forthwith to take
possession of the assets of the insurer and to administer the
same under the orders of the court.

(b) As domiciliary receiver, the commissioner shall be
vested by operation of law with the title to all the property,
contracts and rights of action and all of the books and records
of the insurer, wherever located, as of the date of entry of the
order directing him or her to rehabilitate or liquidate a domestic
insurer or to liquidate the United States branch of an alien
insurer domiciled in this state and he or she shall have the right
to recover the same and reduce the same to possession; except
that ancillary receivers in reciprocal states shall have, as to
assets located in their respective states, the rights and powers
which are prescribed in this section for ancillary receivers
appointed in this state as to assets located in this state.

(c) The recording of a certified copy of the order directing
possession to be taken in the office of the clerk of the county
commission of the county where the proceedings are pending
and in the office of the clerk of the county commission of any
county wherein the insurer has property or other assets, recorded in the same manner as deeds to real property are recorded, shall impart the same notice as would be imparted by a deed, bill of sale or other evidence of title duly recorded or filed.

(d) The commissioner as domiciliary receiver shall be responsible for the proper administration of all assets coming into his or her possession or control. The court may at any time require a bond from the commissioner or his or her deputies if considered desirable for the protection of the assets. The cost of the bond shall be paid out of the assets of the insurer as a cost of administration.

(e) Upon taking possession of the assets of an insurer, the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such steps as are authorized by this article for the purpose of rehabilitating, liquidating or conserving the affairs or assets of the insurer.

(f) In connection with delinquency proceedings, the commissioner may appoint one or more special deputy commissioners of insurance to act for him or her and may employ such counsel, clerks and assistants as he or she considers necessary. The compensation of the special deputies, counsel, clerks or assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the receiver, subject to the approval of the court and shall be paid out of the funds or assets of the insurer. In the event the property of such person does not contain cash or liquid assets sufficient to defray the cost of the service required to be performed under the terms of this article, the commissioner may pay the cost of the services first out of the commissioner’s closed estate fund account. If the moneys in the closed estate fund account are insufficient to fully defray the cost of the
services required under the terms of this article, the commis-
— additional fees” account. Any amount so paid from either
account shall be considered to be expenses of administration
and shall be repaid to the appropriate account out of the first
available moneys in the estate.

(g) Within the limits of duties imposed upon them, special
deputies shall possess all the powers given to and, in the
exercise of those powers, shall be subject to all of the duties
imposed upon the receiver with respect to such proceedings. All
transactions involving estate accounts shall be reconciled
quarterly by a special deputy commissioner appointed pursuant
to subsection (f) of this section and reported to the commis-
sioner. An annual audit of any special deputy commissioner
appointed under this section may be conducted, at the discretion
of the commissioner, by an independent, outside certified public
accountant. The cost of this audit shall be allocated among the
estates of the companies in conservation, rehabilitation or
liquidation on a basis of allocation established by the commis-
sioner.

§33-10-18. Proof of claims.

(a) All claims against an insurer against which delinquency
proceedings have begun shall set forth all of the following that
are applicable:

(1) In reasonable detail, the amount of the claim, or the
basis upon which the amount can be ascertained;

(2) The facts upon which the claim is based, including any
consideration given for it;

(3) The priorities asserted, if any;

(4) The identity and amount of any security on the claim;
(5) The payments made on the debt, if any; and

(6) A statement that the sum claimed is justly owing and whether there is a right of setoff, counterclaim or defense to the claim.

(b) All claims shall be verified by the affidavit of the claimant, or someone authorized to act on his or her behalf and having knowledge of the facts and shall be supported by any documents as may be material thereto.

(c) All claims filed in this state shall be filed with the receiver, whether domiciliary or ancillary, in this state on or before the last date for filing as specified in this article.

(d) When a claim is denied, in whole or in part, by the liquidator, written notice of the determination shall be given to the claimant or his or her attorney by first class mail at the address shown in the proof of claim. Within sixty days from the mailing of the notice, the claimant may file his or her objections with the liquidator. If no such filing is made, the claimant may not further object to the determination.

(e) Whenever objections are filed with the liquidator and the liquidator does not alter his or her denial of the claim as a result of the objections, the liquidator shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or his or her attorney and to any other persons directly affected, not less than ten nor more than thirty days before the date of the hearing. The matter may be heard by the court or by a court-appointed referee who shall submit findings of fact along with his or her recommendation. Upon receipt of the report, the court shall fix a time for hearing the claim and shall direct that the claimant or the receiver, as the court shall specify, shall give such notice as the court shall determine to any persons as shall appear to the court to be interested therein. All such notices shall specify the time and
place of the hearing and shall concisely state the amount and
nature of the claim, the priorities asserted, if any, and the
recommendation of the receiver with reference thereto.

(f) At the hearing, all persons interested shall be entitled to
appear and the court shall enter an order allowing, allowing in
part, or disallowing the claim. Any such order shall be consid-
ered an appealable order.

§33-10-19a. Priority of distribution.

The priority of distribution of claims from the insurer’s
estate shall be in accordance with the order in which each class
of claims is herein set forth. Every claim in each class shall be
paid in full or adequate funds retained for such payment before
the members of the next class receive any payment. No
subclasses may be established within any class. No claim by a
shareholder, policyholder or other creditor may be permitted to
circumvent the priority classes through the use of equitable
remedies. The order of distribution shall be:

(a) Class I. The costs and expenses of administration,
including, but not limited to, the following:

(1) The actual and necessary costs of preserving or recover-
ing the assets of the insurer;

(2) Compensation for all authorized services rendered in the
liquidation;

(3) Any necessary filing fees;

(4) The fees and mileage payable to witnesses;

(5) Reasonable attorney’s fees and fees for other profes-
sional services rendered in the proceeding; and
(6) All expenses incurred by the department of insurance arising out of the enforcement of chapter thirty-three and its rules.

(b) Class II. All claims for refund of unearned premiums under nonassessable policies and all claims of policyholders including claims of the federal or any state or local government as policyholders for losses incurred; third party claims of an insolvent insurer; and all reasonable claims of the West Virginia insurance guaranty associations and associations or entities performing a similar function in other states.

(c) Class III. Claims of the federal government other than as an insured policyholder.

(d) Class IV. Debts due to employees for compensation, which may not exceed two months of monetary compensation and must represent payment for services performed within six months before the filing of the petition for liquidation, or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation. Principal officers and directors shall not be entitled to the benefit of this priority except as otherwise approved by the liquidator and the court. This priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of employees.

(e) Class V. Claims of general creditors including claims of ceding and assuming companies in their capacity as such.

(f) Class VI. Claims of any state or local government. Claims, including those of any governmental body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder
of such claims shall be postponed to the class of claims under subsection (h) of this section.

(g) Class VII. Claims filed late or any other claims other than claims under subsection (h) of this section.

(h) Class VIII. Surplus or contribution notes, or similar obligations and premium refunds on assessable policies. Payments to members of domestic mutual corporations shall be limited in accordance with law.

(i) Class IX. The claims of shareholders or other owners.

§33-10-26. Voidable preferences and liens.

(a) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this article, the effect of which transfer may be to enable the creditor to obtain a greater percentage of this debt than another creditor of the same class would have otherwise received. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then the transfers shall be deemed preferences if made or suffered within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) Any preference may be avoided by the liquidator if the insurer was insolvent at the time of the transfer; and

(1) The transfer was made within four months before the filing of the petition; or

(2) The creditor receiving it or to be benefited thereby or his or her agent acting with reference thereto had, at the time
when the transfer was made, reasonable cause to believe that
the insurer was insolvent or was about to become insolvent; or

(3) The creditor receiving it was an officer, or any em-
ployee or attorney or other person who was in fact in a position
of comparable influence in the insurer to an officer whether or
not he or she held such position, or any shareholder holding
directly or indirectly more than five percent of any class of any
equity security issued by the insurer, or any other person, firm,
corporation, association or aggregation of persons with whom
the insurer did not deal at arm’s length.

(c) Where the preference is voidable, the liquidator may
recover the property or, if it has been converted, its value from
any person who has received or converted the property; except
where a bona fide purchaser or lienor has given less than fair
equivalent value, the purchaser or lienor shall have a lien upon
the property to the extent of the consideration actually given.
Where a preference by way of lien or security title is voidable,
the court may on due notice order the lien or title to be pre-
served for the benefit of the estate, in which event the lien or
title shall pass to the liquidator.

(d) A transfer under this section will be considered to have
been made as follows:

(1) A transfer of property other than real property shall be
deemed to be made or suffered when it becomes so far per-
fected that no subsequent lien obtainable by legal or equitable
proceedings on a simple contract could become superior to the
rights of the transferee.

(2) A transfer of real property shall be deemed to be made
or suffered when it becomes so far perfected that no subsequent
bona fide purchaser from the insurer could obtain rights
superior to the rights of the transferee.
(3) A transfer which creates an equitable lien will not be deemed to be perfected if there are available means by which a legal lien could be created.

(4) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed to be made immediately before the filing of the successful petition.

(5) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers.

(e)(1) A lien obtainable by legal or equitable proceedings upon a simple contract is one arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution or like process, whether before, upon or after judgment or decree and whether before or upon levy. It does not include liens which under applicable law are given a special priority over other liens which are prior in time.

(2) A lien obtainable by legal or equitable proceedings could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of subsection (d) of this section, if such consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by any step wholly within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials. A lien could not, however, become superior and such a purchase could not create superior rights for the purpose of subsection (d) of this section through any acts subsequent to the obtaining of such a lien or subsequent to such a purchase which require the agreement or concurrence of any third party or which require any further judicial action or ruling.
(f) A transfer of property for or on account of a new and contemporaneous consideration which is considered under subsection (d) of this section to be made or suffered after the transfer because of delay in perfecting it does not thereby become a transfer for or on account of an antecedent debt if any acts required by the applicable law to be performed in order to perfect the transfer as against liens or bona fide purchasers' rights are performed within twenty-one days or any period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if such a loan is actually made, or a transfer which becomes security for a future loan, shall have the same effect as a transfer for or on account of a new and contemporaneous consideration.

(g) If any lien deemed voidable under subsection (b) of this section has been dissolved by the furnishing of a bond or other obligation, the surety on which has been indemnified directly or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the filing of a petition under this article which results in a liquidation order, the indemnifying transfer or lien shall also be considered voidable.

(h) The property affected by any lien considered voidable under subsections (a), (b) and (g) of this section shall be discharged from the lien and that property and any of the indemnifying property transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on due notice order any such lien to be preserved for the benefit of the estate and the court may direct that such conveyance be executed as may be proper or adequate to evidence the title of the liquidator.

(i) The circuit court shall have summary jurisdiction of any proceeding by the liquidator to hear and determine the rights of any parties under this section. Reasonable notice of any hearing in the proceeding shall be given to all parties in interest,
including the obligee of a releasing bond or other like obligation. Where an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien the court, upon application of any party in interest, shall in the same proceeding ascertain the value of the property or lien and if the value is less than the amount for which the property is indemnity or than the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as ascertained by the court, to the liquidator within such reasonable times as the court shall fix.

(j) The liability of the surety under a releasing bond or other like obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien nullified and avoided by the liquidator or where the property is retained under subsection (i) of this section to the extent of the amount paid to the liquidator.

(k) If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind, for property which becomes a part of the insurer’s estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference which would otherwise be recoverable from him or her.

(l) If an insurer shall, directly or indirectly, within four months before the filing of a successful petition for liquidation under this article, or at any time in contemplation of a proceeding to liquidate it, pay money or transfer property to an attorney-at-law for services rendered or to be rendered, the transactions may be examined by the court on its own motion or shall be examined by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable amount to be determined by the court and the excess may be recovered by the liquidator for the benefits of the estate provided that where the attorney is in a position of influence in the insurer or an affiliate...
thereof payment of any money or the transfer of any property to the attorney-at-law for services rendered or to be rendered shall be governed by the provision of subdivision (3), subsection (b) of this section.

(m) (1) Every officer, manager, employee, shareholder, member, subscriber, attorney or any other person acting on behalf of the insurer who knowingly participates in giving any preference when he or she has reasonable cause to believe the insurer is or is about to become insolvent at the time of the preference shall be personally liable to the liquidator for the amount of the preference. It is permissible to infer that there is a reasonable cause to so believe if the transfer was made within four months before the date of filing of this successful petition for liquidation.

(2) Every person receiving any property from the insurer or the benefit thereof as a preference voidable under subsections (a) and (b) of this section shall be personally liable therefor and shall be bound to account to the liquidator.

(3) Nothing in this subsection shall prejudice any other claim by the liquidator against any person.

§33-10-26a. Fraudulent transfers prior to petition.

(a) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this article is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this article, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a
purchaser, lienor or obligee for a present fair equivalent value
and except that any purchaser, lienor or obligee, who in good
faith has given a consideration less than fair for such transfer,
lien or obligation, may retain the property, lien or obligation as
security for repayment. The court may, on due notice, order any
such transfer or obligation to be preserved for the benefit of the
estate and in that event, the receiver shall succeed to and may
enforce the rights of the purchaser, lienor or obligee.

(b) A transfer under this section will be considered to have
been made as follows:

(1) A transfer of property other than real property shall be
deemed to be made or suffered when it becomes so far per-
fected that no subsequent lien obtainable by legal or equitable
proceedings on a simple contract could become superior to the
rights of the transferee under subsection (e), section twenty-six
of this article.

(2) A transfer of real property shall be deemed to be made
or suffered when it becomes so far perfected that no subsequent
bona fide purchaser from the insurer could obtain rights
superior to the rights of the transferee.

(3) A transfer which creates an equitable lien shall not be
deemed to be perfected if there are available means by which a
legal lien could be created.

(4) Any transfer not perfected prior to the filing of a
petition for liquidation shall be deemed to be made immediately
before the filing of the successful petition.

(5) The provisions of this subsection apply whether or not
there are or were creditors who might have obtained any liens
or persons who might have become bona fide purchasers.
(c) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be avoided by the receiver under subsection (a) of this section if:

(1) The transaction consists of the termination, adjustment or settlement of a reinsurance contract in which the reinsurer is released from any part of its duty to pay the originally specified share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a present fair equivalent value for the release; and

(2) Any part of the transaction took place within one year prior to the date of filing of the petition through which the receivership was commenced.

(d) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under subsection (a) of this section shall be personally liable therefore and shall be bound to account to the liquidator.

§33-10-26b. Recoupment from affiliates.

(a) If an order instituting a delinquency proceeding against an insurer authorized to do business in this state is entered under this article, the receiver appointed under the order has a right to recover on behalf of the insurer from any affiliate that controlled the insurer the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation, rehabilitation or conservation. This recovery is subject to the limitations of subsections (b) through (g), inclusive, of this section.

(b) No dividend is recoverable if the recipient shows that, when paid, the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect its solvency.
(c) The maximum amount recoverable under this section is the amount needed, in excess of all other available assets, to pay all claims under the receivership, reduced for each recipient by any amount the recipient has already paid to receivers under similar laws of other states.

(d) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared is liable up to the amount of distributions the person would have received if the distributions had been paid immediately. If two or more persons are liable regarding the same distributions, they are jointly and severally liable.

(e) If any person liable under subsection (d) of this section is insolvent, all affiliates that controlled that person at the time the dividend was declared or paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(f) This section does not reduce the personal liability of a director under existing law.

(g) An action or proceeding under this section may not be commenced after the earlier of:

(1) Two years after the appointment of a liquidator pursuant to this article; or

(2) The date the rehabilitation or liquidation is terminated.

§33-10-26c. Fraudulent transfer after petition.

(a) After a petition for rehabilitation or liquidation has been filed, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the
receiver if made for a present fair equivalent value or, if not
made for a present fair equivalent value, then to the extent of
the present consideration actually paid therefore, for which
amount the transferee shall have a lien on the property so
transferred. The commencement of a proceeding in rehabilita-
tion or liquidation shall be constructive notice upon the
recording of a copy of the petition for or order of rehabilitation
or liquidation with the clerk of the county commission of the
county where any real property in question is located. The
exercise by a court of the United States or any state or jurisdi-
tion to authorize or effect a judicial sale of real property of the
insurer within any county in any state shall not be impaired by
the pendency of such a proceeding unless the copy is recorded
in the county prior to the consummation of the judicial sale.

(b) After a petition for rehabilitation or liquidation has been
filed and before either the receiver takes possession of the
property of the insurer or an order of rehabilitation or liquidation
is granted:

(1) A transfer of any of the property of the insurer, other
than real property, made to a person acting in good faith shall
be valid against the receiver if made for a present fair equiva-
 lent value; or, if made for less than a present fair equivalent
value, then to the extent of the present consideration actually
paid therefore, for which amount the transferee shall have a lien
on the property so transferred;

(2) A person indebted to the insurer or holding property of
the insurer may, if acting in good faith, pay the indebtedness or
deliver the property, or any part thereof, to the insurer or upon
his or her order, with the same effect as if the petition were not
pending;

(3) A person having actual knowledge of the pending
rehabilitation or liquidation shall be considered not to act in
good faith;
(4) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or on behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.

(c) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under this section shall be personally liable therefore and shall be bound to account to the liquidator.

(d) Nothing in this article shall impair the negotiability of currency or negotiable instruments.

§33-10-26d. Claims of holders of void or voidable rights.

(a) No claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment or encumbrance voidable under this article shall be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment or encumbrance. If the avoidance is effected by a proceeding in which a final judgment has been entered, the claim will not be allowed unless the money is paid or the property is delivered to the liquidator within thirty days from the date of entry of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under subsection (a) of this section by reason of the avoidance, whether voluntary or involuntary, of a preference, lien, conveyance, transfer, assignment or encumbrance, may be filed as a late filing if filed within thirty days from the date of the avoidance, or within the further time allowed by the court under subsection (a) of this section. A claimant having a late filed claim under this section may be
19 permitted by the liquidator to share in distribution as though the
20 claim were not late, to the extent that the payment will not
21 interfere with the orderly administration of the liquidation.


(a) In all cases of mutual debts or mutual credits between
the insurer and another person in connection with any action or
proceeding under this article, the credits and debts shall be set
off and the balance only shall be allowed or paid, except as
provided in subsection (b), below.

(b) No setoff may be allowed in favor of any such person
where:

(1) The obligation of the insurer to the person would not at
the date of the entry of any liquidation order or otherwise, as
provided in section twenty-five of this article, entitle him or her
to share as a claimant in the assets of the insurer;

(2) The obligation of the insurer to the person was pur-
chased by or transferred to the person with a view of its being
used as a setoff;

(3) The obligation of the person is to pay an assessment
levied against the members of a mutual insurer, or against the
subscribers of a reciprocal insurer, or is to pay a balance upon
the subscription to the capital stock of a stock insurer;

(4) The obligation of the insurer is owed to an affiliate of
such person, or any other entity or association other than the
person;

(5) The obligation of the person is owed to an affiliate of
the insurer, or any other entity or association other than the
insurer; or
(6) The obligations between the person and the insurer arise from transactions by which the person or the insurer assumed risk and obligations from the other party and ceded back substantially the same risks and obligations except the receiver may permit setoffs if in his or her discretion, a setoff is appropriate because of specific circumstances.

(c) Notwithstanding the provisions of subsection (b) of this section, a setoff of sums due on obligations in the nature of those set forth in subdivision (6), subsection (b) of this section shall be allowed for those sums accruing from business written where the contracts were entered into, renewed or extended with the approval of the commissioner of insurance of the state of domicile of the now insolvent insurer, when in the judgment of such commissioner it was necessary to provide reinsurance in order to prevent or mitigate a threatened impairment or insolvency of a domiciliary insurer in connection with the exercise of the commissioner's regulatory responsibilities.

(d) The provisions of this section shall supersede any agreements or contractual provisions which might be construed to enlarge the setoff rights of any person under any contract with the insurer.

§33-10-29. Allowance of certain claims.

(a) No contingent claim may share in a distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to this article, except that such claim shall be considered, if properly presented, and may be allowed to share where:

(1) It does not prejudice the orderly administration of the liquidation; or

(2) There is a surplus and the liquidation is thereafter conducted upon the basis that the insurer is solvent.
(b) Where an insurer has been so adjudicated to be insolvent any person who has a cause of action against an insured of the insurer under a policy issued by the insurer shall have the right to file a claim in the liquidation proceeding, regardless of the fact that the claim may be contingent and the claim may be allowed:

(1) If it may be reasonably inferred from the proof presented upon the claim that such person would be able to obtain a judgment upon the cause of action against the insured; and

(2) If such person furnishes suitable proof, unless the court for good cause shown otherwise directs, that no further valid claim against the insurer arising out of his or her cause of action other than those already presented can be made; and

(3) If the total liability of the insurer to all claimants arising out of the same act of its insured is no greater than its maximum liability would be were it not in liquidation.

(c)(1) No judgment against such an insured taken after the date of entry of the liquidation order may be considered in the liquidation proceedings as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the entry of the liquidation order may be considered as conclusive evidence in the liquidation proceedings, either of the liability of the insured to the person upon the cause of action or of the amount of damages to which the person is therein entitled.

(2) A claim by a third party founded upon a policy may be allowed without requiring the claim to be reduced to judgment, provided it can be reasonably inferred from the proof presented that the claimant would be able to obtain a judgment upon his or her cause of action against the insured and that the judgment would represent a liability of the insurer in liquidation under the policy upon which the claim is founded.
(d) No claim of any secured claimant may be allowed at a sum greater than the difference between the value of the claim without security and the value of the security itself as of the date of the entry of the order of liquidation or such other date set by the court for determining rights and liabilities as provided in section twenty-five of this article unless the claimant surrenders his or her security to the commissioner, in which event the claim shall be allowed in the full amount for which it is valued.

(e) Whenever a creditor, whose claim against an insurer is secured, in whole or in part, by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name and shall be subrogated to the rights of the creditor, whether the claim has been filed by the creditor or by the other person in the creditor's name, to the extent that he or she discharges the undertaking. In the absence of an agreement with the creditor to the contrary, the other person shall not be entitled to any distribution, however, until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by him or her in trust for such other person. The term "other person", as used in this section, is not intended to apply to a guaranty association or foreign guaranty association.

(f) Unless such claim is filed in the manner and within the time provided in sections eighteen and thirty of this article, it shall not be entitled to filing or allowance and no action may be maintained thereon. In the liquidation, pursuant to the provisions of this article, of any domestic insurer which has issued policies insuring the lives of persons, the commissioner shall, within thirty days after the last day set for the filing of claims, make a list of the persons who have not filed proofs of claim with him or her and to whom, according to the books of the
insurer, there are amounts owing under such policies and he or
she shall set opposite the name of each person the amount so
owing to the person. Each person whose name appears upon the
list shall be considered to have duly filed, prior to the last day
set for the filing of claims, a claim for the amount set opposite
his or her name on the list.

(g)(i) Claims founded upon unliquidated or undetermined
demands must be filed within the time limit provided in this
article for the filing of claims, but claims founded upon such
demands shall not share in any distribution to creditors of a
person proceeded against under section nineteen-a of this article
until the claims have been definitely determined, proved and
allowed. Thereafter, the claims shall share ratably with other
claims of the same class in all subsequent distributions.

(2) An unliquidated or undetermined claim or demand
within the meaning of this article shall be considered to be any
claim or demand upon which a right of action has accrued at the
date of the order of liquidation and upon which the liability has
not been determined or the amount thereof liquidated.

(h) The commissioner may require, as a condition of
payment of the final liquidation dividend to a lender, or his or
her assignee, who has filed a claim for an unearned premium as
an assignee of the insured for valuable consideration:

(1) That such assignee of the insured shall assign to the
liquidator all his or her right, title and interest in any unsatisfied
debt of the insured to the assignee, pertaining to policies of the
insolvent insurer, remaining unpaid after crediting the final
liquidation dividend, if the amount of the unsatisfied debt is less
than one hundred dollars and one cent; and

(2) That all of the documents giving rise to the debt be
delivered to him or her.
(i) The commissioner may determine whether or not it will be feasible to attempt to collect any assigned debt. If the commissioner determines not to pursue collection of any such debt, he or she shall file a declaration to that effect with the liquidation court and be relieved of any further responsibility in respect to the debt.

(j) As used in this section, "insured" means a natural person who purchased insurance or coverage from the insolvent insurer for personal, family, or household purposes.

§33-10-30. Time within which claims to be filed.

(a) If upon the granting of an order of liquidation under this article or at any time thereafter during the liquidation proceeding, the insurer shall not be clearly solvent, the court shall, after notice and hearing as provided in this article, make an order declaring the insurer to be insolvent. Thereupon regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who may have claims against the insurer and who have not filed proper proofs thereof to present the same to him or her, at a place specified in the notice, within four months from the date of entry of the order, or if the commissioner shall certify that it is necessary, within such longer time as the court shall prescribe. The last day for filing of proofs of claims shall be specified in the notice and notice shall be given in a manner to be determined by the court.

(b) Proofs of claim may be filed subsequent to the date specified, but no such claim may share in the distribution of the assets until all allowed claims, proofs of which have been filed before said date, have been paid in full with interest, except as provided in section twenty-six-d of this article.

§33-10-36. Early access to distribution.
(a) Within one hundred twenty days of a final determination of insolvency of an insurance company by the circuit court, the commissioner shall make application to the court for approval of a proposal to disburse assets out of the company’s marshaled assets, from time to time as such assets become available, to the appropriate guaranty association having obligations because of the insolvency. “Appropriate guaranty association” means guaranty association and foreign guaranty association as those terms are defined in section one of this article. If the commissioner determines that there are insufficient assets to disburse, the application required by this section shall be satisfied by a filing by the commissioner stating the reasons for this determination.

(b) The proposal shall at least include provisions for:

(1) Reserving amounts for the payment of expenses of administration and of claims falling within the priorities established in section nineteen-a of this article but only with respect to such priorities higher than that of the associations;

(2) Disbursement of the assets marshaled to date and subsequent disbursement of assets as they become available;

(3) Equitable allocation of disbursements to each of the associations entitled thereto;

(4) The securing by the commissioner from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the commissioner such assets, together with income earned on assets previously disbursed, as may be required to pay claims of secured creditors and claims falling within the priorities established in section nineteen-a of this article but only with respect to such priorities higher than that of the associations. No bond shall be required of any such association; and
(5) A full report to be made by the association to the commissioner accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets and any other matter as the court may direct.

(c) The commissioner’s proposal shall provide for disbursements to the association in amounts estimated at least equal to the claim payments made or to be made thereby for which the association could assert a claim against the commissioner, and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of the claim payments made or to be made by the association, then disbursements shall be in the amount of available assets.

(d) Notice of the commissioner’s application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice shall be considered to have been given when deposited in the United States mail, first class postage prepaid, at least thirty days prior to submission of the application to the court. Action on the application may be taken by the court provided the notice required in this subsection has been given and provided that the commissioner’s proposal complies with subdivisions (1) and (2), subsection (b) of this section.

§33-10-38. Unclaimed and withheld funds; termination of proceedings.

(a) All unclaimed funds subject to distribution remaining in the liquidator’s hands when he or she is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found, shall be deposited with the state treasurer and shall be paid without interest to the person entitled thereto or his or her legal representative upon proof satisfactory to the
state treasurer of his or her right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be considered to have been abandoned and shall be escheated to the state of West Virginia without formal escheat proceedings and be deposited with the general fund.

(b) When all assets justifying the expense of collection and distribution have been marshaled and distributed under this article, the liquidator shall petition the circuit court to terminate the liquidation proceeding and to close the estate and for other relief as may be appropriate. Subject to approval of the circuit court, after the completion of all post-closure activities for which moneys were reserved, the liquidator is authorized to deposit any remaining assets reserved for administrative expenses incurred in the closing of the estate that may not be practicably or economically distributed to claimants into a segregated account to be known as the closed estate fund account. The commissioner may thereafter use moneys held in the account to fund the administrative expenses of proceedings against insurers subject to this article that lack sufficient assets to fund administration.

§33-10-39. Immunity in receivership proceedings and representation of the special deputy supervisor.

(a) No claim of any nature whatsoever that is directly related to the receivership of an insurer shall arise against and no liability shall be imposed upon, the insurance commissioner, special deputy commissioner, or any person or entity acting as a receiver of an insurer, including surety, in rehabilitation, liquidation or conservation as a result of a court order issued on or after the effective date of this article for any statement made or actions taken or not taken in the good faith exercise of their powers under law. However, this immunity shall not extend to acts or omissions which are malicious or grossly negligent. This
qualified immunity extends to agents and employees of the receiver.

(b) In any civil proceeding filed against a special deputy commissioner appointed pursuant to this article, the special deputy commissioner shall be entitled to be represented by the attorney general.

§33-10-40. Applicability of amendments.

From and after the first day of July, two thousand four, any delinquency proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing or conserving the insurer shall be undertaken pursuant to this article. Any delinquency proceeding pending against an insurer under this article on the thirtieth day of June, two thousand four, will be administered and concluded under the law in effect at the time the delinquency proceeding was commenced.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.


From and after the first day of July, two thousand four, any delinquency proceeding commenced against a corporation subject to this article for the purpose of liquidating, rehabilitating, reorganizing or conserving the corporation shall be considered to be a delinquency proceeding against an insurance company and shall be undertaken pursuant to the provisions of article ten of this chapter. Any delinquency proceeding pending against a corporation subject to this article prior to the first day of July, two thousand four, will be administered and concluded under the law in effect at the time the delinquency proceeding was commenced.
AN ACT to amend and reenact §33-15A-4, §33-15A-5 and §33-15A-6 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §33-15A-8, §33-15A-9, §33-15A-10 and §33-15A-11, all relating to the regulation of long-term care insurance policies; defining terms; establishing extraterritorial jurisdiction; summarizing disclosure and performance standards for long-term care insurance; instituting and regulating an incontestability period; disclosing nonforfeiture benefits; providing the commissioner authority to promulgate regulations; providing penalties; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

That §33-15A-4, §33-15A-5 and §33-15A-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §33-15A-8, §33-15A-9, §33-15A-10 and §33-15A-11, all to read as follows:

ARTICLE 15A. WEST VIRGINIA LONG-TERM CARE INSURANCE ACT.

§33-15A-10. Authority to promulgate rules.


(a) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis: for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance or personal care services, provided in a setting other than an acute care unit of a hospital. The term includes group and individual, annuities and life insurance policies or riders that provide directly or supplement long-term care insurance. The term also includes a policy or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. The term shall also include qualified long-term care insurance contracts. Long-term care insurance may be issued by insurers; fraternal benefit societies; nonprofit health, hospital, and medical service corporations; prepaid health plans; health maintenance organizations or any similar organization to the extent they are otherwise authorized to issue life or health insurance. Long-term care insurance shall not include any insurance policy that is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, this term does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention or permanent institutional confinement and that provide the option
of a lump-sum payment for those benefits and where neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision of this article, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions of this article.

(b) “Applicant” means:

(1) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(2) In the case of a group long-term care insurance policy, the proposed certificate holder.

(c) “Certificate” means, for the purposes of this article, any certificate issued under a group long-term care insurance policy delivered or issued for delivery in this state.

(d) “Commissioner” means the insurance commissioner of this state.

(e) “Group long-term care insurance” means a long-term care insurance policy that is delivered or issued for delivery in this state and issued to:

(1) One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organizations; or

(2) Any professional, trade or occupational association for its members or former or retired members, or combination thereof, if the association:
(A) Is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(B) Has been maintained in good faith for purposes other than obtaining insurance; or

(3) An association or a trust or the trustees of a fund established, created or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering the policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association or associations have at the outset a minimum of one hundred persons and have been organized and maintained in good faith for the purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws that provide that:

(A) The association or associations hold regular meetings not less than annually to further purposes of the members;

(B) Except for credit unions, the association or associations collect dues or solicit contributions from members; and

(C) The members have voting privileges and representation on the governing board and committees.

Thirty days after the filing the association or associations will be deemed to satisfy the organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

(4) A group other than as described in subdivisions (1), (2) and (3), subsection (e) of this section, subject to a finding by the commissioner that:
(A) The issuance of the group policy is not contrary to the best interest of the public;

(B) The issuance of the group policy would result in economies of acquisition or administration; and

(C) The benefits are reasonable in relation to the premiums charged.

(f) "Policy" means, for the purposes of this article, any policy, contract, subscriber agreement, rider or endorsement delivered or issued for delivery in this state by an insurer; fraternal benefit society; nonprofit health, hospital, or medical service corporation; prepaid health plan; health maintenance organization or any similar organization.

(g) (1) "Qualified long-term care insurance contract" or "federally tax qualified long-term care insurance contract" means an individual or group insurance contract that meets the requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:

(A) The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract shall not fail to satisfy the requirements of this paragraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(B) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this paragraph do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payor. A contract shall not fail to satisfy the requirements
of this paragraph by reason of payments being made on a per
diem or other periodic basis without regard to the expenses
incurred during the period to which the payments relate;

(C) The contract is guaranteed renewable, within the
meaning of Section 7702B(b)(1)(C) of the Internal Revenue
Code of 1986, as amended;

(D) The contract does not provide for a cash surrender
value or other money that can be paid, assigned, pledged as
collateral for a loan, or borrowed except as provided in para-
graph E of this subdivision;

(E) All refunds of premiums and all policyholder dividends
or similar amounts under the contract are to be applied as a
reduction in future premiums or to increase future benefits,
except that a refund on the event of death of the insured or a
complete surrender or cancellation of the contract cannot
exceed the aggregate premiums paid under the contract; and

(F) The contract meets the consumer protection provisions
set forth in Section 7702B(g) of the Internal Revenue Code of
1986, as amended.

(2) "Qualified long-term care insurance contract" or
"federally tax-qualified long-term care insurance contract" also
means the portion of a life insurance contract that provides
long-term care insurance coverage by rider or as part of the
contract and that satisfies the requirements of Sections
7702B(b) and (e) of the Internal Revenue Code of 1986, as
amended.

§33-15A-5. Extraterritorial jurisdiction - Group long-term care
insurance.

No group long-term care insurance coverage may be
offered to a resident of this state under a group policy issued in
another state to a group described in subdivision (4), subsection (e), section four of this article unless this state or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state has made a determination that such requirements have been met.


(a) The commissioner may adopt rules that include standards for full and fair disclosure setting forth the manner, content and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions and definitions of terms.

(b) No long-term care insurance policy may:

(1) Be canceled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.
(c) Preexisting condition:

(1) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in subdivision (1), subsection (e), section four of this article shall use a definition of “preexisting condition” that is more restrictive than the following: Preexisting condition means a condition for which medical advice or treatment was recommended by, or received from, a provider of health care services within six months preceding the effective date of coverage of an insured person.

(2) No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in subdivision (1), subsection (e), section four of this article may exclude coverage for a loss or confinement that is the result of a preexisting condition unless loss or confinement begins within six months following the effective date of coverage of an insured person.

(3) The commissioner may extend the limitation periods set forth in subdivision (1) and (2), subsection (c) of this section as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

(4) The definition of “preexisting condition” does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer’s established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subdivision (2), subsection (c) of this section expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically
named or described preexisting diseases or physical conditions beyond the waiting period described in subdivision (2), subsection (c) of this section.

(d) Prior hospitalization/institutionalization:

(1) No long-term care insurance policy may be delivered or issued for delivery in this state if the policy:

(A) Conditions eligibility for any benefits on a prior hospitalization requirement;

(B) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(C) Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care or recuperative benefits on a prior institutionalization requirement.

(2) (A) A long-term care insurance policy containing post-confinement, post-acute care or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled “Limitations or Conditions on Eligibility for Benefits” such limitations or conditions, including any required number of days of confinement.

(B) A long-term care insurance policy or rider that conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days.

(3) No long-term care insurance policy or rider that provides benefits only following institutionalization shall condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.
(e) The commissioner may adopt rules establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the rule.

(f) Right to return - free look:

1. Long-term care insurance applicants shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in subdivision (1), subsection (e), section four of this article, the applicant is not satisfied for any reason.

2. This subsection shall also apply to denials of applications and any refund must be made within thirty days of the return or denial.

(g) Outline of coverage:

1. An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

2. The commissioner shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage.
(B) In the case of agent solicitations, an agent must deliver the outline of coverage prior to the presentation of an application or enrollment form.

(C) In the case of direct response solicitations, the outline of coverage must be presented in conjunction with any application or enrollment form.

(D) In the case of a policy issued to a group defined in subdivision (1), subsection (e), section four of this article, an outline of coverage shall not be required to be delivered, provided that the information described in paragraphs (A) through (F), inclusive, subdivision (2) of this subsection is contained in other materials relating to enrollment. Upon request, these other materials shall be made available to the commissioner.

(2) The outline of coverage shall include:

(A) A description of the principal benefits and coverage provided in the policy;

(B) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(C) A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;

(D) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contain governing contractual provisions;

(E) A description of the terms under which the policy or certificate may be returned and premium refunded;
(F) A brief description of the relationship of cost of care and benefits; and

(G) A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under Section 7702(B)(b) of the Internal Revenue Code of 1986, as amended.

(h) A certificate issued pursuant to a group long-term care insurance policy that is delivered or issued for delivery in this state shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions and limitations contained in the policy; and

(3) A statement that the group master policy determines governing contractual provisions.

(i) If an applicant for a long-term care insurance contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later than thirty days after the date of approval.

(j) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy that provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:
An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(2) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits if any, for each covered person;

(3) Any exclusions, reductions and limitations on benefits of long-term care;

(4) A statement that any long-term care inflation protection option required by section eight of the commissioner's rule relating to long-term care insurance is not available under this policy; and

(5) If applicable to the policy type, the summary shall also include:

(A) A disclosure of the effects of exercising other rights under the policy;

(B) A disclosure of guarantees related to long-term care costs of insurance charges; and

(C) Current and projected maximum lifetime benefits.

(k) Any time a long-term care benefit, funded through a life insurance vehicle by the acceleration of the death benefit, is in benefit payment status, a monthly report shall be provided to the policyholder. The report shall include:

(1) Any long-term care benefits paid out during the month;

(2) An explanation of any changes in the policy, for example death benefits or cash values, due to long-term care benefits being paid out; and
(3) The amount of long-term care benefits existing or remaining.

(I) If a claim under a long-term care insurance contract is denied, the issuer shall, within sixty days of the date of a written request by the policyholder or certificate holder, or a representative thereof:

(1) Provide a written explanation of the reasons for the denial; and

(2) Make available all information directly related to the denial.

(m) Any policy or rider advertised, marketed or offered as long-term care or nursing home insurance shall comply with the provisions of this article.


(a) For a policy or certificate that has been in force for less than six months an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage.

(b) For a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance for coverage and which pertains to the condition for which benefits are sought.

(c) After a policy or certificate has been in force for two years it is not contestable upon the grounds of misrepresentation alone. The policy or certificate may be contested only
upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(d) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this subsection, “field issued” means a policy or certificate issued by an agent or a third-party administrator pursuant to the underwriting authority granted to the agent or third-party administrator by an insurer.

(e) If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments may not be recovered by the insurer in the event that the policy or certificate is rescinded.

(f) In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the remaining death benefits under these policies shall be governed by section four, article thirteen of this chapter. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.


(a) Except as provided in subsection (b) of this section, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. In the event the policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that shall be available for a specified period of time following a substantial increase in premium rates.
(b) When a group long-term care insurance policy is issued, the offer required in subsection (a) of this section shall be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in subdivision (4), subsection (e), section four of this article, other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

(c) The commissioner may promulgate rules pursuant to chapter twenty-nine-a of this code specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits and the rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse as described in subsection (a) of this section.

§33-15A-10. Authority to promulgate rules.

The commissioner may issue reasonable rules pursuant to chapter twenty-nine-a of this code to promote premium adequacy and to protect the policyholder in the event of substantial rate increases and to establish minimum standards for marketing practices, agent compensation, agent testing, penalties and reporting practices for long-term care insurance.


In addition to any other penalties provided by the laws of this state, any insurer and any agent found to have violated any requirement of this state relating to the regulation of long-term care insurance or the marketing of such insurance shall be subject to a fine of up to three times the amount of any commissions paid for each policy involved in the violation or up to ten thousand dollars, whichever is greater.
AN ACT to repeal §5-16A-1, §5-16A-2, §5-16A-3, §5-16A-4, §5-16A-5, §5-16A-6, §5-16A-7, §5-16A-8, §5-16A-9, §5-16A-10 and §5-16A-11 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-16D-16, relating to small employer accident and sickness policies and small employer group health benefit plans for uninsured groups.

Be it enacted by the Legislature of West Virginia:

That §5-16A-1, §5-16A-2, §5-16A-3, §5-16A-4, §5-16A-5, §5-16A-6, §5-16A-7, §5-16A-8, §5-16A-9, §5-16A-10 and §5-16A-11 of the code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new section, designated §33-16D-16, to read as follows:

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.


(a) Upon filing with and approval by the commissioner, any carrier licensed pursuant to this chapter which accesses a health care provider network to deliver services may offer a health
benefit plan and rates associated with the plan to a small employer subject to the conditions of this section and subject to the provisions of this article. The health benefit plan shall be subject to the following conditions:

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

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

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

(4) The commissioner shall promulgate emergency rules under the provisions of article three, chapter twenty-nine-a of this code on or before the first day of September, two thousand four, to place additional restrictions upon the eligibility requirements for health benefit plans authorized by this section in order to prevent manipulation of eligibility criteria by small employers and otherwise implement the provisions of this section;

(5) Carriers must offer the health benefit plans issued pursuant to this section through one of their existing networks of health care providers;
(A) The director of the public employees insurance agency shall, on or before the first day of May, two thousand four, and each year thereafter, by regular mail, provide a written notice to all known in-state health care providers that:

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

(ii) Notifies the health care provider that if the health care provider does not give written refusal to the director of the public employees insurance agency within thirty days from receipt of the notice or the health care provider has not previously filed a written notice of refusal to participate, the health care provider must participate with and accept the products and provider reimbursements authorized pursuant to this section;

(B) The carrier's network of health care providers, as well as any health care provider which provides health care goods or services to beneficiaries of any departments or divisions of the state, as identified in article twenty-nine-d, chapter sixteen of this code, shall accept the health care provider reimbursement rates set pursuant to this section unless the health care provider gives written refusal to the director of the public employees insurance agency between the first day of May and the first day of June that the provider will not participate in this program for the next calendar year. Notwithstanding any provision of this code to the contrary, health care providers may not be mandated to participate in this program except under the opt-out provisions of subdivision five, subsection (a) of this section and therefore the health care provider shall annually have the ability to file with the director of the public employees insurance agency written notice that the health care provider will not participate with products issued pursuant to this section. Once a health care provider has filed a notice of refusal with the director, the notice shall remain effective until rescinded by the
provider and the provider shall not be required to renew the
notice each year;

(C) The public employees insurance agency is responsible
for receiving the responses, if any, from the health care provid-
ers that have elected not to participate, and for providing a list
to the commissioner of those health care providers that have
elected not to participate;

(D) Those health care providers that do not file a notice of
refusal shall be considered to have accepted participation in this
program and to accept public employees insurance agency
health care provider reimbursement rates for their services as
set by this section;

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

(6) With respect to the health benefit plans authorized by
this section, the carrier shall reimburse network health care
providers at the same health care provider reimbursement rates
in effect for the managed care and health maintenance organiza-
tion plans offered by the West Virginia public employees
insurance agency. Beginning in the year two thousand four,
and in each year thereafter, the health care provider reimburse-
ment rates set under this section shall not be lowered from the
level of the rates in effect on the first day of July of that year for
the managed care and health maintenance plans offered by the
public employees insurance agency. While it is the intent of
this paragraph to govern rates for plans offered pursuant to this
section for annual periods, this paragraph in no way prevents
the public employees insurance agency from making provider
reimbursement rate adjustments to public employees insurance
agency plans during the course of each year. If there is a dispute regarding the determination of appropriate rates pursuant to this section, the director of the public employees insurance agency shall, in his or her sole discretion, specify the appropriate rate to be applied;

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

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

(C) The provisions of this section do not require the public employees insurance agency to give carriers access to the purchasing networks of the public employees insurance agency. The public employees insurance agency may enter into agreements with carriers offering health benefit plans under this section to permit the carrier, at its election, to participate in drug purchasing arrangements pursuant to article sixteen-c, chapter five of this code, including the multistate drug purchasing program. This paragraph provides authorization of the agreements pursuant to section four, article sixteen-c, chapter five of this code;

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

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

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

(10) A carrier may elect to nonrenew any health benefit
plan to an eligible employer if, at any time, the carrier deter-
mines, by applying the same network criteria which it applies
to other small employer health benefit plans, that it no longer
has an adequate network of health care providers accessible for
that eligible small employer. If the carrier makes a determina-
tion that an adequate network does not exist, the carrier has no
obligation to obtain additional health care providers to establish
an adequate network;

(11) Upon thirty days' advance notice to the commissioner,
a carrier may, at any time, elect to nonrenew all health benefit
plans issued pursuant to this section. If a carrier nonrenews all
its business issued pursuant to this section for any reason other
than the adequacy of the provider network, the carrier may not
offer this health benefit plan to any eligible small employer for
a period of at least two years after the last eligible small
employer is nonrenewed; and

(12) The insurance commissioner may not approve any
health benefit plan issued pursuant to this section until it has
obtained any necessary federal governmental authorizations or
waivers. The insurance commissioner shall apply for and
obtain all necessary federal authorizations or waivers.

(b) Health benefit plans authorized by this section are not
intended to violate the prohibition set out in subsection (a),
section four of this article.
(c) If no carrier has offered a health benefit plan under this section by the first day of July, two thousand five, except for failure to obtain a federal authorization or waiver pursuant to subdivision (12), subsection (a) of this section, the director of the public employees insurance agency and the insurance commissioner may, if they agree, jointly develop a proposed program for consideration by the Legislature for the public employees insurance agency to offer small group health plans to uninsured small employer groups. The proposed program shall not be acted upon by the public employees insurance agency until the Legislature approves the program.

(d) If no carrier or the public employees insurance agency has offered a health benefit plan pursuant to this section within three years from the effective date of this section, the provisions of this section expire and become null and void.

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

(f) Carriers offering health benefit plans pursuant to this section shall annually or before the first day of December of each year report in a form acceptable to the commissioner the number of health benefit plans written by the carrier and the number of individuals covered under the health benefit plans.

(g) To the extent that provisions of this section differ from those contained elsewhere in this chapter, the provisions of this section control.
CHAPTER 146

(S. B. 428 — By Senator Minard)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §33-31-1, §33-31-2, §33-31-4, §33-31-5, §33-31-6, §33-31-7, §33-31-8, §33-31-9, §33-31-10, §33-31-11, §33-31-13, §33-31-14 and §33-31-15 of the code of West Virginia 1931, as amended; to amend said code by adding thereto nine new sections, designated §33-31-17, §33-31-18, §33-31-19, §33-31-20, §33-31-21, §33-31-22, §33-31-23, §33-31-24 and §33-31-25; and to amend said code by adding thereto a new article, designated §33-31A-1, §33-31A-2, §33-31A-3, §33-31A-4, §33-31A-5, §33-31A-6, §33-31A-7, §33-31A-8 and §33-31A-9, all relating to captive insurance companies; authorizing establishment of and regulating branch captive insurance companies and sponsored cell captives; and generally modernizing the captive insurance law.

Be it enacted by the Legislature of West Virginia:

That §33-31-1, §33-31-2, §33-31-4, §33-31-5, §33-31-6, §33-31-7, §33-31-8, §33-31-9, §33-31-10, §33-31-11, §33-31-13, §33-31-14 and §33-31-15 of the code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto nine new sections, designated §33-31-17, §33-31-18, §33-31-19, §33-31-20, §33-31-21, §33-31-22, §33-31-23, §33-31-24 and §33-31-25; and that said code be amended by adding thereto a new article, designated §33-31A-1, §33-31A-2, §33-31A-3, §33-31A-4, §33-31A-5, §33-31A-6, §33-31A-7, §33-31A-8 and §33-31A-9, all to read as follows:
Ch. 146] INSURANCE

Article


31A. Sponsored Captive Insurance Company Formation.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-1. Definitions.
§33-31-2. Licensing; authority.
§33-31-4. Minimum capital and surplus; letter of credit.
§33-31-5. Dividends.
§33-31-6. Formation of captive insurance companies in this state.
§33-31-7. Reports and statements.
§33-31-8. Examinations and investigations.
§33-31-9. Grounds and procedures for suspension or revocation of license.
§33-31-10. Legal investments.
§33-31-14. Tax on premiums collected.
§33-31-17. Delinquency.
§33-31-19. Conversion to or merger with reciprocal insurer.
§33-31-20. Branch captive insurance company formation.
§33-31-23. Reports.
§33-31-24. Examination.
§33-31-25. Taxation.

§33-31-1. Definitions.

1 As used in this chapter, unless the context requires otherwise:
2
3 (1) “Affiliated company” means any company in the same
4 corporate system as a parent, an industrial insured or a member
5 organization by virtue of common ownership, control, operation
6 or management.

7 (2) “Alien captive insurance company” means any insur-
8 ance company formed to write insurance business for its parents
9 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 chapter. For purposes of this chapter, 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:

(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 twenty-five thousand dollars; 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 except as indicated in subdivision (4), subsection (a) of this section: 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 three hundred dollars.

(e) If the commissioner is satisfied that the documents and 
statements that such captive insurance company has filed 
comply with the provisions of this chapter, the commissioner 
may grant a license authorizing it to do insurance business in 
this state until April first, thereafter, which license may be 
renewed.

§33-31-4. Minimum capital and surplus; letter of credit.

(a) No captive insurance company shall be issued a license 
unless it shall possess and thereafter maintain unimpaired 
paid-in capital of:

(1) In the case of a pure captive insurance company, not 
less than one hundred thousand dollars;

(2) In the case of an association captive insurance company, 
not less than three hundred fifty thousand dollars;

(3) In the case of an industrial insured captive insurance 
company, not less than two hundred fifty thousand dollars;

(4) In the case of a risk retention group, not less than five 
hundred thousand dollars; and

(5) In the case of a sponsored captive insurance company, 
not less than two hundred fifty thousand dollars.
(b) No captive insurance company shall be issued a license unless it possesses and thereafter maintains unimpaired paid-in surplus of:

(1) In the case of a pure captive insurance company, not less than one hundred fifty thousand dollars;

(2) In the case of an association captive insurance company, not less than three hundred fifty thousand dollars;

(3) In the case of an industrial insured captive insurance company, not less than two hundred fifty thousand dollars;

(4) In the case of a risk retention group, not less than five hundred thousand dollars; and

(5) In the case of a sponsored captive insurance company, not less than two hundred fifty thousand dollars.

(c) The commissioner may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.

(d) Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank chartered by the state of West Virginia or a member bank of the federal reserve system and approved by the commissioner.

§33-31-5. Dividends.

No captive insurance company may pay a dividend out of, or other distribution with respect to, capital or surplus without the prior approval of the commissioner. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the commissioner.
§33-31-6. Formation of captive insurance companies in this state.

1 (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 (1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

2 (2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by its insureds; or

3 (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 (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:

2 (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 chapter. In the event of conflict between the provisions of said general corporation law and the provisions of this chapter, 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 chapter. In the event of conflict between the provisions of chapter thirty-one-e of this code and the provisions of this chapter, 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 chapter 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 chapter. In the event of a conflict between the provisions of article twenty-one of this chapter and the provisions of this chapter, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this chapter pursuant to article twenty-one of this chapter, such provisions shall not be applicable to a reciprocal insurer formed under this chapter unless such provisions are expressly made applicable to captive insurance companies under this chapter.

(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.

§33-31-7. Reports and statements.

(a) Captive insurance companies shall not be required to make any annual report except as provided in this chapter.

(b) On or before the first day of March 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 three 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 the first day of March of each year for each calendar year-end, pages one, two, three, and five of the "captive annual statement; pure or industrial insured", verified by oath of two of its executive officers.

§33-31-8. Examinations and investigations.

(a) At least once in five years, and whenever the commissioner determines it to be prudent, the commissioner shall personally, or by some competent person appointed by the
commissioner, visit each captive insurance company and thoroughly inspect and examine its affairs to ascertain its financial condition, its ability to fulfill its obligations and whether it has complied with the provisions of this chapter. The captive insurance company shall be subject to the provisions of section nine, article two of this chapter in regard to the expense and conduct of the examination.

(b) All examination reports, preliminary examination reports or results, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this section are confidential and are not subject to subpoena 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 to the extent provided in this subsection. Nothing in this subsection shall prevent the commissioner from using such information in furtherance of the commissioner's regulatory authority under this title. The commissioner may, in the commissioner's discretion, grant access to such information to public officers having jurisdiction over the regulation of insurance in any other state or country, or to law-enforcement officers of this state or any other state or agency of the federal government at any time, so long as such officers receiving the information agree in writing to hold it in a manner consistent with this section.

§33-31-9. Grounds and procedures for suspension or revocation of license.

(a) The license of a captive insurance company may be suspended or revoked by the commissioner for any of the following reasons:

(1) Insolvency or impairment of capital or surplus;
(2) Failure to meet the requirements of section four of this article;

(3) Refusal or failure to submit an annual report, as required by section seven of this article, or any other report or statement required by law or by lawful order of the commissioner;

(4) Failure to comply with the provisions of its own charter, bylaws or other organizational document;

(5) Failure to submit to examination or any legal obligation relative thereto, as required by section eight of this article;

(6) Refusal or failure to pay the cost of examination as required by section eight of this article;

(7) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders; or

(8) Failure otherwise to comply with the laws of this state.

(b) If the commissioner finds, upon examination, hearing, or other evidence, that any captive insurance company has violated any provision of subsection (a) of this section, the commissioner may suspend or revoke such company’s license if the commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other provision of this title.

§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. 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 chapter, 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.

(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 chapter, 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.


No captive insurance company may be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in this state, nor may any captive insurance company, or any insured or affiliate thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurance company.

§33-31-14. Tax on premiums collected.

(a) Each pure captive insurance company which maintains its principal office and principal place of business in this state shall pay to the commissioner, in the month of February of each year, a tax at the rate of five tenths of one percent on the gross amount of all premiums collected or contracted for on policies
or contracts of insurance written by the pure captive insurance company during the year ending December thirty-first, next preceding, after deducting from the direct premiums, subject to the tax, the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders: Provided, That no tax shall be due or payable as to considerations received for annuity contracts.

(b) Except as otherwise provided in subsection (a) of this section, each captive insurance company shall pay to the commissioner in the month of February of each year, a tax at the rate of two percent on the gross amount of all premiums collected on or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December thirty-first, next preceding, after deducting from the direct premiums, subject to the tax, the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders. Each captive insurance company shall also be subject to the additional premium taxes levied by sections fourteen-a and fourteen-d, article three of this chapter and the surcharge levied by section thirty-three, article three of this chapter.

(c) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city or municipality within this state, except ad valorem taxes.

(d) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

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 chapter.

§33-31-17. Delinquency.

Except as otherwise provided in this article, the terms and conditions set forth in article ten of this chapter, pertaining to insurance reorganizations, receiverships and injunctions, shall apply in full to captive insurance companies formed or licensed under this article.


The commissioner may adopt rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company. Until such time as rules under this section are adopted, the commissioner may approve the coverage of such risks by a pure captive insurance company.

§33-31-19. Conversion to or merger with reciprocal insurer.

(a) An association captive insurance company, risk retention group, or industrial insured captive insurance company formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefore and the provisions of this section.

(b) Any plan for such conversion or merger shall provide a fair and equitable plan for purchasing, retiring or otherwise extinguishing the interests of the stockholders and policyholders of a stock insurer and the members and policyholders of a
(c) In the case of a conversion authorized under subsection (a) of this section:

(1) Such conversion shall be accomplished under such reasonable plan and procedure as approved by the commissioner. The commissioner may not approve any plan of conversion unless the plan:

(A) Satisfies the provisions of subsection (b) of this section;

(B) Provides for a hearing, of which notice is given or to be given to the captive insurance company, its directors, officers and policyholders, and, in the case of a stock insurer, its stockholders, and in the case of a mutual insurer, its members, all of which persons shall be entitled to attend and appear at such hearing. If notice of a hearing is given and no director, officer, policyholder, member or stockholder requests a hearing, the commissioner may cancel such hearing;

(C) Provides a fair and equitable plan for the conversion of stockholder, member or policyholder interests into subscriber interests in the resulting reciprocal insurer, substantially proportionate to the corresponding interests in the stock or mutual insurer: Provided, That this requirement shall not preclude the resulting reciprocal insurer from applying underwriting criteria that could affect ongoing ownership interests; and

(D) Is approved:

(i) In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present; and
(ii) In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting thereof at which a quorum is present;

(2) The commissioner shall approve such plan of conversion if the commissioner finds that the conversion will promote the general good of the state in conformity with those standards set forth in subdivision (2), subsection (d), section six of this article;

(3) If the commissioner approves the plan, the commissioner shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue such amended certificate of authority to the company's attorney-in-fact;

(4) Upon the issuance of an amended certificate of authority of a reciprocal insurer by the commissioner, the conversion shall be effective; and

(5) Upon the effectiveness of such conversion the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the secretary of state of such conversion.

(d) A merger authorized under subsection (a) of this section shall be accomplished substantially in accordance with the procedures set forth in sections twenty-five and twenty-eight, article five of this chapter, except that, solely for purposes of such merger:

(1) The plan of merger shall satisfy the provisions of subsection (b) of this section;

(2) The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurance company;
(3) The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurance company;

(4) If a subscribers' advisory committee does not have a president or secretary, the officers of such committee having substantially equivalent duties shall be deemed the president or secretary of such committee;

(5) The commissioner shall approve the articles of merger if the commissioner finds that the merger will promote the general good of the state in conformity with those standards set forth in subdivision (2), subsection (d), section six of this article. If the commissioner approves the articles of merger, the commissioner shall endorse the commissioner's approval thereon and the surviving insurer shall present the same to the secretary of state at the secretary of state's office;

(6) Notwithstanding section four of this article, the commissioner may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer, into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section: Provided, That there shall be no more than one authorized insurance company surviving such merger; and

(7) An alien insurer may be a party to a merger authorized under subsection (a) of this section: Provided, That the requirements for a merger between a domestic and a foreign insurer under section twenty-five, article five of this chapter shall apply to a merger between a domestic 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.

§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 chapter, 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.


In the case of a branch captive insurance company, as security for the payment of liabilities attributable to the branch operations, the commissioner shall require that a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed by the branch captive insurance company through its branch operations. The amount of such security may be no less than the amount set forth in subdivision (1), subsection (a), section four of this article and the reserves on such insurance policies or such reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums with regard to business written through the branch operations: Provided, That the commissioner may permit a branch captive insurance company that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as
20 the security remains posted with the reinsurer. If the form of
21 security selected is a letter of credit, the letter of credit must be
22 established by, or issued or confirmed by, a bank chartered in
23 this state or a member bank of the federal reserve system.


1 In the case of a captive insurance company licensed as a
2 branch captive, the alien captive insurance company shall
3 petition the commissioner to issue a certificate setting forth the
4 commissioner's finding that, after considering the character,
5 reputation, financial responsibility, insurance experience and
6 business qualifications of the officers and directors of the alien
7 captive insurance company, the licensing and maintenance of the
8 branch operations will promote the general good of the state.
9 The alien captive insurance company may register to do business
10 in this state after the commissioner's certificate is issued.

§33-31-23. Reports.

1 Prior to the first day of March of each year, or with the
2 approval of the commissioner within sixty days after its fiscal
3 year-end, a branch captive insurance company shall file with the
4 commissioner a copy of all reports and statements required to be
5 filed under the laws of the jurisdiction in which the alien captive
6 insurance company is formed, verified under oath by its presi-
7 dent and secretary. If the commissioner is satisfied that the
8 annual report filed by the alien captive insurance company in its
9 domiciliary jurisdiction provides adequate information concern-
10 ing the financial condition of the alien captive insurance
11 company, the commissioner may waive the requirement for
12 completion of the captive annual statement for business written
13 in the alien jurisdiction.

§33-31-24. Examination.
(a) The examination of a branch captive insurance company pursuant to section eight of this article shall be of branch business and branch operations only, so long as the branch captive insurance company annually provides to the commissioner a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed and demonstrates to the commissioner's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

(b) As a condition of licensure, the alien captive insurance company shall grant authority to the commissioner for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

§33-31-25. Taxation.

In the case of a branch captive insurance company, the tax provided for in section fourteen of this article shall apply only to the branch business of such company.

ARTICLE 31A. SPONSORED CAPTIVE INSURANCE COMPANY FORMATION.

§33-31A-1. Applicability of article.
§33-31A-3. Formation of sponsored captive insurance companies.
§33-31A-4. Supplemental application materials.
§33-31A-5. Protected cells.
§33-31A-6. Qualification of sponsors.
§33-31A-7. Authorized participants.
§33-31A-8. Investments.

§33-31A-1. Applicability of article.
In addition to the provisions of article thirty-one of this chapter, the provisions of this article shall apply to all sponsored captive insurance companies.


As used in this article, unless the context requires otherwise:

(1) "Participant" means associations, corporations, limited liability companies, partnerships, trusts and other business entities and any affiliates thereof that are insured by a sponsored captive insurance company where the losses of the participant are limited through a participant contract to such participant’s pro rata share of the assets of one or more protected cells identified in such participant contract.

(2) "Participant contract" means a contract by which a sponsored captive insurance company insures the risks of a participant and limits the losses of each such participant to its pro rata share of the assets of one or more protected cells identified in such participant contract.

(3) "Protected cell" means a separate account established by a sponsored captive insurance company formed or licensed under the provisions of this chapter in which assets are maintained for one or more participants in accordance with the terms of one or more participant contracts to fund the liability of the sponsored captive insurance company assumed on behalf of such participants as set forth in such participant contracts.

(4) "Sponsor" means any entity that meets the requirements of section six of this article and is approved by the commissioner to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurance company.

(5) "Sponsored captive insurance company" means any captive insurance company:
(A) In which the minimum capital and surplus required by applicable law is provided by one or more sponsors;

(B) That is formed or licensed under the provisions of this chapter;

(C) That insures the risks only of its participants through separate participant contracts; and

(D) That funds its liability to each participant through one or more protected cells and segregates the assets of each protected cell from the assets of other protected cells and from the assets of the sponsored captive insurance company’s general account.

§33-31A-3. Forma of sponsored captive insurance companies.

One or more sponsors may form a sponsored captive insurance company under the provisions of this article. A sponsored captive insurance company shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

§33-31A-4. Supplemental application materials.

In addition to the information required by subdivisions (1) and (2), subsection (c), section two, article thirty-one of this chapter, each applicant-sponsored captive insurance company shall file with the commissioner the following:

(1) Materials demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the commissioner and how it will report such experience to the commissioner;

(2) A statement acknowledging that all financial records of the sponsored captive insurance company, including records pertaining to any protected cells, shall be made available for
inspection or examination by the commissioner or the commissioner’s designated agent;

(3) All contracts or sample contracts between the sponsored captive insurance company and any participants; and

(4) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.

§33-31A-5. Protected cells.

A sponsored captive insurance company formed or licensed under the provisions of this article may establish and maintain one or more protected cells to insure risks of one or more participants, subject to the following conditions:

(1) The shareholders of a sponsored captive insurance company shall be limited to its participants and sponsors: Provided, That a sponsored captive insurance company may issue nonvoting securities to other persons on terms approved by the commissioner;

(2) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurance company to reflect the financial condition and results of operations of such protected cell, net income or loss, dividends or other distributions to participants and such other factors as may be provided in the participant contract or required by the commissioner;

(3) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurance company may conduct;

(4) No sale, exchange or other transfer of assets may be made by such sponsored captive insurance company between or
among any of its protected cells without the consent of such
protected cells;

(5) No sale, exchange, transfer of assets, dividend or
distribution may be made from a protected cell to a sponsor or
participant without the commissioner's approval and in no event
shall such approval be given if the sale, exchange, transfer,
dividend or distribution would result in insolvency or impair-
ment with respect to a protected cell;

(6) Each sponsored captive insurance company shall
annually file with the commissioner such financial reports as the
commissioner shall require, which shall include, without
limitation, accounting statements detailing the financial experi-
ience of each protected cell;

(7) Each sponsored captive insurance company shall notify
the commissioner in writing within ten business days of any
protected cell that is insolvent or otherwise unable to meet its
claim or expense obligations;

(8) No participant contract shall take effect without the
commissioner's prior written approval and the addition of each
new protected cell and withdrawal of any participant or termina-
tion of any existing protected cell shall constitute a change in the
business plan requiring the commissioner's prior written
approval; and

(9) The business written by a sponsored captive, with respect
to each cell, shall be:

(A) Fronted by an insurance company licensed under the
laws of any state;

(B) Reinsured by a reinsurer authorized or approved by the
state of West Virginia; or
(C) Secured by a trust fund in the United States for the benefit of policyholders and claimants or funded by an irrevocable letter of credit or other arrangement that is acceptable to the commissioner. The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses and unearned premiums for business written through the participant's protected cell. The commissioner may require the sponsored captive to increase the funding of any security arrangement established under this subdivision. If the form of security is a letter of credit, the letter of credit must be established, issued or confirmed by a bank chartered in this state, a member of the federal reserve system or a bank chartered by another state if such state chartered bank is acceptable to the commissioner. A trust maintained pursuant to this paragraph shall be established in a form and upon such terms approved by the commissioner.

§33-31A-6. Qualification of sponsors.

A sponsor of a sponsored captive insurance company shall be an insurer licensed under the laws of any state, a reinsurer authorized or approved under the laws of any state or a captive insurance company formed or licensed under this article. A risk retention group shall not be either a sponsor or a participant of a sponsored captive insurance company.

§33-31A-7. Authorized participants.

Associations, corporations, limited liability companies, partnerships, trusts and other business entities may be participants in any sponsored captive insurance company formed or licensed under this chapter. A sponsor may be a participant in a sponsored captive insurance company. A participant need not be a shareholder of the sponsored captive insurance company or
any affiliate thereof. A participant shall insure only its own risks through a sponsored captive insurance company.

§33-31A-8. Investments.

Notwithstanding the provisions of section five of this article, the assets of two or more protected cells may be combined for purposes of investment, and such combination shall not be construed as defeating the segregation of such assets for accounting or other purposes. Sponsored captive insurance companies shall comply with the investment requirements contained in article eight of this chapter, as applicable: Provided, That compliance with such investment requirements shall be waived for sponsored captive insurance companies to the extent that credit for reinsurance ceded to reinsurers is allowed pursuant to section eleven, article thirty-one of this chapter or to the extent otherwise deemed reasonable and appropriate by the commissioner. Notwithstanding any other provision of this chapter, the commissioner may approve the use of alternative reliable methods of valuation and rating.


In the case of a delinquency of a sponsored captive insurance company, the provisions of section seventeen, article thirty-one of this chapter shall apply, provided:

(1) The assets of a protected cell may not be used to pay any expenses or claims other than those attributable to such protected cell; and

(2) Its capital and surplus shall at all times be available to pay any expenses of or claims against the sponsored captive insurance company.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-47-1, §33-47-2, §33-47-3, §33-47-4, §33-47-5, §33-47-6, §33-47-7, §33-47-8, §33-47-9, §33-47-10, §33-47-11, §33-47-12, §33-47-13, §33-47-14, §33-47-15, §33-47-16 and §33-47-17, all relating to the establishment and operation of an interstate compact for the review and approval of certain lines of insurance products; setting forth the purposes for establishing the compact; protecting the interests of consumers and promoting uniform standards for insurance products; setting forth definitions; establishing the interstate insurance product regulation commission which has the power to develop uniform standards for product lines, to receive and approve those product filings and to be an instrumentality of the compacting states; setting forth the powers of the interstate insurance product regulation commission to promulgate rules, establish reasonable uniform standards for product filings, review products filed with the commission, review advertisement relating to long-term care insurance, exercise its rule-making authority, bring legal actions, issue subpoenas, undertake activities relating to the administration of the commission and appoint committees; setting forth provisions relating to organization of the commission; memberships and voting rights of states and participation in the governance of the commission; creation and content of bylaws of the commission; setting forth provisions relating to meetings and acts of the commission; establishing rule-making authority of the commission; exempting rules promulgated by the commission from the provisions of chapter twenty-nine-a of this code; allowing states to opt out of rules promulgated by the commis-
sion; setting forth provisions relating to the maintenance and
disclosure of commission records; commission's power to
monitor states' compliance with the compact, but preserving to
states the ability to regulate the market conduct of insurers;
setting forth provisions relating to resolution of disputes between
compacting states and noncompacting states; setting forth
requirements for filing products with the commission; setting
forth appeal rights of insurers following disapproval of filings;
setting forth provisions relating to the mechanism for funding the
operations of the commission, including the collection of filing
fees; setting forth the circumstances under which the compact will
become effective and requiring twenty-six states or states
representing forty percent of premium volume for the effected
insurance lines to adopt the compact before the commission may
adopt uniform standards and approve filings; setting forth the
procedures for states to withdraw from the compact and circum­
stances under which a state will be determined to be in default of
the compact; provisions relating to severability; requiring the
insurance commissioner to file in the state register rules or
uniform standards adopted by the commission and which have
become effective in this state; and provisions relating to the
binding effect of the compact.

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 §33-47-1, §33-47-2, §33-
47-3, §33-47-4, §33-47-5, §33-47-6, §33-47-7, §33-47-8, §33-47-9,
§33-47-10, §33-47-11, §33-47-12, §33-47-13, §33-47-14, §33-47-15,
§33-47-16 and §33-47-17, all to read as follows:

ARTICLE 47. INTERSTATE INSURANCE PRODUCT REGULATION
COMPACT.

§33-47-1. Purposes.
§33-47-3. Establishment of the commission and venue.
§33-47-5. Organization of the commission.
§33-47-6. Meetings and acts of the commission.
§33-47-7. Rules and operating procedures: rule-making functions of the commission and opting out of uniform standards.
§33-47-10. Product filing and approval.
§33-47-13. Compacting states, effective date and amendment.
§33-47-17. Filing of rules by the insurance commissioner.

§33-47-1. Purposes.

Pursuant to terms and conditions of this article, the state of West Virginia seeks to join with other states and establish the interstate insurance product regulation compact and thus become a member of the interstate insurance product regulation commission. The insurance commissioner is hereby designated to serve as the representative of this state to the commission.

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

2. To develop uniform standards for insurance products covered under the compact;

3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states;
(4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

(5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

(6) To create the interstate insurance product regulation commission; and

(7) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.


For purposes of this compact:

(a) "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy as more specifically defined in the rules and operating procedures of the commission.

(b) "Bylaws" mean those bylaws established by the commission for its governance or for directing or controlling the commission’s actions or conduct.

(c) "Compacting state" means any state which has enacted this compact legislation and which has not withdrawn pursuant to subsection (a), section fourteen of this article or been terminated pursuant to subsection (b) of said section.

(d) "Commission" means the "interstate insurance product regulation commission" established by this compact.

(e) "Commissioner" means the insurance commissioner of the state of West Virginia.
(f) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.

(g) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this article.

(h) "Member" means the person chosen by a compacting state as its representative to the commission or his or her designee.

(i) "Noncompacting state" means any state which is not at the time a compacting state.

(j) "Operating procedures" mean procedures promulgated by the commission implementing a rule, uniform standard or a provision of this compact.

(k) "Product" means the form of a policy or contract, including any application, endorsement or related form which is attached to and made a part of the policy or contract and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an insurer is authorized to issue.

(l) "Rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to section seven of this article, designed to implement, interpret or prescribe law or policy or describing the organization, procedure or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

(m) "State" means any state, district or territory of the United States of America.

(n) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer.
(o) "Uniform standard" means a standard adopted by the commission for a product line, pursuant to section seven of this article and shall include all of the product requirements in aggregate: Provided, That each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable or against public policy as determined by the commission.

§33-47-3. Establishment of the commission and venue.

(a) The compacting states hereby create and establish a joint public agency known as the "interstate insurance product regulation commission". Pursuant to section four of this article, the commission will have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith and give approval to those product filings satisfying applicable uniform standards: Provided, That it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.

(b) The commission is a body corporate and politic and an instrumentality of the compacting states.

(c) The commission is solely responsible for its liabilities except as otherwise specifically provided in this article.

(d) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.


The commission shall have the following powers:
(a) To promulgate rules, pursuant to section seven of this article, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this article;

(b) To exercise its rule-making authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission: Provided, That a compacting state shall have the right to opt out of any uniform standard pursuant to section seven of this article, to the extent and in the manner provided in this article: Provided, however, That any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of two thousand one. The commission shall consider whether any subsequent amendments to the national association of insurance commissioners' long-term care insurance model act or the long-term care insurance model regulation adopted by the national association of insurance commissioners require the commissioner to amend the uniform standards established by the commission for long-term care insurance products;

(c) To receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long-term care insurance products and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;

(d) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission,
and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this subsection shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

(e) To exercise its rule-making authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;

(f) To promulgate operating procedures, pursuant to section seven of this article, which shall be binding in the compacting states to the extent and in the manner provided in this article;

(g) To bring and prosecute legal proceedings or actions in its name as the commission: Provided, That the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(h) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

(i) To establish and maintain offices;

(j) To purchase and maintain insurance and bonds;

(k) To borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state;

(l) To hire employees, professionals or specialists and elect or appoint officers and to fix their compensation, define their duties and give them appropriate authority to carry out the
purposes of the compact and determine their qualifications; and
to establish the commission’s personnel policies and programs
relating to, among other things, conflicts of interest, rates of
compensation and qualifications of personnel;

(m) To accept any and all appropriate donations and grants
of money, equipment, supplies, materials and services and to
receive, utilize and dispose of the same: Provided, That at all
times the commission shall strive to avoid any appearance of
impropriety;

(n) To lease, purchase, accept appropriate gifts or donations
of, or otherwise to own, hold, improve or use, any property,
real, personal or mixed: Provided, That at all times the
commission shall strive to avoid any appearance of impropri-
ety;

(o) To sell, convey, mortgage, pledge, lease, exchange,
abandon or otherwise dispose of any property, real, personal or
mixed;

(p) To remit filing fees to compacting states as may be set
forth in the bylaws, rules or operating procedures;

(q) To enforce compliance by compacting states with rules,
uniform standards, operating procedures and bylaws;

(r) To provide for dispute resolution among compacting
states;

(s) To advise compacting states on issues relating to
insurers domiciled or doing business in noncompacting
jurisdictions, consistent with the purposes of this compact;

(t) To provide advice and training to those personnel in
state insurance departments responsible for product review and
to be a resource for state insurance departments;

(u) To establish a budget and make expenditures;

(v) To borrow money;
(w) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives and any other interested persons as may be designated in the bylaws;

(x) To provide and receive information from, and to cooperate with, law-enforcement agencies;

(y) To adopt and use a corporate seal; and

(z) To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

§33-47-5. Organization of the commission.

(a) Membership, voting and bylaws of the commission shall be as follows:

(1) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein may be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(2) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two thirds of the members vote in favor thereof.
(3) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:

(A) Establishing the fiscal year of the commission;

(B) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(C) Providing reasonable standards and procedures for the establishment and meetings of other committees, and providing standards and procedures governing any general or specific delegation of any authority or function of the commission;

(D) Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and the votes taken during such meeting;

(E) Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

(F) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;
(G) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(H) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and reserving of all of its debts and obligations.

(4) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

(b) Management committee, officers and personnel.

(1) A management committee comprising no more than fourteen members shall be established as follows:

(A) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

(B) Four members from those compacting states with at least two percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(C) Four members from those compacting states with less than two percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the NAIC as provided in the bylaws.

(2) The management committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:
(A) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(B) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard: Provided, That a uniform standard shall not be submitted to the compacting states for adoption unless approved by two thirds of the members of the management committee;

(C) Overseeing the offices of the commission; and

(D) Planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(3) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(4) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

(c) Legislative and advisory committees.

(1) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee: Provided, That the manner of selection
and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(2) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(3) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(d) Corporate records of the commission.

The commission shall maintain its corporate books and records in accordance with the bylaws.

(e) Qualified immunity, defense and indemnification.

(1) The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities: Provided, That nothing in this subdivision shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of
any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities: Provided, That nothing herein shall be construed to prohibit that person from retaining his or her own counsel: Provided, however, That the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities: Provided, That the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

§33-47-6. Meetings and acts of the commission.

(a) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(b) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(c) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.
§33-47-7. Rules and operating procedures: rule-making functions of the commission and opting out of uniform standards.

(a) Rule-making authority. -- The commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this article, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

(b) Rule-making procedure. -- Rules and operating procedures shall be made pursuant to a rule-making process that conforms to the model state administrative procedure act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision. Notwithstanding any provision of this code to the contrary, the commission is authorized to promulgate rules in the manner set forth in this section. Rules promulgated by the commission pursuant to this section are not subject to the provisions of article three, chapter twenty-nine-a of this code and will become effective pursuant to the procedures set forth in this section notwithstanding any provisions of article three, chapter twenty-nine-a of this code to the contrary.

(c) Effective date and opt out of a uniform standard. -- A uniform standard shall become effective ninety (90) days after its promulgation by the commission or such later date as the commission may determine: Provided, That a compacting state may opt out of a uniform standard as provided in this section.
“Opt out” is defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure or amendment.

(d) Opt out procedure. -- A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state’s administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must: (a) Give written notice to the commission no later than ten business days after the uniform standard is promulgated, or at the time the state becomes a compacting state; and (b) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) The intent of the Legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this article; and (ii) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.
(e) **Effect of opt out.** -- If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time as the opt out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under section fourteen of this article for withdrawals.

(f) **Stay of uniform standard.** -- If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission: *Provided,* That a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rule-making process has been terminated.

(g) Not later than thirty days after a rule or operating procedure is promulgated, any person may file a petition for

(a) The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law-enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(b) Except as to privileged records, data and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data or information to the commission: Provided, That disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement: Provided, however, That, except as otherwise expressly provided in this article, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(c) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform
standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in section fourteen of this article.

(d) The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state’s law. The commissioner’s enforcement of compliance with the compact is governed by the following provisions:

(1) With respect to the commissioner’s market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(2) Before a commissioner may bring an action for violation of any provision, standard or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this subdivision does not require notice to the insurer, opportunity for hearing or disclosure of requests for authorization or records of the commission’s action on such requests.


The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more
1 compacting states, or between compacting states and
2 noncompacting states, and the commission shall promulgate an
3 operating procedure providing for resolution of such disputes.

§33-47-10. Product filing and approval.

1 (a) Insurers and third-party filers seeking to have a product
2 approved by the commission shall file the product with, and pay
3 applicable filing fees to, the commission. Nothing in this
4 article shall be construed to restrict or otherwise prevent an
5 insurer from filing its product with the insurance department in
6 any state wherein the insurer is licensed to conduct the business
7 of insurance, and such filing shall be subject to the laws of the
8 states where filed.

9 (b) The commission shall establish appropriate filing and
10 review processes and procedures pursuant to commission rules
11 and operating procedures. Notwithstanding any provision
12 herein to the contrary, the commission shall promulgate rules
13 to establish conditions and procedures under which the commis-
14 sion will provide public access to product filing information.
15 In establishing such rules, the commission shall consider the
16 interests of the public in having access to such information, as
17 well as protection of personal medical and financial information
18 and trade secrets, that may be contained in a product filing or
19 supporting information.

20 (c) Any product approved by the commission may be sold
21 or otherwise issued in those compacting states for which the
22 insurer is legally authorized to do business.


1 (a) Not later than thirty days after the commission has given
2 notice of a disapproved product or advertisement filed with the
3 commission, the insurer or third-party filer whose filing was
4 disapproved may appeal the determination to a review panel
5 appointed by the commission. The commission shall promul-
6 gate rules to establish procedures for appointing such review
7 panels and provide for notice and hearing. An allegation that
the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection (d), section three of this article.

(b) The commission shall have authority to monitor, review and reconsider products and advertisements subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (a) of this section.


(a) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

(b) The commission shall collect a filing fee from each insurer and third party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission’s annual budget.

(c) The commission’s budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in section seven of this article.

(d) The commission shall be exempt from all taxation in and by the compacting states.
(e) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(f) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and Legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request: Provided, That any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(g) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

§33-47-13. Compacting states, effective date and amendment.

(a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states: Provided, That the commission shall become effective for purposes of adopting uniform standards for, reviewing and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards.
only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(c) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.


(a) Withdrawal.--

(1) Once effective, the compact shall continue in force and remain binding upon each and every compacting state: Provided, That a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in subdivision (5) of this subsection.

(3) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.
(4) The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.

(5) The withdrawing state is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(6) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(b) Default. --

(1) If the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state’s suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the
commission, the defaulting state shall be terminated from the compact and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(2) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (a) of this section.

(3) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(c) Dissolution of compact.

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.


(a) The provisions of this compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(b) The provisions of this compact shall be liberally construed to effectuate its purposes.


(a) Other laws.--
(1) Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in subdivision (2) of this subsection.

(2) For any product approved or certified to the commission, the rules, uniform standards and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval and certification of such products. For advertisements that are subject to the commission’s authority, any rule, uniform standard or other requirement of the commission which governs the content of the advertisements shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict: (i) The access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort or other laws not specifically directed to the content of the product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

(3) All insurance products filed with individual states shall be subject to the laws of those states.

(b) **Binding effect of this compact.** --

(1) All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.

(2) All agreements between the commission and the compacting states are binding in accordance with their terms.

(3) Upon the request of a party to a conflict over the meaning or interpretation of commission actions and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.
(4) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state and those obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective.

§33-47-17. Filing of rules by the insurance commissioner.

The insurance commissioner shall, pursuant to the provisions of section four, article three, chapter twenty-nine-a of this code, file in the state register any rules or uniform standards which have been adopted by the commission and have become effective in this state.

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-48-1, §33-48-2, §33-48-3, §33-48-4, §33-48-5, §33-48-6, §33-48-7, §33-48-8, §33-48-9, §33-48-10, §33-48-11 and §33-48-12, all relating to creating a West Virginia insurance plan; defining terms; creating a body corporate and politic to be known as the West Virginia health insurance plan; providing for its supervision and control by a board of directors to be appointed by the governor; providing the board of directors' administrative requirements; requiring a plan
of operation to be approved by the insurance commissioner; requiring the plan to be operated so as to qualify as an acceptable alternative mechanism under the federal Health Insurance Portability and Accountability Act and as an option to provide health insurance coverage for individuals eligible for the federal Health Care Tax Credit; describing procedural requirements for the plan; describing powers of the plan; requiring the board to annually report to the governor summarizing preceding year activities; shielding the board and its employees from any liability resulting from obligations of the plan; authorizing the board of directors to promulgate rules to implement the act; defining eligibility for persons seeking coverage from the plan and when such coverage shall cease; making it an unfair trade practice to arrange for an employee to apply for coverage with the plan for the purpose of separating that employee from group health insurance coverage provided in connection with the employee’s employment; providing for the selection of a plan administrator; providing for funding for the plan; defining the benefits to be offered; providing that participation in the plan by an insurer is not the basis of any legal action against the participating insurer; providing that the plan is exempt from taxes; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-48-1, §33-48-2, §33-48-3, §33-48-4, §33-48-5, §33-48-6, §33-48-7, §33-48-8, §33-48-9, §33-48-10, §33-48-11 and §33-48-12, all to read as follows:

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS ACT.

§33-48-1. Definitions.
§33-48-4. Eligibility.
§33-48-5. Unfair referral to plan.
§33-48-7. Funding of the plan.
§33-48-1. Definitions.

For purposes of this article:

(a) "Board" means the board of directors of the plan.

(b) "Church plan" has the meaning given such term under Section 3(33) of the federal Employee Retirement Income Security Act of 1974.

(c) "Commissioner" means the insurance commissioner of this state.

(d) (1) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) A group health plan;

(B) Health insurance coverage;

(C) Part A or Part B of Title XVIII of the Social Security Act;

(D) Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;

(E) Chapter 55 of Title 10, U. S. C.;

(F) A medical care program of the federal Indian health service or of a tribal organization;

(G) A state health benefits risk pool;
21 (H) A health plan offered under Chapter 89 of Title 5, U. S. C.;
22
23 (I) A public health plan as defined in federal regulations;
24 or
25 (J) A health benefit plan under Section 5(e) of the federal Peace Corps Act (22 U. S. C. 2504 (e)).
26
27 (2) A period of creditable coverage shall not be counted, with respect to the enrollment of an individual who seeks coverage under this article, if, after such period and before the enrollment date, the individual experiences a significant break in coverage.
28 (e) "Department" means the insurance commissioner of West Virginia.
29
30 (f) "Dependent" means a resident spouse or resident unmarried child under the age of nineteen years, a child who is a student under the age of twenty-three years and who is financially dependent upon the parent or a child of any age who is disabled and dependent upon the parent.
31 (g) "Federally defined eligible individual" means an individual:
32
33 (1) For whom, as of the date on which the individual seeks coverage under this article, the aggregate of the periods of creditable coverage as defined in subsection (d) of this section is eighteen or more months;
34 (2) Whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan or health insurance coverage offered in connection with such a plan;
35 (3) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (Medicare), or a state plan under Title XIX of Act (Medicaid).
or any successor program and who does not have other health insurance coverage;

(4) With respect to whom the most recent coverage within the period of aggregate creditable coverage was not terminated based on a factor relating to nonpayment of premiums or fraud;

(5) Who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected this coverage; and

(6) Who has exhausted the continuation coverage under this provision or program, if the individual elected the continuation coverage described in subdivision (5) of this subsection.

(h) “Governmental plan” has the meaning given such term under Section 3(32) of the federal Employee Retirement Income Security Act of 1974 and any federal government plan.

(i) “Group health plan” means an employee welfare benefit plan as defined in Section 3(1) of the federal Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care as defined in subsection (m) of this section and including items and services paid for as medical care to employees or their dependents as defined under the terms of the plan directly or through insurance, reimbursement or otherwise.

(j)(1) “Health insurance coverage” means any hospital and medical expense incurred policy, nonprofit health care service plan contract, health maintenance organization subscriber contract, or any other health care plan or arrangement that pays for or furnishes medical or healthcare services whether by insurance or otherwise.

(2) “Health insurance coverage” shall not include one or more, or any combination of, the following:

(A) Coverage only for accident or disability income insurance, or any combination thereof;
(B) Coverage issued as a supplement to liability insurance;

(C) Liability insurance, including general liability insurance and automobile liability insurance;

(D) Workers' compensation or similar insurance;

(E) Automobile medical payment insurance;

(F) Credit-only insurance;

(G) Coverage for on-site medical clinics; and

(H) Other similar insurance coverage, specified in federal regulations issued pursuant to PL 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(3) "Health insurance coverage" shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the coverage:

(A) Limited scope dental or vision benefits;

(B) Benefits for long-term care, nursing home care, home health care, community-based care or any combination thereof; or

(C) Other similar, limited benefits specified in federal regulations issued pursuant to PL 104-191.

(4) "Health insurance coverage" shall not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:
(A) Coverage only for a specified disease or illness; or
(B) Hospital indemnity or other fixed indemnity insurance.

(5) "Health insurance coverage" shall not include the following if offered as a separate policy, certificate or contract of insurance:

(A) Medicare supplemental health insurance as defined under Section 1882(g)(1) of the Social Security Act;
(B) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, U. S. C. (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)); or
(C) Similar supplemental coverage provided to coverage under a group health plan.

(k) "Health maintenance organization" means an organization licensed in this state pursuant to the provisions of article twenty-five-a of this chapter.

(l) "Insurer" means any entity that provides health insurance coverage in this state. For the purposes of this article, insurer includes an insurance company, a prepaid limited health service organization as operating under a certificate of authority pursuant to article twenty-five-d of this chapter, a fraternal benefit society, a health maintenance organization and any other entity providing a plan of health insurance coverage or health benefits subject to state insurance regulation.

(m) "Medical care" means amounts paid for:

(1) The diagnosis, care, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;
(2) Transportation primarily for and essential to medical care referred to in subdivision (1) of this subsection; and
(3) Insurance covering medical referred to in subdivisions (1) and (2) of this subsection.

(n) "Medicare" means coverage under both Parts A and B of Title XVIII of the Social Security Act, 42 U. S. C. 1395, et seq., as amended.

(o) "Participating insurer" means any insurer providing health insurance coverage to residents of this state.

(p) "Plan" means the West Virginia health insurance plan as created in section two of this article.

(q) "Plan of operation" means the articles, bylaws and operating rules and procedures adopted by the board pursuant to section two of this article.

(r) "Resident" means an individual who has been legally domiciled in this state for a period of at least thirty days, except that for a federally defined eligible individual, there shall not be a thirty-day requirement. "Resident" also means an individual who is legally domiciled in this state on the date of application to the plan and is eligible for the credit for health insurance costs under Section 35 of the Internal Revenue Code of 1986.

(s) "Significant break in coverage" means a period of sixty-three consecutive days during all of which the individual does not have any creditable coverage, except that neither a waiting period nor an affiliation period is taken into account in determining a significant break in coverage.

Terms within this article with meaning ascribed by federal law shall have the meaning as in effect in federal law the thirty first day of December, two thousand three.


(a) There is hereby created within the West Virginia department of tax and revenue a body corporate and politic to be known as the West Virginia health insurance plan which
shall be deemed to be an instrumentality of the state and a
public corporation. The West Virginia health insurance plan
shall have perpetual existence and any change in the name or
composition of the plan shall in no way impair the obligations
of any contracts existing under this chapter.

(b) The plan shall operate subject to the supervision and
control of the board. The board shall consist of the commis-
sioner or his or her designated representative, who shall serve
as an ex officio member of the board and shall be its chairper-
son, and six members appointed by the governor. At least two
board members shall be individuals, or the parent, spouse or
child of individuals, reasonably expected to qualify for
coverage by the plan. At least two board members shall be
representatives of insurers. At least one board member shall be
a hospital administrator. A majority of the board shall be
composed of individuals who are not representatives of
insurers or health care providers.

(c) The initial board members shall be appointed as
follows: One third of the members to serve a term of two years;
one third of the members to serve a term of four years; and one
third of the members to serve a term of six years. Subsequent
board members shall serve for a term of three years. A board
member's term shall continue until his or her successor is
appointed.

(d) Vacancies in the board shall be filled by the governor.
Board members may be removed by the governor for cause.

(e) Board members shall not be compensated in their
capacity as board members but shall be reimbursed for reason-
able expenses incurred in the necessary performance of their
duties.

(f) The board shall submit to the commissioner a plan of
operation for the plan and any amendments thereto necessary
or suitable to assure the fair, reasonable and equitable adminis-
tration of the plan. The plan of operation shall become
effective upon approval in writing by the commissioner
consistent with the date on which the coverage under this article must be made available. If the board fails to submit a suitable plan of operation within one hundred eighty days after the appointment of the board of directors, or at any time thereafter fails to submit suitable amendments to the plan of operation, the commissioner shall adopt and promulgate such rules as are necessary or advisable to effectuate the provisions of this section. Such rules shall continue in force until modified by the commissioner or superseded by a plan of operation submitted by the board and approved by the commissioner.

(g) The plan of operation shall:

(1) Establish procedures for operation of the plan: Provided, That the plan shall be operated so as to qualify as an acceptable alternative mechanism under the federal Health Insurance Portability and Accountability Act and as an option to provide health insurance coverage for individuals eligible for the federal health care tax credit established by the federal Trade Adjustment Assistance Reform Act of 2002 (Section 35 of the Internal Revenue Code of 1986);

(2) Establish procedures for selecting an administrator in accordance with section six of this article;

(3) Establish procedures to create a fund, under management of the board, for administrative expenses;

(4) Establish procedures for the handling, accounting and auditing of assets, moneys and claims of the plan and the plan administrator;

(5) Develop and implement a program to publicize the existence of the plan, the eligibility requirements and procedures for enrollment; and to maintain public awareness of the plan;

(6) Establish procedures under which applicants and participants may have grievances reviewed by a grievance committee appointed by the board. The grievances shall be
reported to the board after completion of the review. The board shall retain all written complaints regarding the plan for at least three years; and

(7) Provide for other matters as may be necessary and proper for the execution of the board’s powers, duties and obligations under this article.

(h) The plan shall have the general powers and authority granted under the laws of this state to health insurers and, in addition thereto, the specific authority to:

(1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of this article, including the authority, with the approval of the commissioner, to enter into contracts with similar plans of other states for the joint performance of common administrative functions or with persons or other organizations for the performance of administrative functions;

(2) Sue or be sued, including taking any legal actions necessary or proper to recover or collect assessments due the plan;

(3) Take such legal action as necessary:

(A) To avoid the payment of improper claims against the plan or the coverage provided by or through the plan;

(B) To recover any amounts erroneously or improperly paid by the plan;

(C) To recover any amounts paid by the plan as a result of mistake of fact or law; or

(D) To recover other amounts due the plan;

(4) Establish and modify, from time to time, as appropriate, rates, rate schedules, rate adjustments, expense allowances, agents’ referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the plan.
Rates and rate schedules may be adjusted for appropriate factors such as age, sex and geographic variation in claim cost and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;

(5) Issue policies of insurance in accordance with the requirements of this article;

(6) Appoint appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the plan, policy and other contract design and any other function within the authority of the pool;

(7) Borrow money to effect the purposes of the plan. Any notes or other evidence of indebtedness of the plan not in default shall be legal investments for insurers and may be carried as admitted assets;

(8) Establish rules, conditions and procedures for reinsuring risks of participating insurers desiring to issue plan coverages in their own name. Provision of reinsurance shall not subject the plan to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers;

(9) Employ and fix the compensation of employees;

(10) Prepare and distribute certificate of eligibility forms and enrollment instruction forms to insurance procedures and to the general public;

(11) Provide for reinsurance of risks incurred by the plan;

(12) Issue additional types of health insurance policies to provide optional coverages, including medicare supplemental insurance;

(13) Provide for and employ cost containment measures and requirements, including, but not limited to, preadmission screening, second surgical opinion, concurrent utilization review and individual case management for the purpose of making the benefit plan more cost effective;
(14) Design, utilize, contract or otherwise arrange for the delivery of cost-effective health care services, including establishing or contracting with preferred provider organizations, health maintenance organizations and other limited network provider arrangements; and

(15) Adopt bylaws, policies and procedures as may be necessary or convenient for the implementation of this article and the operation of the plan.

(i) The board shall make an annual report to the governor which shall also be filed with the Legislature. The report shall summarize the activities of the plan in the preceding calendar year, including the net written and earned premiums, plan enrollment, the expense of administration, and the paid and incurred losses.

(j) Study and recommend to the Legislature in January, two thousand six, alternative funding mechanisms for the continuation of the health plan for uninsurable individuals.

(k) Neither the board nor its employees shall be liable for any obligations of the plan. No member or employee of the board shall be 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 such 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.


The board may promulgate rules, in accordance with article three, chapter twenty-nine-a of this code, as may be necessary to implement the provisions of this article.

§33-48-4. Eligibility.
(a) (1) Any individual person who is and continues to be a resident shall be eligible for plan coverage if evidence is provided:

(A) Of a notice of rejection or refusal to issue substantially similar insurance for health reasons by one insurer; or

(B) Of a refusal by an insurer to issue insurance except at a rate exceeding the plan rate.

(C) That the individual is legally domiciled in this state and is eligible for the credit for health insurance costs under Section 35 of the Internal Revenue Code of 1986.

(2) Any federally defined eligible individual who has not experienced a significant break in coverage and who is and continues to be a resident shall be eligible for plan coverage.

(3) A rejection or refusal by an insurer offering only stop loss, excess of loss or reinsurance coverage with respect to an applicant under subdivision (1) of this subsection shall not be sufficient evidence under this subsection.

(b) The board shall promulgate a list of medical or health conditions for which a person shall be eligible for plan coverage without applying for health insurance coverage pursuant to subdivision (1), subsection (a) of this section. Persons who can demonstrate the existence or history of any medical or health conditions on the list promulgated by the board shall not be required to prove the evidence specified in said subdivision (1). The list shall be effective on the first day of the operation of the plan and may be amended, from time to time, as may be appropriate.

(c) Each resident dependent of a person who is eligible for plan coverage shall also be eligible for plan coverage.

(d) A person shall not be eligible for coverage under the plan if:
(1) The person has or obtains health insurance coverage substantially similar to or more comprehensive than a plan policy or would be eligible to have coverage if the person elected to obtain it; except that:

(A) A person may maintain other coverage for the period of time the person is satisfying any preexisting condition waiting period under a plan policy; and

(B) A person may maintain plan coverage for the period of time the person is satisfying a preexisting condition waiting period under another health insurance policy intended to replace the plan policy;

(2) The person is determined to be eligible for health care benefits under the state medicaid law;

(3) The person has previously terminated plan coverage unless twelve months have lapsed since such terminations, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual;

(4) The plan has paid out one million dollars in benefits on behalf of the person;

(5) The person is an inmate or resident of a public institution, except that this subdivision shall not apply with respect to an applicant who is a federally defined eligible individual; or

(6) The person's premiums are paid for or reimbursed under any government sponsored program or by any government agency or health care provider, except as an otherwise qualifying full-time employee, or dependent thereof, of a government agency or health care provider.

(e) Coverage shall cease:

(1) On the date a person is no longer a resident of this state;

(2) On the date a person requests coverage to end;
(3) Upon the death of the covered person;

(4) On the date state law requires cancellation of the policy; or

(5) At the option of the plan, thirty days after the plan makes any inquiry concerning the person's eligibility or place of residence to which the person does not reply.

(f) Except under the circumstance described in subsection (d) of this section, a person who ceases to meet the eligibility requirements of this section may be terminated at the end of the policy period for which the necessary premiums have been paid.

§33-48-5. Unfair referral to plan.

It shall constitute an unfair trade practice for the purposes of article eleven of this chapter for an insurer, insurance agent or insurance broker to refer an individual employee to the plan, or arrange for an individual employee to apply to the plan, for the purpose of separating that employee from group health insurance coverage provided in connection with the employee's employment.


(a) The board shall select a plan administrator through a competitive bidding process to administer the plan. The board shall evaluate bids submitted based on criteria established by the board which shall include:

(1) The plan administrator's proven ability to handle health insurance coverage to individuals;

(2) The efficiency and timeliness of the plan administrator's claim processing procedures;

(3) An estimate of total charges for administering the plan;
(4) The plan administrator’s ability to apply effective cost
11 containment programs and procedures and to administer the
12 plan in a cost efficient manner; and
13
(5) The financial condition and stability of the plan
14 administrator.
15
(b) (1) The plan administrator shall serve for a period
16 specified in the contract between the plan and the plan adminis-
17 trator subject to removal for cause and subject to any terms,
18 conditions and limitations of the contract between the plan and
19 the plan administrator.
20
(2) At least one year prior to the expiration of each period
21 of service by a plan administrator, the board shall invite
22 eligible entities, including the current plan administrator to
23 submit bids to serve as the plan administrator. Selection of the
24 plan administrator for the succeeding period shall be made at
25 least six months prior to the end of the current period.
26
(c) The plan administrator shall perform such functions
27 relating to the plan as may be assigned to it, including:
28
(1) Determination of eligibility;
29
(2) Payment of claims;
30
(3) Establishment of a premium billing procedure for
31 collection of premium from persons covered under the plan;
32 and
33
(4) Other necessary functions to assure timely payment of
34 benefits to covered persons under the plan.
35
(d) The plan administrator shall submit regular reports to
36 the board regarding the operation of the plan. The frequency,
37 content and form of the report shall be specified in the contract
38 between the board and the plan administrator.
39
(e) Following the close of each calendar year, the plan
40 administrator shall determine net written and earned premiums,
the expense of administration and the paid and incurred losses for the year and report this information to the board and the commission on a form prescribed by the commissioner.

(f) Notwithstanding any other provision in this section to the contrary, the board may elect to designate the public employees insurance agency as the plan administrator. If so designated, the public employees insurance agency shall provide the services set forth in subsection (c) of this section and shall be subject to the reporting requirements of subsections (d) and (e) of this section. The plan shall, if the public employees insurance agency is designated by the board as the plan administrator, reimburse health care providers at the same health care reimbursement rates then in effect for the West Virginia public employees insurance agency.

§33-48-7. Funding of the plan.

(a) Premiums. –

(1) The plan shall establish premium rates for plan coverage as provided in subdivision (2) of this subsection. Separate schedules of premium rates based on age, sex and geographical location may apply for individual risks. Premium rates and schedules shall be submitted to the commissioner for approval prior to use.

(2) The plan, with the assistance of the commissioner, shall determine a standard risk rate by considering the premium rates charged by other insurers offering health insurance coverage to individuals. The standard risk rate shall be established using reasonable actuarial techniques, and shall reflect anticipated experience and expenses for such coverage. Initial rates for plan coverage shall not be less than one hundred twenty-five percent of rates established as applicable for individual standard risks. Subject to the limits provided in this subdivision, subsequent rates shall be established to provide fully for the expected costs of claims including recovery of prior losses, expenses of operation, investment income of claim reserves,
and any other cost factors subject to the limitations described herein. In no event shall plan rates exceed one hundred fifty percent of rates applicable to individual standard risks.

(b) Sources of additional revenue. –

The plan may be additionally funded by an assessment on hospitals. Notwithstanding the provisions of subsection (c), section eight, article twenty-nine-b, chapter sixteen of this code and not to be construed as in conflict therewith, the health care authority is authorized to increase the assessment obligation of hospitals. The increase shall not exceed a maximum of twenty-five percent above the one tenth of one percent specified in this code section. The entire assessment, including the increase, shall be collected as specified in subsection (c), section eight, article twenty-nine-b, chapter sixteen of this code. Upon receipt of the assessment fees, the health care authority shall transfer all proceeds generated from the new fee collected to a special revenue account established in the state treasury by the commissioner and designated the “West Virginia Health Insurance Plan Account” for the sole purpose of providing additional funding for the plan.


(a) The plan shall offer health care coverage consistent with comprehensive coverage to every eligible person who is not eligible for medicare. The coverage to be issued by the plan, its schedule of benefits, exclusions and other limitations shall be established by the board and subject to the approval of the commissioner.

(b) In establishing the plan coverage, the board shall take into consideration the levels of health insurance coverage provided in the state and medical economic factors as may be deemed appropriate; and promulgate benefit levels, deductibles, coinsurance factors, exclusions and limitations determined to be generally reflective of and commensurate with
health insurance coverage provided through a representative
number of large employers in the state.

(c) The board may adjust any deductibles and coinsurance
factors annually according to the medical component of the
consumer price index.

(d) Preexisting conditions. –

(1) Plan coverage shall exclude charges or expenses
incurred during the first six months following the effective date
of coverage as to any condition for which medical advice, care
or treatment was recommended or received as to such condi-
tions during the six-month period immediately preceding the
effective date of coverage, except that no preexisting condition
exclusion shall be applied to a federally defined eligible
individual.

(2) Subject to subdivision (1) of this subsection, the
preexisting condition exclusions shall be waived to the extent
that similar exclusions, if any, have been satisfied under any
prior health insurance coverage which was involuntarily
terminated; Provided, That:

(A) Application for pool coverage is made not later than
sixty-three days following such involuntary termination and, in
such case, coverage in the plan shall be effective from the date
on which such prior coverage was terminated; and

(B) The applicant is not eligible for continuation or
conversion rights that would provide coverage substantially
similar to plan coverage.

(e) Nonduplication of benefits. –

(1) The plan shall be payer of last resort of benefits
whenever any other benefit or source of third-party payment is
available. Benefits otherwise payable under plan coverage
shall be reduced by all amounts paid or payable through any
other health insurance coverage and by all hospital and medical
expense benefits paid or payable under any workers' compensation coverage, automobile medical payment or liability insurance, whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program.

(2) The plan shall have a cause of action against an eligible person for the recovery of the amount of benefits paid that are not for covered expenses. Benefits due from the plan may be reduced or refused as a set-off against any amount recoverable under this subdivision.


Neither the participation in the plan as participating insurers, the establishment of rates, forms or procedures nor any other joint or collective action required by this article shall be the basis of any legal action, criminal or civil liability or penalty against the plan or any participating insurer.

§33-48-10. Taxation.

The plan established pursuant to this article shall be exempt from the premium taxes assessed under sections fourteen and fourteen-a, article three of this chapter.

§33-48-11. Continuation of model health plan for uninsurable individuals.

The model health plan for uninsurable individuals shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

§33-48-12. Effective date.

The provisions of this article shall become effective on the first day of July, two thousand four.
CHAPTER 149

(Com. Sub. for S. B. 513 — By Senators McCabe, Minard and Unger)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §12-7-4, §12-7-6, §12-7-8a and §12-7-11 of the code of West Virginia, 1931, as amended, all relating to the jobs investment trust board; expanding board powers; providing for sale or transfer of nonincentive tax credits; and providing that certain documents be available for public inspection.

Be it enacted by the Legislature of West Virginia:

That §12-7-4, §12-7-6, §12-7-8a and §12-7-11 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

§12-7-6. Corporate powers.

§12-7-8a. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rulemaking.

§12-7-11. Documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality.

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

1 (a) The jobs investment trust board is continued. The board
2 is a public body corporate and established to improve and
3 otherwise promote economic development in this state.
(b) The board consists of thirteen members, five of whom serve by virtue of their respective positions. These five are the president of West Virginia university or his or her designee; the president of Marshall university or his or her designee; the chancellor of the higher education policy commission or his or her designee; the executive director of the West Virginia housing development fund; and the executive director of the West Virginia development office. One member shall be appointed by the governor from a list of two names submitted by the board of directors of the housing development fund. One member shall be appointed by the governor from a list of two names submitted by the commissioner of the division of tourism. The other six members shall be appointed from the general public by the governor. Of the members of the general public appointed by the governor, one shall be an attorney with experience in finance and investment matters, one shall be a certified public accountant, one shall be a representative of labor, one shall be experienced or involved in innovative business development and two shall be present or past executive officers of companies listed on a major stock exchange or large privately held companies: Provided, That all appointments made pursuant to the provisions of this article shall be by and with the advice and consent of the Senate.

(c) A vacancy on the board shall be filled by appointment by the governor for the unexpired term in the same manner as the original appointment. Any person appointed to fill a vacancy serves only for the unexpired term.

(d) The governor may remove any appointed member in case of incompetency, neglect of duty, moral turpitude or malfeasance in office and the governor may declare the office vacant and fill the vacancy as provided in other cases of vacancy.

(e) The chairman of the board shall be elected by the board from among the members of the board.

(f) Seven members of the board is a quorum. No action may be taken by the board except upon the affirmative vote of
at least a majority of those members present or participating by any other means as described in subsection (g) of this section, but in no event fewer than six of the members serving on the board.

 Members of the board may participate in a meeting of the board by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other and participation in a board meeting pursuant to this subsection constitutes presence in person at the meeting.

 The members of the board, including the chairman, may receive no compensation for their services as members of the board, but are entitled to their reasonable and necessary expenses actually incurred in discharging their duties under this article.

 The board shall meet on a quarterly basis or more often if necessary.

 The governor shall appoint a member for a four-year term. Any member whose term has expired serves until his or her successor has been duly appointed and qualified. Any member is eligible for reappointment.

 Additionally, one member of the West Virginia House of Delegates, to be appointed by the speaker of the House of Delegates, and one member of the West Virginia Senate, to be appointed by the president of the Senate, shall serve as advisory members of the jobs investment trust board and, as advisory members, shall be ex officio, nonvoting members.

 §12-7-6. Corporate powers.

 The board may:

 (1)(i) Make loans to eligible businesses with or without interest secured if and as required by the board; and (ii) acquire ownership interests in eligible businesses. These investments
may be made in eligible businesses that stimulate economic
growth and provide or retain jobs in this state and shall be made
only upon the determination by the board that the investments
are prudent and meet the criteria established by the board;

(2) Accept appropriations, gifts, grants, bequests and
devises and use or dispose of them to carry out its corporate
purposes;

(3) Make and execute contracts, releases, compromises,
greements and other instruments necessary or convenient for
the exercise of its powers or to carry out its corporate purposes;

(4) Collect reasonable fees and charges in connection with
making and servicing loans, notes, bonds, obligations, commit-
ments and other evidences of indebtedness, in connection with
making equity investments and in connection with providing
technical, consultative and project assistance services;

(5) Sue and be sued;

(6) Make, amend and repeal bylaws and rules consistent
with the provisions of this article;

(7) Hire its own employees, who shall be employees of the
state of West Virginia for purposes of articles ten and sixteen,
chapter five of this code, and appoint officers and consultants
and fix their compensation and prescribe their duties;

(8) Acquire, hold and dispose of real and personal property
for its corporate purposes;

(9) Enter into agreements or other transactions with any
federal or state agency, college or university, any person and
any domestic or foreign partnership, corporation, association or
organization;

(10) Acquire real and personal property, or an interest in
real or personal property, in its own name, by purchase or
foreclosure when acquisition is necessary or appropriate to
protect any loan in which the board has an interest; to sell,
transfer and convey any real or personal property to a buyer;
and, in the event a sale, transfer or conveyance cannot be
effected with reasonable promptness or at a reasonable price, to
lease real or personal property to a tenant;

(11) Purchase, sell, own, hold, negotiate, transfer or assign:
(i) Any mortgage, instrument, note, credit, debenture, guarantee,
bond or other negotiable instrument or obligation securing
a loan, or any part of a loan; (ii) any security or other instru-
ment evidencing ownership or indebtedness; or (iii) equity or
other ownership interest. An offering of one of these instru-
ments shall include the representation and qualification that the
board is a public body corporate managing a venture capital
fund that includes high-risk investments and that in any
transfer, sale or assignment of any interest, the transferee,
purchaser or assignee accepts any risk without recourse to the
jobs investment trust or to the state;

(12) Procure insurance against losses to its property in
amounts, and from insurers, as is prudent;

(13) Consent, when prudent, to the modification of the rate
of interest, time of maturity, time of payment of installments of
principal or interest or any other terms of the investment, loan,
contract or agreement in which the board is a party;

(14) Establish training and educational programs to further
the purposes of this article;

(15) File its own travel rules;

(16) Borrow money to carry out its corporate purpose in
principal amounts and upon terms as are necessary to provide
sufficient funds for achieving its corporate purpose;

(17) Take options in or warrants for, subscribe to, acquire,
purchase, own, hold, transfer, sell, vote, employ, mortgage,
pledge, assign, pool or syndicate: (i) Any loans, notes, mort-
gages or securities; (ii) debt instruments, ownership certificates
or other instruments evidencing loans or equity; or (iii) securi-
ties or other ownership interests of or in domestic or foreign
corporations, associations, partnerships, limited partnerships,
limited liability partnerships, limited liability companies, joint
ventures or other private enterprise to foster economic growth,
jobs preservation and creation in the state of West Virginia and
all other acts that carry out the board’s purpose;

(18) Contract with either Marshall university or West
Virginia university, or both, for the purpose of retaining the
services of, and paying the reasonable cost of, services per-
formed by the institution for the board in order to effectuate the
purposes of this article;

(19) Enter into collaborative arrangements or contracts with
private venture capital companies when considered advisable
by the board;

(20) Provide equity financing for any eligible business that
will stimulate economic growth and provide or retain jobs in
this state and hold, transfer, sell, assign, pool or syndicate, or
participate in the syndication of, any loans, notes, mortgages,
securities, debt instruments or other instruments evidencing
loans or equity interest in furtherance of the board's corporate
purposes;

(21) Form partnerships, create subsidiaries or take all other
actions necessary to qualify as a small business investment
company under the United States Small Business Investment
Act, PL 85-699, as amended;

(22) Provide for staff payroll and make purchases in the
same manner as the housing development fund;

(23) Indemnify its members, directors, officers, employees
and agents relative to actions and proceedings to which they
have been made parties and make advances for expenses
relative thereto and purchase and maintain liability insurance on
behalf of those persons all to the same extent as authorized for
West Virginia business corporations under present or future
103 laws of the state applicable to business corporations generally;
104 and

105 (24) Contract for the provision of legal services by private
106 counsel and, notwithstanding the provisions of article three,
107 chapter five of this code, counsel may, but is not limited to,
108 represent the board in court, negotiate contracts and other
109 agreements on behalf of the board, render advice to the board
110 on any matter relating thereto, prepare contracts and other
111 agreements and provide any other legal services requested by
112 the board.

§12-7-8a. New millennium fund; new millennium fund promissory notes; nonincentive tax credits; rulemaking.

1 (a) The new millennium fund is continued to permit the
2 board to better fulfill its mission to mobilize financing and
3 capital for emerging, expanding and restructuring businesses in
4 the state. New millennium fund moneys are to consist of all
5 appropriations for use by the jobs investment trust board made
6 by the Legislature subsequent to the thirty-first day of Decem-
7 ber, one thousand nine hundred ninety-nine, and funds bor-
8 rowed from private or institutional lenders by the board through
9 the issuance of promissory notes. Fund moneys may be held in
10 a separate account or accounts by or at the West Virginia
11 housing development fund for the board until the board
12 disburses any portion of the funds. Fund moneys that are not
13 set aside or otherwise designated for paying interest on the
14 promissory notes may be used by the board in accordance with
15 and to effectuate the purposes of this article. The board may
16 impose reasonable fees and charges associated with its invest-
17 ment of funds from the new millennium fund in eligible
18 businesses to be paid in any combination of money, warrants or
19 equity interests.

20 (b) Without limiting the powers otherwise enumerated in
21 this article, the board may: (1) Sell and transfer portions of the
22 nonincentive tax credits created, issued and transferred to the
23 board pursuant to the provisions of this section to contracting
24 taxpayers and/or their assigns in return for the payments
described in subsection (f) of this section; (2) issue or provide promissory notes on loans made to the board having terms of up to ten years on a zero-coupon basis or otherwise; (3) enter into put options or similar commitment contracts with taxpayers that would be for terms of up to ten years committing, at the board’s option, to sell and transfer to the contracting taxpayers or their assigns at the end of the term and as soon after the term as is reasonable under the circumstances portions of the nonincentive tax credits created, issued and transferred to the board pursuant to this section; (4) grant, transfer and assign the benefits of the put options or similar commitment contracts as collateral to secure the board’s obligations pursuant to its promissory notes; (5) satisfy the board’s payment obligations under its promissory notes from assets of the board, other than the benefits of the put options or similar commitment contracts, then to effect a corresponding cancellation of the board’s related nonincentive tax credit commitment; and (6) satisfy the board’s payment obligations under its promissory notes from the benefits of the put options or similar commitment contracts, then to effect a corresponding sale and transfer of nonincentive tax credits. The terms and conditions of the promissory notes, put options or similar commitment contracts shall be consistent with the purposes of this section, and approved by board resolution, and may be different for separate transactions.

(c) Without limiting the powers otherwise enumerated in this article and with regard to the new millennium fund, the board has and may exercise all powers necessary to further the purposes of this section, including, but not limited to, the power to commit, sell and transfer nonincentive tax credits up to the total amount of thirty million dollars.

(d) The board may issue its promissory notes pursuant to this section in amounts totaling no more than six million dollars in each of the fiscal years ending in two thousand one, two thousand two, two thousand three, two thousand four and two thousand five and may issue its nonincentive tax credit commitments in amounts totaling no more than six million dollars in each of the fiscal years ending in two thousand one, two thousand two, two thousand three, two thousand four and two thousand five.
thousand two, two thousand three, two thousand four and two
thousand five. The board may agree to sell and transfer, at its
option, nonincentive tax credits to taxpayers ten years after the
date of its commitments and as soon thereafter as it is reason-
able under the circumstances.

(e) Prior to committing to the sale and transfer of any
nonincentive tax credits, the board shall first determine that:

(1) The new millennium fund moneys to be received in
relationship to the commitment shall be used for the develop-
ment, promotion and expansion of the economy of the state;
and

(2) The existence and pledge of a put option or similar
commitment contract that is supported by the nonincentive tax
credits that are committed by the board is a material induce-
ment to the private or institutional lender transferring moneys
to the board to be placed in the new millennium fund.

(f) The board may sell and transfer nonincentive tax credits
only in conjunction with the satisfaction of its obligations under
its promissory notes issued pursuant to this section. Each
original sale and transfer of nonincentive tax credits by the
board shall be consummated upon payment to the board, or for
its benefits, of an amount equal to the dollar amount of the
nonincentive tax credits sold and transferred. The nonincentive
tax credits sold and transferred by the board pursuant to this
section shall be claimed as a credit on the tax returns for the
year or years in which the nonincentive tax credits are sold and
transferred by the board. The amount of the nonincentive tax
credit that exceeds the taxpayer’s tax liability for the taxable
year in the year of the purchase may be carried to succeeding
taxable years until used in full up to two years after the year of
purchase and may not be carried back to prior taxable years.
Any nonincentive tax credit sold and transferred by the board
that remains outstanding after the third taxable year subsequent
to and including the year of the transfer is forfeited.
(g) Nonincentive tax credits are created, issued and transferred by the state to the board in a total amount of thirty million dollars to be used by taxpayers, including persons, firms, corporations and all other business entities, to reduce the tax liabilities imposed upon them pursuant to articles twelve-a, thirteen, thirteen-a, twenty-one, twenty-three and twenty-four, chapter eleven of this code. The total amount of nonincentive tax credits that are created, issued and transferred to the board is thirty million dollars. The nonincentive tax credits are freely transferable to subsequent transferees. The board shall immediately notify the president of the Senate, the speaker of the House of Delegates and the governor in writing if and when any nonincentive tax credits are sold and transferred by the board.

(h) In conjunction with the department of tax and revenue, the board shall develop a system for: (i) Registering nonincentive tax credits, commitments for the sale and transfer of nonincentive tax credits, the assignments of the commitments and the assignments of the nonincentive tax credits; and (ii) certifying nonincentive tax credits so that when nonincentive tax credits are claimed on a tax return, they may be verified as validly issued by the board, properly taken in the year of claim and in accordance with the requirements of this section.

(i) The board may promulgate, repeal, amend and change rules consistent with the provisions of this article to carry out the purposes of this section. 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.

§12-7-11. Documentary materials concerning trade secrets; commercial, financial or personal information; confidentiality.

Any documentary material or data made or received by the board for the purpose of furnishing assistance, to the extent that the material or data consists of trade secrets, commercial, financial or personal information regarding the financial
position or activities of such business or person, shall not be
considered public records and shall be exempt from disclosure
pursuant to the provisions of chapter twenty-nine-b of this code.
Any discussion or consideration of the trade secrets, commer-
cial, financial or personal information may be held by the board
in executive session closed to the public, notwithstanding the
provisions of article nine-a, chapter six of this code: Provided,
That the board shall make public the following information
regarding executed investments: (1) The names and addresses
of the principals of the business and its board of directors; (2)
the location or locations of the projects; (3) the amount of the
investment or financial assistance provided by the board; (4) the
purpose of the investment or financial assistance; (5) the
maturity, interest rate and other pertinent terms of the invest-
ment; (6) the fixed assets which serve as security for the
investment; and (7) the names and addresses of all persons
holding twenty-five percent or more of the equity of the entity
receiving investment assistance: Provided, however, That the
board shall keep available in its offices for inspection by any
citizen of this state the annual report prepared pursuant to the
requirements of section twelve of this article and the annual
audit report prepared pursuant to the requirements of sections
nine and fourteen of this article.

CHAPTER 150

(Com. Sub. for S. B. 71 — By Senator Hunter)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §21-1B-1, §21-1B-2 and §21-1B-3 of
the code of West Virginia, 1931, as amended, all relating to
verifying legal employment status of workers employed in West
Virginia; defining “unauthorized workers”; and permitting
division of labor permits as proof of employment.
Be it enacted by the Legislature of West Virginia:

That §21-1B-1, §21-1B-2 and §21-1B-3 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE IB. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§21-1B-1. Findings; policy.

§21-1B-2. Definitions.

§21-1B-3. Unauthorized workers; employment prohibited.

§21-1B-1. Findings; policy.

1 The Legislature finds that employers have the responsibility to verify the legal employment status of all persons who come into their employ and to report their employment to the appropriate governmental agencies. Employers are precluded from hiring unauthorized workers and can be penalized for doing so. Additionally, employers owe a duty to the residents of the state to uphold the intent and integrity of the general workforce due to the potential loss of revenue to the state by loss of taxes, unemployment premiums and workers' compensation premiums.

§21-1B-2. Definitions.

(a) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government, public benefit corporation, public authority or political subdivision of the state or other business entity which employs or seeks to employ an individual or individuals.

(b) "Commissioner" means the labor commissioner or his or her designated agent.

(c) "Unauthorized worker" means a person who does not have the legal right to be employed or is employed in violation of law.
12 (d) "Records" means records that may be required by the
13 commissioner of labor for the purposes of compliance with the
14 provisions of this article.

§21-1B-3. Unauthorized workers; employment prohibited.

1 (a) It is unlawful for any employer to employ, hire, recruit,
2 or refer, either for him or herself or on behalf of another, for
3 private or public employment within the state, an unauthorized
4 worker who is not duly authorized to be employed by law.

5 (b) Employers shall be required to verify a prospective
6 employee's legal status or authorization to work prior to
7 employing the individual or contracting with the individual for
8 employment services.

9 (c) For purposes of this article, proof of legal status or
10 authorization to work includes, but is not limited to, a valid
11 social security card, a valid immigration or nonimmigration
12 visa including photo identification, a valid birth certificate, a
13 valid passport, a valid photo identification card issued by a
14 government agency, a valid work permit or supervision permit
15 authorized by the division of labor, a valid permit issued by the
16 department of justice or other valid document providing
17 evidence of legal residence or authorization to work in the
18 United States.

CHAPTER 151

(Com. Sub. for H. B. 4299 — By Delegates Stemple and Kominar)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]
code of West Virginia, 1931, as amended, all relating to modifications to the West Virginia Contractor Licensing Act; by increasing the cost of the undertaking in the definition of a contractor; providing compensation for board members; increasing the penalty for failing to conspicuously display license; exempting certain work from licensure; decreasing the period that a lapsed license may be renewed; providing for an appeal of penalty for contracting without a license; and removal of references to the board in certain sections.

Be it enacted by the Legislature of West Virginia:

That §21-11-3, §21-11-4, §21-11-6, §21-11-12, §21-11-13, §21-11-15, §21-11-17 and §21-11-20 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.
§21-11-6. Necessity for license; exemptions.
§21-11-12. License renewal, lapse and reinstatement.
§21-11-13. Violation of article; injunction; criminal penalties.
§21-11-17. Record keeping.
§21-11-20. Board authorized to provide training.


(a) “Commissioner” means the commissioner of the division of labor.

(b) “Board” means the West Virginia contractor licensing board.

(c) “Contractor” means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck or demolish any building,
highway, road, railroad, structure or excavation associated with a project, development or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is two thousand five hundred dollars or more.

Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

Contractor does not include:

1. One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

2. A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

3. A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management and maintenance, who acting in his or her respective professional capacity and any employee of such professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;

4. A pest control operator licensed under the provisions of section seven, article sixteen-a, chapter nineteen of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding one thousand dollars on property treated for insect pests; or

5. A corporation, partnership or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in subsection (c) of this section and who employs full time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of such
corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article.

(d) "Electrical contractor" means a person who engages in the business of contracting to install, erect, repair or alter electrical equipment for the generation, transmission or utilization of electrical energy.

(e) "General building contractor" means a person whose principal business is in connection with any structures built, being built or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole or any part of such construction.

(f) "General engineering contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: Irrigation, drainage and water supply projects; electrical generation projects; swimming pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and other liquid or gaseous substances; refineries; chemical plants and other industrial plants requiring a specialized engineering knowledge and skill; piers and foundations; and structures or work incidental thereto.

(g) "Heating, ventilating and cooling contractor" means a person who engages in the business of contracting to install, erect, repair, service or alter heating, ventilating and air conditioning equipment or systems to heat, cool or ventilate residential and commercial structures.

(h) "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this article.
(i) "Multifamily contractor" means a person who is engaged in construction, repair or improvement of a multifamily residential structure.

(j) "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association or other entity engaged in the undertaking of construction projects or any combination thereof.

(k) "Piping contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld or mechanical methods.

(l) "Plumbing contractor" means a person whose principal business is the installation, maintenance, extension and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating, and piping for stand pipes.

(m) "Residential contractor" means a person whose principal business is in connection with construction, repair or improvement of real property used as, or intended to be used for, residential occupancy.

(n) "Specialty contractor" means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out herein.

(o) "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than thirty consecutive calendar days.
(p) "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct of residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels or other transient lodging units are not residential structures.

(q) "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

(r) "Division" means the division of labor.

(s) "Cease and desist order" means an order issued by the commissioner pursuant to the provisions of this article.

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

(a) The West Virginia contractor licensing board is continued. The board shall consist of ten members appointed by the governor by and with the advice and consent of the Senate for terms of four years. Such members shall serve until their successors are appointed and have qualified. Eight of the appointed members shall be owners of businesses engaged in the various contracting industries, with at least one member appointed from each of the following contractor classes: One electrical contractor, one general building contractor, one general engineering contractor, one heating, ventilating and cooling contractor, one multifamily contractor, one piping contractor, one plumbing contractor and one residential contractor, as defined in section three hereof. Two of the appointed members shall be building code officials who are not members of any contracting industry. At least three members of the board shall reside at the time of their appointment in each congressional district as existing on the first day of January, one
thousand nine hundred ninety-eight. The commissioner of labor, the secretary of the department of tax and revenue or his designee, and the commissioner of the bureau of employment programs or his designee shall be ex officio nonvoting members of the board.

(b) Terms of the members first appointed shall be two members for one year, two members for two years, three members for three years and three members for four years, as designated by the governor at the time of appointment. Thereafter, terms shall be for four years. A member who has served all or part of two consecutive terms shall not be subject to reappointment unless four years have elapsed since the member last served. Vacancies shall be filled by appointment by the governor for the unexpired term of any member whose office is vacant and shall be made within sixty days of the occurrence of the vacancy. A vacancy on the board shall not impair the right of the remaining members to exercise all the powers of the board.

(c) The board shall elect a chair from one of the voting members of the board. The board shall meet at least once annually and at such other times as called by the chair or a majority of the board. Board members shall receive compensation not to exceed the amount paid to members of the Legislature for the interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day spent attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a member of the board. A majority of the members appointed shall constitute a quorum of the board.

§21-11-6. Necessity for license; exemptions.

(a) On or after the first day of October, one thousand nine hundred ninety-one, no person shall engage in this state in any act as a contractor, as defined in this article, unless such person holds a license issued under the provisions of this article. No firm, partnership, corporation, association or other entity shall
engage in contracting in this state unless an officer thereof holds a license issued pursuant to this article.

(b) Any person to whom a license has been issued under this article shall keep the license or a copy thereof posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts. Any person violating the provisions of this subsection shall be subject, after hearing, to a warning, a reprimand, or a fine of not more than two hundred dollars.

(c) Except as otherwise provided in this code, the following are exempt from licensure:

(1) Work done exclusively by employees of the United States government, the state of West Virginia, a county, municipality or municipal corporation, and any governmental subdivision or agency thereof;

(2) The sale or installation of a finished product, material or article or merchandise which is not actually fabricated into and does not become a permanent fixed part of the structure;

(3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;

(4) A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;

(5) Work performed by a public utility company regulated by the West Virginia public service commission and its employees;

(6) Repair work contracted for by the owner of the equipment on an emergency basis in order to maintain or restore the operation of such equipment;
(7) Work performed by an employer’s regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the employer which is not intended for speculative sale or lease;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for such work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this state when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.

§21-11-12. License renewal, lapse and reinstatement.

(a) A license which is not renewed on or before the renewal date shall lapse. The board may establish by regulation a delayed renewal fee to be paid for issuance of any license which has lapsed: Provided, That no license which has lapsed for a period of ninety days or more may be renewed: Provided, however, That, if a licensee is in a dispute with a state agency, and it is determined that the licensee is not at fault, the board shall renew the license.

(b) In the event that continuing education or other requirements are made a condition of license reinstatement after lapse, suspension or revocation, such requirements must be satisfied before the license is reissued.

§21-11-13. Violation of article; injunction; criminal penalties.

(a)(1) Upon a determination that a person is engaged in contracting business in the state without a valid license, the board or commissioner shall issue a cease and desist order requiring such person to immediately cease all operations in the state. The order shall be withdrawn upon issuance of a license to such person.
(2) After affording an opportunity for a hearing, the board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person engaging in contracting business in the state without a valid license. The board may accept payment of the penalty in lieu of a hearing.

(3) Within thirty days after receipt of the final order issued pursuant to this section, any party adversely affected by the order may appeal the order to the circuit court of Kanawha County, West Virginia, or to the circuit court of the county in which the petitioner resides or does business.

(b) Any person continuing to engage in contracting business in the state without a valid license after service of a cease and desist order is guilty of a misdemeanor and, upon conviction, is subject to the following penalties:

(1) For a first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) For a second offense, a fine of not less than five hundred dollars nor more than five thousand dollars, or confinement in the county or regional jail for not more than six months, or both;

(3) For a third or subsequent offense, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in the county or regional jail for not less than thirty days nor more than one year.

(c) The board may institute proceedings in the circuit court of the county in which the alleged violations of the provisions of this article occurred or are now occurring to enjoin any violation of any provision of this article.

(d) Any person who undertakes any construction work without a valid license when such license is required by this article, when the total cost of the contractor's construction contract on any project upon which the work is undertaken is twenty-five thousand dollars or more, shall, in addition to any
other penalty herein provided, be assessed by the board an administrative penalty not to exceed two hundred dollars per day for each day the person is in violation.


(a) The division and commissioner shall perform the following administrative duties:

(1) Collect and record all fees;

(2) Maintain records and files;

(3) Issue and receive application forms;

(4) Notify applicants of the results of the board examination;

(5) Arrange space for holding examinations and other proceedings;

(6) Issue licenses and temporary licenses as authorized by this article;

(7) Issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the division;

(8) Notify licensees of renewal dates at least thirty days before the expiration date of their license;

(9) Answer routine inquiries;

(10) Maintain files relating to individual licensees;

(11) Arrange for printing and advertising;

(12) Purchase supplies;

(13) Employ additional help when needed;
(14) Perform other services that may be requested by the board;

(15) Provide inspection, enforcement and investigative services to the board; and

(16) Issue cease and desist orders to persons engaging in contracting within the state without a valid license.

(b) All authority not specifically delegated to the commissioner and division shall be the responsibility of the board.

(c) Following successful completion of the examination, and prior to the issuance of the license, the applicant shall certify by affidavit that the applicant:

(1) Is in compliance with the business franchise tax provisions of chapter eleven of this code;

(2) Has registered, and is in compliance, with the workers’ compensation fund and the employment security fund, as required by chapter twenty-three and chapter twenty-one-a of this code; and

(3) Is in compliance with the applicable wage bond requirements of section one, article five of this chapter:

Provided, That in the case of an out-of-state contractor not doing business in this state and seeking licensure for bidding purposes only, the applicant may be granted a conditional license for bid purposes only.

§21-11-17. Record keeping.

(a) The division shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the state treasury to be known as the “West Virginia Contractor Licensing Board Fund”. Expenditures from said fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve
of this code and upon the fulfillment of the provisions set forth in article two, chapter five-a of this code: Provided, That for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, expenditures are authorized from collections rather than pursuant to an appropriation by the Legislature. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) The division shall maintain at the principal office, open for public inspection during office hours, a complete indexed record of all applications, licenses issued, licenses renewed and all revocations, cancellations and suspensions of licenses. Applications shall show the date of application, name, qualifications, place of business and place of residence of each applicant; and whether the application was approved or refused.

(c) (1) All investigations, complaints, reports, records, proceedings and other information received by the commissioner and board and related to complaints made to the commissioner or board or investigations conducted by the commissioner or board pursuant to this article, including the identity of the complainant or respondent, shall be confidential and shall not be knowingly and improperly disclosed by any member or former member of the board, the commissioner or staff, except as follows:

(A) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of this article, the complaint and all reports, records, nonprivileged and nondeliberative materials introduced at any probable cause hearing held pursuant to the complaint are thereafter not confidential: Provided, That confidentiality of such information shall remain in full force and effect until the respondent has been served with a copy of the statement of charges.

(B) Any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports,
records and nondeliberative materials introduced into evidence at such subsequent hearing, as well as the board’s and commissioner’s orders, are not confidential.

(C) The commissioner or board may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint as well as the identity of the complainant shall be disclosed to a person named as respondent in any such complaint filed immediately upon such respondent’s request.

(E) Where the commissioner or board is otherwise required by the provisions of this article to disclose such information or to proceed in such a manner that disclosure is necessary and required to fulfill such requirements.

(2) If, in a specific case, the commissioner or board finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commissioner or board shall order that all or a portion of the information communicated to the commissioner or board to cause an investigation and all allegations of violations or misconduct contained in a complaint shall be confidential, and the person providing such information or filing a complaint shall be bound to confidentiality until further order of the board.

(d) If any person violates the provisions of subsection (c) of this section by knowingly and willfully disclosing any information made confidential by such section or by the commissioner or board, such person shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or imprisoned in the county jail not more than one month, or both fined and imprisoned.
§21-11-20. Board authorized to provide training.

(a) On behalf of the board, the division may enter into work-sharing agreements with state vocational and technical training schools to provide classroom training to students who desire to obtain a West Virginia contractor license. The purpose of the training is limited to instruction applicable to the contractor license examinations required by the board. The terms of the work-sharing agreements shall be determined by the West Virginia contractor licensing board and county boards of education.

(b) For the purposes of this section, the division is authorized to expend funds from its special revenue account, known as the contractor licensing fund, to support this activity.

AN ACT to amend and reenact §47-1-20 of the code of West Virginia, 1931, as amended, relating to allowing the commissioner of labor to charge fees for laboratory services and calibrations by rule; establishing a special revenue account to be used by the division of labor for the enforcement of weights and measures statutes.

Be it enacted by the Legislature of West Virginia:
That §47-1-20 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEIGHTS AND MEASURES.

§47-1-20. State measurement laboratory.

1 The commissioner shall operate and maintain a state measurement laboratory certified and approved by the national institute of standards and technology. The laboratory shall be used to both house and maintain the state primary standards and secondary standards as traceable to the national standards and to test or calibrate any secondary or working standards which are submitted for test as required by this article.

8 The commissioner shall promulgate rules, pursuant to chapter twenty-nine-a of this code to assess fees for weights and measures laboratory calibration and testing. All fees collected by the commissioner under the provisions of this section shall be deposited into a special revenue account in the state treasury to be known as the “Weights and Measures Fund.” The moneys in the fund shall be used by the commissioner solely for the enforcement of this article. The commissioner is hereby authorized to allocate moneys from the weights and measures fund to enforce the provisions of this article without legislative appropriation of moneys from the fund until the last day of June, two thousand six. Effective the first day of July, two thousand six, no moneys may be expended from the fund except by legislative appropriation.

22 The commissioner shall provide such personnel as required to operate the laboratory in a manner which is consistent with the needs of this article. Personnel shall be trained and certified to perform all such calibrations and tests as required by the national institute of standards and technology to maintain traceability of the state standards to national standards, and to properly maintain the laboratory facility as certified and traceable to the national institute of standards and technology.
CHAPTER 153

(Com. Sub. for S. B. 454 — By Senators Bowman, Minard, Kessler, McCabe, Rowe, Snyder, Minear and McKenzie)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

§8A-8-1, §8A-8-2, §8A-8-3, §8A-8-4, §8A-8-5, §8A-8-6, §8A-8-7, §8A-8-8, §8A-8-9, §8A-8-10, §8A-8-11, §8A-8-12, §8A-9-1, §8A-9-2, §8A-9-3, §8A-9-4, §8A-9-5, §8A-9-6, §8A-9-7, §8A-10-1, §8A-10-2, §8A-10-3, §8A-10-4, §8A-10-5, §8A-11-1, §8A-11-2, §8A-12-1, §8A-12-2, §8A-12-3, §8A-12-4, §8A-12-5, §8A-12-6, §8A-12-7, §8A-12-8, §8A-12-9, §8A-12-10, §8A-12-11, §8A-12-12, §8A-12-13, §8A-12-14, §8A-12-15, §8A-12-16, §8A-12-17, §8A-12-18, §8A-12-19, §8A-12-20 and §8A-12-21, all relating to land-use planning; authorizing planning commissions; setting forth jurisdiction and requirements for various types of planning commissions; requiring comprehensive plans; requiring surveys and studies; establishing mandatory and optional components of plans; establishing processes for adopting and amending plans; authorizing ordinances; establishing process for enacting ordinances; setting forth requirements for contents of ordinances; providing for subdivision or land development ordinances; providing for subdivision or land development plans and plats; establishing processes for approval of minor and major subdivisions; requiring plats to be recorded; setting forth appeal processes; providing for methods of security for construction and development; establishing vested property rights; providing for enforcement authority; providing for elections on ordinances; providing for variances from ordinances; providing for exemptions from ordinances; authorizing boards of zoning appeals; providing civil and criminal penalties; providing for injunctions; validating prior plans and ordinances; and incorporating special provisions for factory-built homes, group residential facilities and voluntary farmland protection programs.

Be it enacted by the Legislature of West Virginia:


CHAPTER 8A. LAND USE PLANNING.

Article
2. Planning Commissions.
5. Subdivision or Land Development Plan and Plat.
7. Zoning Ordinance.
8. Board of Zoning Appeals.
12. Voluntary Farmland Protection Programs.

ARTICLE 1. GENERAL PROVISIONS.

§8A-1-1. Legislative findings.

§8A-1-1. Legislative findings.

(a) The Legislature finds, as the object of this chapter, the following:

(1) That planning land development and land use is vitally important to a community;

(2) A planning commission is helpful to a community to plan for land development, land use and the future;

(3) A plan and a vision for the future is important when deciding uses for and development of land;

(4) That sprawl is not advantageous to a community;

(5) A comprehensive plan is a guide to a community’s goals and objectives and a way to meet those goals and objectives;

(6) That the needs of agriculture, residential areas, industry and business be recognized in future growth;

(7) That the growth of the community is commensurate with and promotive of the efficient and economical use of public funds;

(8) Promoting growth that is economically sound, environmentally friendly and supportive of community livability to enhance quality of life is a good objective for a governing body; and
(9) Governing bodies of municipalities and counties need flexibility when authorizing land development and use.

(b) Therefore, the Legislature encourages and recommends the following:

(1) The goal of a governing body should be to have a plan and a vision for the future, and an agency to oversee it;

(2) A governing body should have a planning commission, to serve in an advisory capacity to the governing body, and promote the orderly development of its community;

(3) A comprehensive plan should be the basis for land development and use, and be reviewed and updated on a regular basis;

(4) A goal of a governing body should be to reduce sprawl;

(5) That planning commissions prepare a comprehensive plan and governing bodies adopt the comprehensive plans;

(6) Governing bodies, units of government and planning commissions work together to provide for a better community;

(7) Governing bodies may have certain regulatory powers over developments affecting the public welfare; and

(8) Based upon a comprehensive plan, governing bodies may:

(A) Enact a subdivision and land development ordinance;

(B) Require plans and plats for land development;

(C) Issue improvement location permits for construction; and

(D) Enact a zoning ordinance.

As used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) "Abandonment" means the relinquishment of property or a cessation of the use of the property by the owner or lessee without any intention of transferring rights to the property to another owner or resuming the nonconforming use of the property for a period of one year.

(b) "Aggrieved" or "aggrieved person" means a person who:

(1) Is denied by the planning commission, board of subdivision and land development appeals, or the board of zoning appeals, in whole or in part, the relief sought in any application or appeal; or

(2) Has demonstrated that he or she will suffer a peculiar injury, prejudice or inconvenience beyond that which other residents of the county or municipality may suffer.

(c) "Comprehensive plan" means a plan for physical development, including land use, adopted by a governing body, setting forth guidelines, goals and objectives for all activities that affect growth and development in the governing body's jurisdiction.

(d) "Conditional use" means a use which because of special requirements or characteristics may be permitted in a particular zoning district only after review by the board of zoning appeals and upon issuance of a conditional use permit, and subject to the limitations and conditions specified in the zoning ordinance.

(e) "Contiguous" means lots, parcels, municipal boundaries or county boundaries that are next to, abutting and having a boundary, or portion thereof, that is coterminous. Streets, highways, roads or other traffic or utility easements, streams, rivers, and other natural topography are not to be used to
determine lots, parcels, municipal boundaries or county boundaries as contiguous.

(f) "Essential utilities and equipment" means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:

(1) Local serving;

(2) Nonlocal or transmission through the county or municipality; and

(3) Water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies:

(A) Public service commission;

(B) Department of environmental protection; or

(C) The department of health and human resources.

(g) "Existing use" means use of land, buildings or activity permitted or in existence prior to the adoption of a zoning map or ordinances by the county or municipality. If the use is nonconforming to local ordinance and lawfully existed prior to the adoption of the ordinance, the use may continue to exist as a nonconforming use until abandoned for a period of one year: Provided, That in the case of natural resources, the absence of natural resources extraction or harvesting is not abandonment of the use.

(h) "Exterior architectural features" means the architectural character and general composition of the exterior of a structure,
including, but not limited to, the kind, color and texture of the
building material, and the type, design and character of all
windows, doors, massing and rhythm, light fixtures, signs, other
appurtenant elements and natural features when they are
integral to the significance of the site, all of which are subject
to public view from a public street, way or place.

(i) “Factory-built homes” means modular and manufactured
homes.

(j) “Flood-prone area” means any land area susceptible to
repeated inundation by water from any source.

(k) “Governing body” means the body that governs a
municipality or county.

(l) “Historic district” means a geographically definable
area, designated as historic on a national, state or local register,
possessing a significant concentration, linkage or continuity of
sites, buildings, structures or objects united historically or
aesthetically by plan or physical development.

(m) “Historic landmark” means a site, building, structure or
object designated as historic on a national, state or local
register.

(n) “Historic site” means the location of a significant event.
a prehistoric or historic occupation or activity, or a building or
structure whether standing, ruined or vanished, where the
location itself possesses historical, cultural or archaeological
value regardless of the value of any existing structure and
designated as historic on a national, state or local register.

(o) “Improvement location permit” means a permit issued
by a municipality or county, in accordance with its subdivision
and land development ordinance, for the construction, erection,
installation, placement, rehabilitation or renovation of a
structure or development of land, and for the purpose of
regulating development within flood-prone areas.
(p) "Infill development" means to fill in vacant or underused land in existing communities with new development that blends in with its surroundings.

(q) "Land development" means the development of one or more lots, tracts or parcels of land by any means and for any purpose, but does not include easements, rights-of-way or construction of private roads for extraction, harvesting or transporting of natural resources.

(r) "Manufactured home" means housing built in a factory according to the federal manufactured home construction and safety standards effective the fifteenth day of June, one thousand nine hundred seventy-six.

(s) "Modular home" means housing built in a factory that meets state or local building codes where the homes will be sited.

(t) "Non-traditional zoning ordinance" means an ordinance that sets forth development standards and approval processes for land uses within the jurisdiction, but does not necessarily divide the jurisdiction into distinct zoning classifications or districts requiring strict separation of different classifications or uses, and does not require a zoning map amendment.

(u) "Permitted use" means any use allowed within a zoning district, subject to the restrictions applicable to that zoning district and is not a conditional use.

(v) "Plan" means a written description for the development of land.

(w) "Planning commission" means a municipal planning commission, a county planning commission, a multicounty planning commission, a regional planning commission or a joint planning commission.

(x) "Plat" means a map of the land development.
(y) “Preferred development area” means a geographically defined area where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities.

(z) “Public place” means any lots, tracts or parcels of land, structures, buildings or parts thereof owned or leased by a governing body or unit of government.

(aa) “Sprawl” means poorly planned or uncontrolled growth, usually of a low-density nature, within previously rural areas, that is land consumptive, auto-dependent, designed without respect to its surroundings, and some distance from existing development and infrastructure.

(bb) “Streets” means streets, avenues, boulevards, highways, roads, lanes, alleys and all public ways.

(cc) “Subdivision or partition” means the division of a lot, tract or parcel of land into two or more lots, tracts or parcels of land, or the recombination of existing lots, tracts, or parcels.

(dd) “Unit of government” means any federal, state, regional, county or municipal government or governmental agency.

(ee) “Urban area” means all lands or lots within the jurisdiction of a municipal planning commission.

(ff) “Utility” means a public or private distribution service to the public that is regulated by the public service commission.

(gg) “Zoning” means the division of a municipality or county into districts or zones which specify permitted and conditional uses and development standards for real property within the districts or zones.

(hh) “Zoning map” means a map that geographically illustrates all zoning district boundaries within a municipality or county, as described within the zoning ordinance, and which
is certified as the official zoning map for the municipality or county.

ARTICLE 2. PLANNING COMMISSIONS.

§8A-2-1. Planning commissions authorized.
§8A-2-2. Continuation of established planning commissions.
§8A-2-4. County planning commission.
§8A-2-5. Multicounty planning commission, regional planning commission or joint planning commission.
§8A-2-10. Governing body’s duties.

§8A-2-1. Planning commissions authorized.

(a) A governing body of a municipality or county may, by ordinance, create a planning commission to promote the orderly development of its jurisdiction.

(b) Governing bodies may, by ordinance, create a multicounty planning commission, a regional planning commission or a joint planning commission to promote the orderly development of land and reduce duplication of effort.

(c) The planning commission shall serve in an advisory capacity to the governing body or governing bodies that created it and have certain regulatory powers over land planning.

(d) Governing bodies and planning commissions are authorized to carry out the objectives and overall purposes of this chapter.

(e) A planning commission has only those powers, duties and jurisdiction as given to it in the ordinance creating it.

§8A-2-2. Continuation of established planning commissions.
(a) A planning commission established prior to the effective date of this chapter shall continue to operate as though established under the terms of this chapter. All actions lawfully taken under prior acts are hereby validated and continued in effect until amended or repealed by action taken under the authority of this chapter.

(b) The membership of an existing planning commission shall continue unchanged until the first regular meeting, after the enactment of this chapter, of the governing body that established the planning commission. At that time, any appointments or changes necessary shall be made to bring the membership of the existing planning commission into conformity with the provisions of this chapter.


(a) A municipal planning commission shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission.

(b) The members of a municipal planning commission must be:

(1) Residents of the municipality; and

(2) Qualified by knowledge and experience in matters pertaining to the development of the municipality.

(c) At least three fifths of all of the members must have been residents of the municipality for at least three years prior to nomination or appointment and confirmation.

(d) The members of a municipal planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, government and other relevant disciplines. One member must be a member of the municipal governing body or a designee and one member must be a member of the administrative department of the municipality or a designee. The term of
membership for these two members is the same as their term of
office.

(e) The remaining members of the municipal planning
commission first selected shall serve respectively for terms of
one year, two years and three years, divided equally or as nearly
equally as possible between these terms. Thereafter, members
shall serve three-year terms. Vacancies shall be filled for the
unexpired term and made in the same manner as original
selections were made.

(f) The members of a municipal planning commission shall
serve without compensation, but shall be reimbursed for all
reasonable and necessary expenses actually incurred in the
performance of their official duties.

(g) Nominations for municipal planning commission
membership shall be made by the administrative authority and
confirmed by the governing body when the administrative
authority and the governing body are separate, or appointed and
confirmed by the governing body where the administrative
authority and governing body are the same.

(h) An individual may serve as a member of a municipal
planning commission, a county planning commission, a
multicounty planning commission, a regional planning commis-
sion or a joint planning commission, at the same time.

(i) The governing body of the municipality may establish
procedures for the removal of members of the planning
commission for inactivity, neglect of duty or malfeasance. The
procedures must contain provisions requiring that the person to
be removed be provided with a written statement of the reasons
for removal and an opportunity to be heard on the matter.

§8A-2-4. County planning commission.

(a) A county planning commission shall have not less than
five nor more than fifteen members, the exact number to be
specified in the ordinance creating the planning commission.
(b) The members of a county planning commission must be:

(1) Residents of the county; and

(2) Qualified by knowledge and experience in matters pertaining to the development of the county.

(c) At least three fifths of all of the members must have been residents of the county for at least three years prior to appointment and confirmation by the county commission.

(d) The members of a county planning commission must fairly represent different areas of interest, knowledge and expertise, including, but not limited to, business, industry, labor, farming, government and other relevant disciplines. One member must be a member of the county commission or a designee. The term of membership for this member is the same as the term of office.

(e) The remaining members of the county planning commission first selected shall serve respectively for terms of one year, two years and three years, divided equally or as nearly equally as possible between these terms. Thereafter, members shall serve three-year terms. Vacancies shall be filled for the unexpired term and made in the same manner as original selections were made.

(f) The members of a county planning commission shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

(g) Appointments for county planning commission membership shall be made and confirmed by the county commission.

(h) An individual may serve as a member of a municipal planning commission, a county planning commission, a
multicounty planning commission, a regional planning commission or a joint planning commission, at the same time.

(i) The county commission may establish procedures for the removal of members of the planning commission for inactivity, neglect of duty or malfeasance. The procedures must contain provisions requiring that the person to be removed be provided with a written statement of the reasons for removal and an opportunity to be heard on the matter.

§8A-2-5. Multicounty planning commission, regional planning commission or joint planning commission.

(a) A multicounty planning commission, a regional planning commission or a joint planning commission shall have not less than five nor more than fifteen members, the exact number to be specified in the ordinance creating the planning commission.

(b) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must be:

(1) Residents of the jurisdiction of the multicounty planning commission, regional planning commission or joint planning commission; and

(2) Qualified by knowledge and experience in matters pertaining to the development of the jurisdiction.

(c) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must equally represent the jurisdictions in the planning commission, and must have been residents of the jurisdiction he or she represents for at least three years prior to appointment and confirmation.

(d) The members of a multicounty planning commission, a regional planning commission or a joint planning commission must fairly represent different areas of interest, knowledge and
expertise, including, but not limited to, business, industry, 
labor, farming, government and other relevant disciplines. 
Each governing body participating in the planning commission 
must have one member from its governing body on the planning 
commission. The term of membership for this member is the 
same as the term of office.

(e) The remaining members of the multicounty planning 
commission, regional planning commission or joint planning 
commission first selected shall serve respectively for terms of 
one year, two years and three years, divided equally or as nearly 
equally as possible between these terms. Thereafter, members 
shall serve three-year terms. Vacancies shall be filled for the 
unexpired term and made in the same manner as original 
selections were made.

(f) The members of a multicounty planning commission, a 
regional planning commission or a joint planning commission 
shall serve without compensation, but shall be reimbursed for 
all reasonable and necessary expenses actually incurred in the 
performance of their official duties.

(g) Appointments for a multicounty planning commission, 
a regional planning commission or a joint planning commission 
membership shall be made and confirmed by each governing 
body participating in the planning commission.

(h) An individual may serve as a member of a municipal 
planning commission, a county planning commission, a 
multicounty planning commission, a regional planning commis-
ion or a joint planning commission, at the same time.

(i) The governing bodies may establish procedures for the 
removal of members of the planning commission for inactivity, 
neglect of duty or malfeasance. The procedures must contain 
provisions requiring that the person to be removed be provided 
with a written statement of the reasons for removal and an 
opportunity to be heard on the matter.

(a) The governing body of a municipality located within a county with a planning commission may, by ordinance, designate the county planning commission as the municipal planning commission. A county planning commission designated as a municipal planning commission has all the powers, authority and duties granted under this article to a municipal planning commission.

(b) The county commission of a county with a municipal planning commission may, by ordinance, designate the municipal planning commission as the county planning commission. A municipal planning commission designated as a county planning commission has all the powers, authority and duties granted under this article to a county planning commission.

(c) If a municipality is located in more than one county, this section only applies to the county where the major portion of the territory of the municipality is located.

(d) Municipalities and counties may contract annually with each other to pay expenses for shared planning commissions.


(a) A planning commission shall meet at least quarterly and may meet more frequently at the request of the president or by two or more members.

(b) Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.

(c) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.


A planning commission must have quorum to conduct a meeting. A majority of the members of a planning commission is a quorum. No action of a planning commission is official

At its first regular meeting each year, a planning commission shall elect from its members a president and vice president. The vice president shall have the power and authority to act as president of the planning commission during the absence or disability of the president.

§SA-2-10. Governing body’s duties.

(a) The county commission in the case of a county planning commission, and the governing body of the municipality in the case of a municipal planning commission, shall provide the planning commission with:

1. Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and
2. Appropriate money to defray the reasonable expenses of the planning commission.

(b) In the ordinance creating a multicounty planning commission, a regional planning commission or a joint planning commission, the governing bodies shall designate office space and will each equally appropriate money sufficient to defray the reasonable expenses of the planning commission.

(c) Planning commissions are authorized to accept gifts, funds and donations which will be deposited with the appropriate governing body in a special nonreverting planning commission fund to be available for expenditures by the planning commission for the purpose designated by the donor.


A planning commission has the following powers and duties:
(1) Exercise general supervision for the administration of the affairs of the commission;

(2) Prescribe rules and regulations pertaining to administration, investigations and hearings: Provided, That the rules and regulations are adopted by the governing body;

(3) Supervise the fiscal affairs and responsibilities of the commission;

(4) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the planning commission: Provided, That the governing body sets the salaries;

(5) Keep an accurate and complete record of all planning commission proceedings;

(6) Record and file all bonds and contracts;

(7) Take responsibility for the custody and preservation of all papers and documents of the planning commission;

(8) Make recommendations to the appropriate governing body concerning planning;

(9) Make an annual report to the appropriate governing body concerning the operation of the planning commission and the status of planning within its jurisdiction;

(10) Prepare, publish and distribute reports, ordinances and other material relating to the activities authorized under this article;

(11) Adopt a seal, and certify all official acts;

(12) Invoke any legal, equitable or special remedy for the enforcement of the provisions of this article or any ordinance, rule and regulation or any action taken thereunder;
(13) Prepare and submit an annual budget to the appropriate governing body;

(14) If necessary, establish advisory committees;

(15) Delegate limited powers to a committee composed of one or more members of the commission; and

(16) Contract for special or temporary services and professional counsel with the approval of the governing body. Upon request, a county prosecuting attorney, the county surveyor, the county engineer, or any other county employee may render assistance and service to a planning commission without compensation.

ARTICLE 3. COMPREHENSIVE PLAN.

§8A-3-1. Purpose and goals of a comprehensive plan.
§8A-3-2. Study guidelines for a comprehensive plan.
§8A-3-3. Authority for planning commission.
§8A-3-4. Mandatory components of a comprehensive plan.
§8A-3-5. Optional components of a comprehensive plan.
§8A-3-6. Notice and public participation requirement for a comprehensive plan.
§8A-3-7. Submission of comprehensive plan.
§8A-3-8. Adoption of comprehensive plan by governing body.
§8A-3-9. Filing the comprehensive plan
§8A-3-10. Rejection or amendment of comprehensive plan by governing body.
§8A-3-11. Amending comprehensive plan after adoption.
§8A-3-12. Validation of prior comprehensive plans.
§8A-3-13. Intergovernmental cooperation.
§8A-3-14. Jurisdiction of municipal planning commission.

§8A-3-1. Purpose and goals of a comprehensive plan.

(a) The general purpose of a comprehensive plan is to guide a governing body to accomplish a coordinated and compatible development of land and improvements within its territorial jurisdiction, in accordance with present and future needs and resources.
(b) A comprehensive plan is a process through which citizen participation and thorough analysis are used to develop a set of strategies that establish as clearly and practically as possible the best and most appropriate future development of the area under the jurisdiction of the planning commission. A comprehensive plan aids the planning commission in designing and recommending to the governing body ordinances that result in preserving and enhancing the unique quality of life and culture in that community and in adapting to future changes of use of an economic, physical or social nature. A comprehensive plan guides the planning commission in the performance of its duties to help achieve sound planning.

(c) A comprehensive plan must promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, as well as efficiency and economy in the process of development.

(d) The purpose of a comprehensive plan is to:

(1) Set goals and objectives for land development, uses and suitability for a governing body, so a governing body can make an informed decision;

(2) Ensure that the elements in the comprehensive plan are consistent;

(3) Coordinate all governing bodies, units of government and other planning commissions to ensure that all comprehensive plans and future development are compatible;

(4) Create conditions favorable to health, safety, mobility, transportation, prosperity, civic activities, recreational, educational, cultural opportunities and historic resources;

(5) Reduce the wastes of physical, financial, natural or human resources which result from haphazard development, congestion or scattering of population;
(6) Reduce the destruction or demolition of historic sites and other resources by reusing land and buildings and revitalizing areas;

(7) Promote a sense of community, character and identity;

(8) Promote the efficient utilization of natural resources, rural land, agricultural land and scenic areas;

(9) Focus development in existing developed areas and fill in vacant or underused land near existing developed areas to create well designed and coordinated communities; and

(10) Promote cost-effective development of community facilities and services.

(e) A comprehensive plan may provide for innovative land use management techniques, including:

(1) Density bonuses and/or density transfer;

(2) Clustering;

(3) Design guidelines, including planned unit developments;

(4) Conservation easements;

(5) Infill development;

(6) Consolidation of services; and

(7) Any other innovative land use technique that will promote the governing body’s development plans.

§8A-3-2. Study guidelines for a comprehensive plan.

(a) When preparing or amending a comprehensive plan, a planning commission shall make comprehensive surveys and studies of the existing conditions and services and probable future changes of such conditions and services within the territory under its jurisdiction.
(b) The comprehensive surveys and studies may cover such factors as population density, health, general welfare, historic sites, mobility, transportation, food supply, education, water and sanitation requirements, public services, accessibility for the disabled and future potential for residential, commercial, industrial or public use.

c) The major objective of the planning process is providing information to and coordination among divergent elements in the municipality or county. The elements in the comprehensive plan shall be consistent and governing bodies, units of government and planning commissions must work together to ensure that comprehensive plans and future development are compatible.

§8A-3-3. Authority for planning commission.

(a) A planning commission shall prepare a comprehensive plan for the development of land within its jurisdiction. A planning commission shall then recommend the comprehensive plan to the appropriate governing body for adoption.

(b) A county, multicounty, regional or joint comprehensive plan may include the planning of towns, villages or municipalities to the extent to which, in the planning commission's judgment, they are related to the planning of the unincorporated territory of the county as a whole: Provided, That the comprehensive plan shall not be considered a comprehensive plan for any town, village or municipality without the consent of the planning commission and/or the governing body of the town, village or municipality.

(c) A comprehensive plan should be coordinated with the plans of the department of transportation, insofar as it relates to highways, thoroughfares, trails and pedestrian ways under the jurisdiction of that planning commission.

(d) A county planning commission may prepare a comprehensive plan for either the entire county or a part of the county.
(e) A multicounty, regional or joint planning commission may prepare a comprehensive plan for land within its jurisdiction.

§8A-3-4. Mandatory components of a comprehensive plan.

(a) The comprehensive plan is a written statement on present and future land use and development patterns consisting of descriptive materials, including text, graphics and maps, covering the objectives, principles and guidelines for the orderly and balanced present and future economic, social, physical, environmental and fiscal development of the area under the jurisdiction of the planning commission.

(b) A comprehensive plan shall meet the following objectives:

1. A statement of goals and objectives for a governing body, concerning its present and future land development;
2. A timeline on how to meet short and long-range goals and objectives;
3. An action plan setting forth implementation strategies;
4. Recommend to the governing body a financial program for goals and objectives that need public financing;
5. A statement of recommendations concerning future land use and development policies that are consistent with the goals and objectives set forth in the comprehensive plan;
6. A program to encourage regional planning, coordination and cooperation with other governing bodies, units of government and planning commissions; and
7. Maps, plats, charts and/or descriptive material presenting basic information on the land included in the comprehensive plan, including present and future uses.
(c) The comprehensive plan shall have, but is not limited to, the following components:

1. Land use. — Designate the current, and set goals and programs for the proposed general distribution, location and suitable uses of land, including, but not limited to:
   (A) Residential, commercial, industrial, agricultural, recreational, educational, public, historic, conservation, transportation, infrastructure or any other use of land;
   (B) Population density and building intensity standards;
   (C) Growth and/or decline management;
   (D) Projected population growth or decline; and
   (E) Constraints to development, including identifying flood-prone and subsidence areas.

2. Housing. — Set goals, plans and programs to meet the housing needs for current and anticipated future residents of the jurisdiction, including, but not limited to:
   (A) Analyzing projected housing needs and the different types of housing needed, including affordable housing and universally designed housing accessible to persons with disabilities;
   (B) Identifying the number of projected necessary housing units and sufficient land needed for all housing needs;
   (C) Addressing substandard housing;
   (D) Rehabilitating and improving existing housing; and
   (E) Adaptive reuse of buildings into housing.

3. Transportation. — Consistent with the land use component, identify the type, location, programs, goals and plans to
meet the intermodal transportation needs of the jurisdiction,
including, but not limited to:

(A) Vehicular, transit, air, port, railroad, river and any other
mode of transportation system;

(B) Movement of traffic and parking;

(C) Pedestrian and bicycle systems; and

(D) Intermodal transportation.

(4) Infrastructure. -- Designate the current, and set goals,
plans and programs, for the proposed locations, capabilities and
capacities of all utilities, essential utilities and equipment,
infrastructure and facilities to meet the needs of current and
anticipated future residents of the jurisdiction.

(5) Public services. -- Set goals, plans and programs, to
ensure public safety, and meet the medical, cultural, historical,
community, social, educational and disaster needs of the current
and anticipated future residents of the jurisdiction.

(6) Rural. -- Consistent with the land use component,
identify land that is not intended for urban growth and set goals,
plans and programs for growth and/or decline management in
the designated rural area.

(7) Recreation. -- Consistent with the land use component,
identify land, and set goals, plans and programs for recreational
and tourism use in the area.

(8) Economic development. -- Establish goals, policies,
objectives, provisions and guidelines for economic growth and
vitality for current and anticipated future residents of the
jurisdiction, including, but not limited to:

(A) Opportunities, strengths and weaknesses of the local
economy and workforce;
(B) Identifying and designating economic development sites and/or sectors for the area; and

(C) Type of economic development sought, correlated to the present and projected employment needs and utilization of residents in the area.

(9) Community design. — Consistent with the land use component, set goals, plans and programs to promote a sense of community, character and identity.

(10) Preferred development areas. — Consistent with the land use component, identify areas where incentives may be used to encourage development, infill development or redevelopment in order to promote well designed and coordinated communities and prevent sprawl.

(11) Renewal and/or redevelopment. — Consistent with the land use component, identify slums and other blighted areas and set goals, plans and programs for the elimination of such slums and blighted areas and for community renewal, revitalization and/or redevelopment.

(12) Financing. — Recommend to the governing body short and long-term financing plans to meet the goals, objectives and components of the comprehensive plan.

(13) Historic preservation. — Identify historical, scenic, archaeological, architectural or similar significant lands or buildings, and specify preservation plans and programs so as not to unnecessarily destroy the past development which may make a viable and affordable contribution in the future.

§8A-3-5. Optional components of a comprehensive plan.

The comprehensive plan may have, but is not limited to, the following components:

(1) History. — An analysis of the history of the area to better provide for the future.
5  (2) *Environmental.* — Recommend programs where
6  appropriate to appropriate regulatory agencies to protect the
7  area from all types of pollution and promote a healthy environ-
8  ment.

9  (3) *Tourism.* — Recommend programs to promote tourism
10  and cultural and heritage development in the area.

11  (4) *Conservation.* — Recommend programs to conserve and
12  protect wildlife, natural habitats, sensitive natural areas, green
13  spaces and direct access to sunlight.

14  (5) *Safety.* — Recommend public safety programs to educate
15  and protect the public from disasters, both natural and man-
16  made.

17  (6) *Natural resources use.* — Identify areas for natural
18  resources use in an urban area.

§8A-3-6. **Notice and public participation requirement for a**
**comprehensive plan.**

1  (a) Prior to recommending a new or amended comprehen-
2  sive plan to a governing body for adoption, the planning
3  commission shall give notice and hold a public hearing on the
4  new or amended comprehensive plan.

5  (b) At least thirty days prior to the date set for the public
6  hearing, the planning commission shall publish a notice of the
7  date, time and place of the public hearing as a Class I legal
8  advertisement in compliance with the provisions of article
9  three, chapter fifty-nine of this code. The publication area shall
10  be the area covered by the comprehensive plan.

11  (c) A planning commission shall include public participa-
12  tion throughout the process of studying and preparing a
13  comprehensive plan and amending a comprehensive plan. A
14  planning commission shall adopt procedures for public partici-
15  pation throughout the process of studying and preparing or
16  amending a comprehensive plan.
§8A-3-7. Submission of comprehensive plan.

(a) After the comprehensive plan is prepared and before it is approved, the planning commission shall hold a public hearing. After the public hearing and approval, the planning commission shall submit the recommended comprehensive plan to the applicable governing body for consideration and adoption.

(b) At the first meeting of the applicable governing body following the submission of the recommended comprehensive plan by the planning commission to the governing body, the planning commission shall present the recommended comprehensive plan to the governing body.

(c) After the presentation of the recommended comprehensive plan by the planning commission to the governing body and prior to adoption, the governing body shall hold a public hearing after giving notice.

(d) At least fifteen days prior to the date set for the public hearing, the planning commission shall publish a notice of the date, time and place of the public hearing as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the area covered by the comprehensive plan.

§8A-3-8. Adoption of comprehensive plan by governing body.

(a) Within the latter of ninety days or three scheduled meetings after the submission of the recommended comprehensive plan to the governing body, the governing body must act by either adopting, rejecting or amending the comprehensive plan.

(b) If the comprehensive plan is adopted by the governing body, then the governing body may adopt the comprehensive
§8A-3-9. Filing the comprehensive plan.

After the adoption of a comprehensive plan by a governing body, the governing body must file the adopted comprehensive plan in the office of the clerk of the county commission where the comprehensive plan applies. If an adopted comprehensive plan covers more than one county, a certified copy of the adopted comprehensive plan must be filed in the office of the clerk of the county commission of each county covered by the adopted comprehensive plan.

§8A-3-10. Rejection or amendment of comprehensive plan by governing body.

(a) If a governing body rejects or amends the recommended comprehensive plan, then the comprehensive plan must be returned to the planning commission for its consideration, with a written statement of the reasons for the rejection or amendment.

(b) The planning commission has forty-five days to consider the rejection or amendment and make recommendations to the governing body.

(c) If the planning commission approves the amendment to the comprehensive plan, then the comprehensive plan shall stand as adopted by the governing body.

(d) If the planning commission disapproves of the rejection or amendment, then the planning commission shall state its reasons in its written recommendations to the governing body.
(e) Within forty-five days of receipt of the planning commission's written recommendations for disapproval, the governing body must act on the comprehensive plan.

(f) If the planning commission does not file a written recommendation with the governing body within forty-five days, then the action in rejecting or amending the comprehensive plan is final.

§SA-3-11. Amending comprehensive plan after adoption.

(a) After the adoption of a comprehensive plan by the governing body, the planning commission shall follow the comprehensive plan, and review the comprehensive plan and make updates at least every ten years.

(b) After the adoption of a comprehensive plan by the governing body, all amendments to the comprehensive plan shall be made by the planning commission and recommended to the governing body for adoption in accordance with the procedures set forth in sections six, seven, eight and nine of this article. The planning commission shall hold a public hearing prior to its recommendation to the governing body.

(c) If a governing body wants an amendment, it may request in writing for the planning commission to prepare an amendment. The planning commission must hold a public hearing within one hundred twenty days after the written request by the governing body to the planning commission is received.

(d) Within the latter of ninety days or three scheduled meetings after the submission of the recommended amendment to the comprehensive plan to the governing body, the governing body must act by either adopting, rejecting or amending the comprehensive plan.

§SA-3-12. Validation of prior comprehensive plans.

(a) The adoption of a comprehensive plan or any general development plans by a planning commission, under the
authority of prior acts, is hereby validated and the plans may continue in effect for ten years after the effective date of this chapter or until the plans are revised, amended or replaced in accordance with this chapter.

(b) After the effective date of this chapter, amendments to prior plans shall be made in accordance with the provisions of this article.

§8A-3-13. Intergovernmental cooperation.

(a) With a view to coordinating and integrating the planning of municipalities and/or counties with each other, all governing bodies and units of government within the lands under the jurisdiction of the planning commission preparing or amending a comprehensive plan, all governing bodies and units of government affected by the comprehensive plan, and any other interested or affected governing body, unit of government or planning commission, must cooperate, participate, share information and give input when a planning commission prepares or amends a comprehensive plan.

(b) All planning commissions, governing bodies and units of government are authorized to cooperate and share information with each other and may adopt rules and regulations to coordinate and integrate planning.

(c) All planning commissions, governing bodies and units of government must make available, upon the request of a planning commission, any information, maps, documents, data and plans pertinent to the preparation of a comprehensive plan.

§8A-3-14. Jurisdiction of municipal planning commission.

The jurisdiction of a municipal planning commission shall not extend beyond the corporate limits of the municipality.

ARTICLE 4. SUBDIVISION AND LAND DEVELOPMENT ORDINANCE.

§8A-4-1. Subdivision and land development ordinances authorized.

§8A-4-2. Contents of subdivision and land development ordinance.
§8A-4-1. Subdivision and land development ordinances authorized.

(a) The governing body of a municipality or a county may regulate subdivisions and land development within its jurisdiction by:

(1) Adopting a comprehensive plan; and

(2) Enacting a subdivision and land development ordinance.

(b) A municipality may adopt, by reference, the subdivision and land development ordinance of the county in which it is located.

(c) With the prior approval of the county planning commission, a municipality may, by ordinance, designate the county planning commission as the planning commission for the municipality to review and approve subdivision or land development plans and plats.

§8A-4-2. Contents of subdivision and land development ordinance.

(a) A subdivision and land development ordinance shall include the following provisions:

(1) A minor subdivision or land development process, including criteria, requirements and a definition of minor subdivision;

(2) The authority of the planning commission and its staff to approve a minor subdivision or land development;
(3) A major subdivision or land development process, including criteria and requirements;

(4) The authority of the planning commission to approve a major subdivision or land development;

(5) The standards for setback requirements, lot sizes, streets, sidewalks, walkways, parking, easements, rights-of-way, drainage, utilities, infrastructure, curbs, gutters, street lights, fire hydrants, storm water management and water and wastewater facilities;

(6) Standards for flood-prone or subsidence areas;

(7) A review process for subdivision or land development plans and plats by the planning commission;

(8) An approval process for subdivision or land development plans and plats by the planning commission, including the authority to approve subdivision or land development plans and plats with conditions;

(9) A process to amend final approved subdivision or land development plans and plats;

(10) A requirement that before development of the land is commenced, subdivision and land development plans and plats must be approved by the applicable planning commission, in accordance with the comprehensive plan;

(11) A requirement that after approval of the subdivision or land development plat by the planning commission and before the subdivision or development of the land is commenced, the subdivision and land development plat shall be recorded in the office of the clerk of the county commission where a majority of the land to be developed lies;

(12) A schedule of fees to be charged which are proportioned to the cost of checking and verifying proposed plats;
(13) The process for granting waivers from the minimum standards of the subdivision and land development ordinance;

(14) Improvement location permit process, including a requirement that a structure or development of land is prohibited without an improvement location permit;

(15) The acceptable methods of payment to cover the cost of the water and sewer service infrastructure, which can include, but are not limited to, bonds, impact fees, escrow fees and proffers;

(16) The process for cooperating and coordinating with other governmental agencies affected by the subdivision and land development and use; and

(17) Penalties for violating the subdivision and land development ordinance.

(b) A subdivision and land development ordinance may include the following provisions:

(1) Establishing a board of subdivision and land development appeals with the same powers, duties and appeals process as set out for the board of zoning appeals under the provisions of article eight of this chapter;

(2) Requirements for green space, common areas, public grounds, walking and cycling paths, recreational trails, parks, playgrounds and recreational areas;

(3) Encourage the use of renewable energy systems and energy-conserving building design;

(4) Vested property right, including requirements;

(5) Exemptions of certain types of land development from the subdivision and land development ordinance requirements, including, but not limited to, single-family residential structures and farm structures; and
(6) Any other provisions consistent with the comprehensive plan the governing body considers necessary.

§8A-4-3. Enactment of subdivision and land development ordinance.

(a) Before a governing body enacts a subdivision and land development ordinance, the governing body shall hold at least one public hearing and give public notice.

(b) The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code, at least thirty days prior to the public hearing. The public notice must contain a brief summary of the principal provisions of the proposed subdivision and land development ordinance and a reference to the place or places where copies of the proposed subdivision and land development ordinance may be examined.

(c) After the public hearing, if the governing body makes other than technical amendments to the proposed subdivision and land development ordinance prior to voting on it, the governing body shall hold another public hearing and give public notice. The public notice shall be as provided in subsection (b) of this section, and must contain a brief summary of the amendments.

§8A-4-4. Filing the subdivision and land development ordinance.

After the enactment of the subdivision and land development ordinance by a governing body, the governing body must file the enacted subdivision and land development ordinance in the office of the clerk of the county commission where the subdivision and land development ordinance applies.

§8A-4-5. Amendments to the subdivision and land development ordinance.
After the enactment of the subdivision and land development ordinance by the governing body, all amendments to the subdivision and land development ordinance shall be made by the governing body after holding a public hearing with public notice.

§8A-4-6. Effect of adopted subdivision and land development ordinance.

After enactment of a subdivision and land development ordinance by the governing body, all subsequent subdivisions and land development must be done in accordance with the provisions of the subdivision and land development ordinance.

§8A-4-7. Validation of prior subdivision and land development ordinance.

All subdivision and land development ordinances, all amendments, supplements and changes to the ordinance, legally adopted under prior acts, and all action taken under the authority of the ordinance, are hereby validated and the ordinance shall continue in effect until amended or repealed by action of the governing body taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

ARTICLE 5. SUBDIVISION OR LAND DEVELOPMENT PLAN AND PLAT.

§8A-5-1. Jurisdiction of planning commissions.
§8A-5-2. Requirements for a minor subdivision or land development.
§8A-5-3. Application for minor subdivision or land development.
§8A-5-4. Approval of minor subdivision or land development plans and plats.
§8A-5-5. Recording of minor subdivision or land development plat.
§8A-5-6. Application for major subdivision or land development.
§8A-5-7. Contents of a major subdivision or land development plan and plat.
§8A-5-8. Approval of major subdivision or land development plans and plats.
§8A-5-10. Appeal process.
§8A-5-1. Jurisdiction of planning commissions.

(a) A planning commission has the authority to:

(1) Approve a minor subdivision or land development application within its jurisdiction;

(2) Exempt an application for a minor subdivision or land development within its jurisdiction; and

(3) Approve a major subdivision or land development application within its jurisdiction.

(b) The staff of a planning commission has the authority to approve a minor subdivision or land development application within its jurisdiction, if granted such authority by the governing body in the subdivision and land development ordinance.

(c) If a subdivision or land development plan and plat cannot be approved through the minor subdivision or land development process, then an applicant must use the major subdivision or land development approval process.

PART I. MINOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

§8A-5-2. Requirements for a minor subdivision or land development.

(a) An application for approval of a subdivision or land development plan and plat may be considered a minor subdivision or land development if it meets the following requirements:

(1) Only creates the maximum number of lots specifically permitted by the subdivision and land development ordinance for a minor subdivision or land development;

(2) Will not require the development of new or the extension of existing off-tract infrastructure; and
Such other requirements as determined by the governing body to ensure that required improvements are installed and not avoided by a series of minor subdivisions or land developments.

(b) The following can be considered a minor subdivision or land development if approved by the planning commission:

(1) Merger or consolidation of parcels of land;

(2) Land transfers between immediate family members; and

(3) Minor boundary line adjustments.

§8A-5-3. Application for minor subdivision or land development.

(a) An applicant submits a copy of a land development plat and the fees to the planning commission having jurisdiction over the land.

(b) Within seven days after the submission of the subdivision or land development plat, the applicant and the staff of the planning commission shall meet to discuss the proposed subdivision or land development and the criteria used to classify the proposal as minor.

(c) The staff of the planning commission may make a site inspection of the proposed subdivision or land development.

(d) Within ten days after the submission of the subdivision or land development plat, the staff of the planning commission shall notify the applicant in writing that the proposed subdivision or land development has been classified a minor subdivision or land development.

§8A-5-4. Approval of minor subdivision or land development plans and plats.

(a) Within ten days after a plat has been classified a minor subdivision or land development, then the planning commission or staff, if the authority has been given by the governing body, shall approve or deny the plat.
(b) If the planning commission approves the plat, then the planning commission shall affix its seal on the plat.

c) If the planning commission approves the plat with conditions, then the planning commission must state the conditions.

d) If the planning commission denies the plat, then the planning commission shall notify the applicant in writing of the reasons for the denial.

§8A-5-5. Recording of minor subdivision or land development plat.

After approval of a minor subdivision or land development plat by the planning commission and before the subdivision or development is commenced, the subdivision or land development plat shall be recorded by the applicant in the office of the clerk of the county commission where the land is located.

PART II. MAJOR SUBDIVISION OR LAND DEVELOPMENT PROCESS.

§8A-5-6. Application for major subdivision or land development.

(a) An applicant for approval of a major subdivision or land development plan and plat shall submit written application, a copy of the proposed land development plan and plat, and the fees to the planning commission having jurisdiction over the land.

(b) Within forty-five days after receipt of the application, the planning commission shall review the application for completeness and either accept or deny it.

c) If the application is not complete, then the planning commission may deny the application and must notify the applicant in writing stating the reasons for the denial.

§8A-5-7. Contents of a major subdivision or land development plan and plat.
(a) A land development plan and plat must include everything required by the governing body's subdivision and land development ordinance.

(b) If a governing body does not have a subdivision and land development ordinance or if a governing body's subdivision and land development ordinance does not specify what may be included in a subdivision or land development plan and plat, then the following may be included, when applicable, in a subdivision or land development plan and plat:

(1) Show that the subdivision or land development conforms to the governing body's comprehensive plan;

(2) A method of payment to cover the cost of the water and sewer service infrastructure, which can include, but is not limited to, bonds, impact fees, escrow fees and proffers;

(3) Coordination among land development with adjoining land owners, including, but not limited to, facilities and streets;

(4) Distribution of population and traffic in a manner tending to create conditions favorable to health, safety, convenience and the harmonious development of the municipality or county;

(5) Show that there is a fair allocation of areas for different uses, including, but not limited to, streets, parks, schools, public and private buildings, utilities, businesses and industry;

(6) Show that there is a water and sewer supply;

(7) Setback and lot size measures were used;

(8) The standards used for designating land which is subject to flooding or subsidence, details for making it safe, or information showing that such land will be set aside for use which will not endanger life or property and will not further aggravate or increase the existing menace;
(9) The control measures for drainage, erosion and sediment;

(10) The coordination of streets, sidewalks and pedestrian pathways in and bordering the land development; and

(11) The design, construction and improvement measures to be used for the streets, sidewalks, easements, rights-of-way, drainage, utilities, walkways, curbs, gutters, street lights, fire hydrants, water and wastewater facilities, and other improvements installed, including the width, grade and location for the purpose of accommodating prospective traffic, customers and facilitating fire protection.

§8A-5-8. Approval of major subdivision or land development plans and plats.

(a) Upon written request of the applicant for a determination, the planning commission must determine by vote at the next regular meeting or at a special meeting, whether or not the application is complete based upon a finding that the application meets the requirements set forth in its governing body’s subdivision and land development ordinance.

(b) If a governing body’s subdivision and land development ordinance does not specify what may be included in a land development plan and plat, then the planning commission must determine that an application is complete if the application meets the requirements set forth in subsection (b), section seven of this article.

(c) At a meeting where the application is determined to be complete, the planning commission must set a date, time and place for a public hearing and a meeting to follow the public hearing to vote on the application. The public hearing must be held within forty-five days, and the planning commission must notify the applicant of the public hearing and meeting in writing unless notice is waived in writing by the applicant. The planning commission must publish a public notice of the public
hearing and meeting in a local newspaper of general circulation
in the area at least twenty-one days prior to the public hearing.

(d) At a meeting at the conclusion of the public hearing or
a meeting held within fourteen days after the public hearing, the
planning commission shall vote to approve, deny or hold the
application.

(e) The application may be held for additional information
necessary to make a determination. An application may be held
for up to forty-five days.

(f) The planning commission shall approve the application
after the planning commission determines that an application is
complete and meets the requirements of the governing body's
subdivision and land development ordinance; or if the govern-
ing body does not have a subdivision and land development
 ordinance or if the subdivision and land development ordinance
does not specify what may be included in a subdivision or land
development plan and plat, that the application meets the
requirements set forth in subsection (b) section seven of this
article.

(g) If the planning commission approves the application,
then the planning commission shall affix its seal on the subdivi-
sion or land development plan and/or plat.

(h) If the planning commission approves the application
with conditions, then the planning commission must specify
those conditions.

(i) If the planning commission denies the application, then
the planning commission shall notify the applicant in writing of
the reasons for the denial. The applicant may request, one time,
a reconsideration of the decision of the planning commission,
which request for reconsideration must be in writing and
received by the planning commission no later than ten days
after the decision of the planning commission is received by the
applicant.

1 After approval of a major subdivision or land development plat by the planning commission and after the conditions of the planning commission are met, the subdivision or land development plat shall be recorded by the applicant in the office of the clerk of the county commission where the land is located. If the land is located in more than one county, then the land development plat shall be recorded in the county of the initial land development and subsequently recorded in the other counties when there is land development in that county.

§8A-5-10. Appeal process.

1 (a) An appeal may be made by an aggrieved person from any decision or ruling of the planning commission to:

2 (1) The circuit court, pursuant to the provisions of article nine of this chapter; or

3 (2) A board of subdivision and land development appeals, if the governing body has established a board of subdivision and land development appeals by ordinance.

4 (b) Within thirty days after the date of the denial, the petition, specifying the grounds of the appeal in writing, must be filed with:

5 (1) The circuit court of the county in which the affected land or the major portion of the affected land is located; or

6 (2) The board of subdivision and land development appeals that has jurisdiction over the affected land.


1 A land development plan and plat that has not been approved by the planning commission is without legal effect:

2 Provided, That failure to comply with this article shall not
invalidate or affect the title to any land within the area of the 
land development plat.


(a) A vested property right is a right to undertake and 
complete the land development. The right is established when 
the land development plan and plat is approved by the planning 
commission and is only applicable under the terms and condi-
tions of the approved land development plan and plat.

(b) Failure to abide by the terms and conditions of the 
approved land development plan and plat will result in forfei-
ture of the right.

(c) The vesting period for an approved land development 
plan and plat which creates the vested property right is five 
years from the approval of the land development plan and plat 
by the planning commission.

(d) Without limiting the time when rights might otherwise 
vest, a landowner’s rights vest in a land use or development 
plan and cannot be affected by a subsequent amendment to a 
zoning ordinance or action by the planning commission when 
the landowner:

(1) Obtains or is the beneficiary of a significant affirmative 
governmental act which remains in effect allowing develop-
ment of a specific project;

(2) Relies in good faith on the significant affirmative 
governmental act; and

(3) Incurs extensive obligations or substantial expenses in 
diligent pursuit of the specific project in reliance on the 
significant affirmative governmental act.

(e) A vested right is a property right, which cannot be taken 
without compensation. A court may award damages against the 
local government in favor of the landowner for monetary losses 
incurred by the landowner and court costs and attorneys’ fees,
resulting from the local government’s bad faith refusal to recognize that the landowner has obtained vested rights.

ARTICLE 6. METHODS OF SECURITY.

§8A-6-1. Bond requirements.
§8A-6-2. Conditions as part of final plat approval.
§8A-6-3. Enforcement and guarantees.

§8A-6-1. Bond requirements.

(a) If a bond is used as an acceptable method of security for infrastructure construction, then it shall meet the following requirements:

(1) Be in an amount to cover the infrastructure construction, as determined by the governing body;

(2) Be payable to the governing body;

(3) Have adequate surety and be satisfactory to the governing body;

(4) Specify the time for the completion of the infrastructure construction; and

(5) Specify the date and/or condition for when the bond will be released.

(b) The money from the bond shall only be used by the governing body to which the bond is payable, for the completion of the infrastructure construction, when the infrastructure construction is not completed as approved at the issuance of the bond.

§8A-6-2. Conditions as part of final plat approval.

(a) A subdivision and land development ordinance may provide for the voluntary proffering by a landowner as a requirement of final plat approval for a development project.
(b) For purposes of this section, a "voluntary proffer" is a written offer by a landowner to a governing body whereby the landowner offers to satisfy certain reasonable conditions as a requirement of the final plat approval for a development project. A voluntary proffer made to a governing body shall be in lieu of payment of an impact fee as authorized by section four, article twenty, chapter seven of this code: Provided, That no proffer may be accepted by a governing body in lieu of an impact fee that would otherwise go to schools without the approval of the county board of education.

(c) For purposes of this section, a condition contained in a voluntary proffer is considered reasonable if:

(1) The development project results in the need for the conditions;

(2) The conditions have a reasonable relation to the development project; and

(3) All conditions are in conformity with the comprehensive plan adopted pursuant to this chapter.

(d) No proffer may be accepted by a governing body unless it has approved a list detailing any proposed capital improvements from all areas within the jurisdiction of the governing body to which the proffer is made, which list contains descriptions of any proposed capital improvements, cost estimates, projected time frames for constructing the improvements and proposed or anticipated funding sources: Provided, That the approval of the list does not limit the governing body from accepting proffers relating to items not contained on the list.

(e) For purposes of this section, "capital improvement" has the same definition as found in section three, article twenty, chapter seven of this code.

(f) If a voluntary proffer includes the dedication of real property or the payment of cash, the proffer shall provide for the alternate disposition of the property or cash payment in the
event the property or cash payment is not to be used for the purpose for which it was proffered.

(g) Notwithstanding any provision of this code to the contrary, a municipality may transfer the portion of the proceeds of a voluntary proffer intended by the terms of the proffer to be used by the board of education of a county in which the municipality is located upon the condition that the portion so transferred may only be used by the board for capital improvements.

§8A-6-3. Enforcement and guarantees.

(a) The planning commission is vested with all the necessary authority to administer and enforce conditions attached to the final plat approved for a development project, including, but not limited to, the authority to:

(1) Order, in writing, the remedy for any noncompliance with the conditions;

(2) Bring legal action to ensure compliance with the conditions, including injunction, abatement, or other appropriate action or proceeding; and

(3) Require a guarantee satisfactory to the planning commission in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or a contract for the construction of the improvements and the contractor’s guarantee, in like amount and so conditioned, which guarantee shall be reduced or released by the planning commission upon the submission of satisfactory evidence that construction of the improvements has been completed in whole or in part.

(b) Failure to meet all conditions attached to the final plat approved for a development project shall constitute cause to deny the issuance of any of the required use, occupancy or improvement location permits, as may be appropriate.
ARTICLE 7. ZONING ORDINANCE.

§8A-7-1. Authority for zoning ordinance.

§8A-7-2. Contents of zoning ordinance.


§8A-7-4. Study and report on zoning.

§8A-7-5. Enactment of zoning ordinance.

§8A-7-6. Filing the zoning ordinance.

§8A-7-7. Election on a zoning ordinance.

§8A-7-8. Amendments to the zoning ordinance by the governing body.

§8A-7-9. Amendments to the zoning ordinance by petition.

§8A-7-10. Effect of enacted zoning ordinance.


§8A-7-12. Validation of prior zoning ordinance.


§8A-7-1. Authority for zoning ordinance.

1 (a) The governing body of a municipality or a county may regulate land use within its jurisdiction by:

3 (1) Adopting a comprehensive plan;

4 (2) Working with the planning commission and the public to develop a zoning ordinance; and

6 (3) Enacting a zoning ordinance.

7 (b) A zoning ordinance may cover a county’s entire jurisdiction or parts of its jurisdiction.

9 (c) A zoning ordinance shall cover a municipality’s entire jurisdiction.

11 (d) A municipality may adopt, by reference, the zoning ordinance of the county in which it is located.

§8A-7-2. Contents of zoning ordinance.

1 (a) The following must be considered when enacting a zoning ordinance:
(1) Promoting general public welfare, health, safety, comfort and morals;

(2) A plan so that adequate light, air, convenience of access, and safety from fire, flood and other danger is secured;

(3) Ensuring attractiveness and convenience is promoted;

(4) Lessening congestion;

(5) Preserving historic landmarks, sites, districts and buildings;

(6) Preserving agricultural land; and

(7) Promoting the orderly development of land.

(b) A zoning ordinance may include the following:

(1) Regulating the use of land and designating or prohibiting specific land uses;

(2) Authorizing flexible planning standards to create, redevelop, reuse, protect, and enhance the physical qualities of the community;

(3) Designating historic districts and regulating the uses of land and the design of buildings within the historic district;

(4) Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;

(5) Establishing design standards and site plan approval procedures;

(6) Dividing the land of the governing body into different zone classifications regulating the use of land, establishing
performance standards for various land uses when dividing is
not desired, or any combination of both;

(7) Authorizing overlay districts and special design districts
within which specific additional development standards for
each permitted, accessory and conditional use shall apply;

(8) Regulating the height, area, bulk, use and architectural
features of buildings, including reasonable exterior architectural
features and reasonable aesthetic standards for factory-built
homes;

(9) Authorizing a process and standards for factory-built
homes: Provided, That a governing body is prohibited from
establishing a process and standards for regulating factory-built
homes that is more restrictive than a process and standards for
site-built homes;

(10) Preserving green spaces and requiring new green
spaces, landscaping, screening and the preservation of adequate
natural light;

(11) Regulating traffic flow and access, pedestrian flow and
access, parking and loading;

(12) Identifying flood-prone areas subject to periodic
flooding, and regulating with specific control the permitted use,
type of construction and height of floor levels above base flood
elevation permitted in the area so as to lessen or avoid the
hazards to persons and damage to property resulting from the
accumulation of storm or flood waters;

(13) Designating an airport area and establishing land-use
regulations within a specific distance from the boundaries of the
airport; and
56 (14) Authorizing planned unit developments to achieve
57 more efficient use of land and setting standards and regulations
58 for the developments.

59 (c) A zoning ordinance shall:

60 (1) Create a board of zoning appeals;

61 (2) Specify certification requirements for zoning district
62 maps that are consistent with the governing body’s comprehen-
63 sive plan;

64 (3) Adopt procedures and requirements for nonconforming
65 land uses;

66 (4) Adopt procedures and requirements for variances; and

67 (5) Adopt procedures and requirements for conditional use
68 permits.


1 (a) A zoning ordinance may cover a county’s entire
2 jurisdiction or parts of its jurisdiction.

3 (b) The different zones created in a zoning ordinance by a
4 governing body do not have to cover or include the same
5 territory, and may overlap.

6 (c) Overlay districts and special design districts may have
7 specific additional development standards for each permitted,
8 accessory and conditional use.

9 (d) Each zone will be subject to the same rules, regulations,
10 standards and designations throughout the zone, unless specific
11 provisions are made by the governing body in the zoning
12 ordinance.
(e) Essential utilities and equipment are a permitted use in any zoning district.

(f) Several areas of a municipality or county may be classified in a zone even though the areas are not contiguous.

(g) The boundaries of each zone and the designated classifications must be shown on a zoning district map. The boundaries may only be changed after appropriate public hearing and zoning district map changes are adopted by the governing body.

(h) A governing body shall certify the original zoning district map. Subsequent versions of the zoning district map shall be certified and clearly identified with an effective date.

(i) All certified zoning district maps must be filed with the clerk of the applicable governing body, the applicable planning commission and the office of the clerk of the applicable county commission.

§8A-7-4. Study and report on zoning.

(a) After adoption of a comprehensive plan and before enacting a zoning ordinance, a governing body with the applicable planning commission must study the land within its jurisdiction. The study may include:

(1) Evaluating the existing conditions, the character of the buildings, the most desirable use for the land and the conservation of property values in relation to the adopted comprehensive plan; and

(2) Holding public hearings and meetings with notice to receive public input.

(b) The planning commission must use the information from the study and the comprehensive plan and prepare a report
§8A-7-5. Enactment of zoning ordinance.

(a) After the study and the report, and before the governing body enacts the proposed zoning ordinance, the governing body shall hold at least two public hearings and give public notice. At least one public hearing shall be held during the day and at least one public hearing shall be held during the evening.

(b) The public notice shall be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code, at least fourteen consecutive days prior to the public hearing. The public notice must contain the following:

1. The date, time and place of the public hearings;

2. That it is a public hearing on a proposed zoning ordinance;

3. A brief summary of the principal provisions of the proposed zoning ordinance;

4. A reference to the place where copies of the proposed zoning ordinance may be examined; and

5. That written objections to the proposed zoning ordinance may be made and will be heard at the public hearings and must be filed with the clerk of the applicable governing body.
(c) Copies of the proposed zoning ordinance must be made available to the public, at least two weeks prior to the public hearings, at the office of the governing body and all public libraries in the area to be zoned.

(d) After the public hearings, if the governing body makes substantial amendments to the proposed zoning ordinance prior to voting on the zoning ordinance, the governing body shall hold another public hearing, after public notice. The public notice shall be as provided in subsections (b) and (c) of this section, and must contain a brief summary of the amendments.

(e) After the public hearings and any amendments, the governing body may enact the zoning ordinance or it may hold an election to have the qualified voters residing in the affected area approve the zoning ordinance.

§8A-7-6. Filing the zoning ordinance.

After the enactment of a zoning ordinance by a governing body, the governing body shall file the enacted zoning ordinance in the office of the clerk of the county commission where the zoning ordinance applies.

§8A-7-7. Election on a zoning ordinance.

(a) The governing body of a municipality or a county may submit a proposed zoning ordinance for approval or rejection at any primary election, general election or special election, to the qualified voters residing:

(1) Within the entire jurisdiction of the governing body, if the proposed zoning ordinance is for the entire jurisdiction; or

(2) In the specific area to be zoned by the proposed zoning ordinance, if the proposed zoning ordinance only applies to part of the governing body’s jurisdiction.
(b) The election laws of this state apply to any election on a proposed zoning ordinance.

(c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing body within ninety days after the enactment of a zoning ordinance by a governing body without an election, then a zoning ordinance does not take effect until an election is held and a majority of the voters approves it. At least fifteen percent of the total eligible voters in the area to be affected by the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on a zoning ordinance.

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

(e) The ballots for an election on a zoning ordinance shall have the following:

☐ For Zoning

☐ Against Zoning

(f) The zoning ordinance is adopted if it is approved by a majority of the voters and is effective on the date the results of an election are declared. If a zoning ordinance is rejected, the zoning ordinance does not take effect. The governing body may submit the zoning ordinance to the voters again at the next primary or general election.

§8A-7-8. Amendments to the zoning ordinance by the governing body.
(a) After the enactment of the zoning ordinance, the governing body of the municipality or the county may amend the zoning ordinance without holding an election.

(b) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

§8A-7-9. Amendments to the zoning ordinance by petition.

(a) After the enactment of the zoning ordinance, the planning commission or the owners of fifty percent or more of the real property in the area to which the petition relates may petition to amend the zoning ordinance. The petition must be signed and be presented to the planning commission or the clerk of the governing body.

(b) Within sixty days after a petition to amend the zoning ordinance is received by the planning commission or the governing body, then the planning commission or the governing body must hold a public hearing after giving public notice. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code, at least fifteen days prior to the public hearing.

(c) If the petition to amend the zoning ordinance is from the owners of fifty percent or more of the real property in the area,
then before amending the zoning ordinance, the governing body
with the advice of the planning commission, must find that the
amendment is consistent with the adopted comprehensive plan.
If the amendment is inconsistent, then the governing body with
the advice of the planning commission, must find that there
have been major changes of an economic, physical or social
nature within the area involved which were not anticipated
when the comprehensive plan was adopted and those changes
have substantially altered the basic characteristics of the area.

§8A-7-10. Effect of enacted zoning ordinance.

(a) After enactment of a zoning ordinance by a municipality
or county, all subsequent land development must be done in
accordance with the provisions of the zoning ordinance.

(b) All zoning ordinances, and all amendments, supple-
ments and changes thereto, legally adopted under any prior
enabling acts, and all actions taken under the authority of any
such ordinances, are hereby validated and continued in effect
until amended or repealed by action of the governing body of
the municipality or the county taken under authority of this
article. These ordinances shall have the same effect as though
previously adopted as a comprehensive plan of land use or parts
thereof.

(c) Land, buildings or structures in use when a zoning
ordinance is enacted can continue the same use and such use
cannot be prohibited by the zoning ordinance so long as the use
of the land, buildings or structures is maintained, and no zoning
ordinance may prohibit alterations or additions to or replace-
ment of buildings or structures owned by any farm, industry or
manufacturer, or the use of land presently owned by any farm,
industry or manufacturer but not used for agricultural, industrial
or manufacturing purposes, or the use or acquisition of addi-
tional land which may be required for the protection, continuing
development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use. A zoning ordinance may provide for the enlargement or extension of a nonconforming use, or the change from one nonconforming use to another.

(d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: Provided, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures must conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.

(e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing, outside of urban areas, the complete use of natural resources by the owner.


(a) A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.

(b) The board of zoning appeals shall grant a variance to the zoning ordinance if it finds that the variance:
(1) Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;

(2) Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;

(3) Would eliminate an unnecessary hardship and permit a reasonable use of the land; and

(4) Will allow the intent of the zoning ordinance to be observed and substantial justice done.

§8A-7-12. Validation of prior zoning ordinance.

All zoning ordinances, all amendments, supplements and changes to the ordinance, legally adopted under prior acts, and all action taken under the authority of the ordinance, are hereby validated and the ordinance shall continue in effect until amended or repealed by action of the governing body taken under authority of this article.


(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

(2) A petition by the voters in the affected area. If the voters petition to replace the nontraditional zoning ordinance with a zoning ordinance, then the provisions of this section and this chapter shall be followed.

(b) At least fifteen percent of the total eligible voters in the affected area may petition the governing body to replace the
nontraditional zoning ordinance with a zoning ordinance. The petition must include:

1. The governing body’s name to which the petition is addressed;
2. The reason for the petition, including:
   a. Replacing the nontraditional zoning ordinance with a zoning ordinance; and
   b. That the question of replacing the nontraditional zoning ordinance with a new zoning ordinance be put to the voters of the affected area; and
3. Signatures in ink or permanent marker.

Each person signing the petition must be a registered voter in the affected area and in the governing body’s jurisdiction. The petition must be delivered to the clerk of the affected governing body. There are no time constraints on the petition.

Upon receipt of the petition with the required number of qualifying signatures, the governing body shall place the question on the next special, primary or general election ballot. Notice for an election on replacing a zoning ordinance must be published in a local newspaper of general circulation in the area affected by the nontraditional zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code.

The ballots for an election on replacing a zoning ordinance shall have the following:

"Shall ________ (name of governing body) replace ________ (name of commonly known nontraditional zoning ordinance) with a zoning ordinance?"
(f) Upon a majority vote of the voters voting in favor of replacing a non-traditional zoning ordinance with a zoning ordinance, the governing body shall immediately begin the process of adopting and enacting a zoning ordinance, in accordance with the provisions of chapter eight-a of this code. The governing body has a maximum of three years from the date of the election to adopt a zoning ordinance.

(g) The governing body may amend its nontraditional zoning ordinance during the process of adopting and enacting a zoning ordinance.

(h) If a majority of the voters reject replacing the nontraditional zoning ordinance with a zoning ordinance, the affected voters may not petition for a vote on the issue for at least two years from the date of the election.

(i) Nothing in this section shall prevent a governing body from amending its zoning ordinance in accordance with this chapter.

ARTICLE 8. BOARD OF ZONING APPEALS.

§8A-8-1. Board of zoning appeals authorized.
§8A-8-2. Continuation of established boards of zoning appeals.
§8A-8-4. County board of zoning appeals.
§8A-8-5. Board of zoning appeals meetings.
§8A-8-6. Quorum.
§8A-8-7. Officers.
§8A-8-10. Appeal to board of zoning appeals.
§8A-8-12. Stays; exception.
PART I. BOARD OF ZONING APPEALS.

§8A-8-1. Board of zoning appeals authorized.

1 If a governing body adopts a zoning ordinance, then as part
2 of that zoning ordinance it shall create a board of zoning
3 appeals to hear appeals on zoning issues.

§8A-8-2. Continuation of established boards of zoning appeals.

1 A board of zoning appeals established prior to the effective
2 date of this chapter shall continue to operate as though estab-
3 lished under the terms of this chapter. All actions lawfully
4 taken under prior acts are hereby validated and continued in
5 effect until amended or repealed by action taken under the
6 authority of this chapter.


1 (a) A municipal board of zoning appeals shall have five
2 members to be appointed by the governing body of the munici-
3 pality.
4
5 (b) The members of a municipal board of zoning appeals
6 must be:
7
8 (1) Residents of the municipality for at least three years
9 preceding his or her appointment;
10
11 (2) Cannot be a member of the municipal planning commis-
12 sion; and
13
14 (3) Cannot hold any other elective or appointive office in
15 the municipal government.
16
17 (c) Upon the creation of a board of zoning appeals, the
18 members shall be appointed for the following terms: One for
19 a term of one year; two for a term of two years; and two for a
term of three years. The terms shall expire on the first day of
January of the first, second and third year, respectively,
following their appointment. Thereafter, members shall serve
three-year terms. If a vacancy occurs, the governing body of
the municipality shall appoint a member for the unexpired term.

(d) The governing body of the municipality may appoint up
to three additional members to serve as alternate members of
the municipal board of zoning appeals. The alternate members
must meet the same eligibility requirements as set out in
subsection (b) of this section. The term for an alternate
member is three years. The governing body of the municipality
may appoint alternate members on a staggered term schedule.

(e) An alternate member shall serve on the board when one
of the regular members is unable to serve. The alternate
member shall serve until a final determination is made in the
matter to which the alternate member was initially called on to
serve.

(f) The municipal board of zoning appeals shall establish
rules and procedures for designating an alternate member. An
alternate member shall have the same powers and duties of a
regular board member.

(g) The members and alternate members of a county board
of zoning appeals shall serve without compensation, but shall
be reimbursed for all reasonable and necessary expenses
actually incurred in the performance of their official duties.

§8A-8-4. County board of zoning appeals.

(a) A county board of zoning appeals shall have five
members to be appointed by the governing body of the county.

(b) The members of a county board of zoning appeals must
be:
(1) Residents of the county for at least three years preceding his or her appointment;

(2) Cannot be a member of the county planning commission; and

(3) Cannot hold any other elective or appointive office in the county government.

(c) Where only a portion of the county is zoned, the members of the board of zoning appeals for that part of the county that is zoned, must be:

(1) Residents of that part of the county that is zoned for at least three years preceding his or her appointment;

(2) Cannot be a member of the county planning commission; and

(3) Cannot hold any other elective or appointive office in the county government.

(d) Upon the creation of a board of zoning appeals, the members shall be appointed for the following terms: One for a term of one year; two for a term of two years; and two for a term of three years. The terms shall expire on the first day of January of the first, second and third year, respectively, following their appointment. Thereafter, members shall serve three-year terms. If a vacancy occurs, the governing body of the county shall appoint a member for the unexpired term.

(e) The governing body of the county may appoint up to three additional members to serve as alternate members of the county board of zoning appeals. The alternate members must meet the same eligibility requirements as set out in subsection (b) or subsection (c) of this section, as applicable. The term for an alternate member is three years. The governing body of the
county may appoint alternate members on a staggered term schedule.

(f) An alternate member shall serve on the board when one of the regular members is unable to serve. The alternate member shall serve until a final determination is made in the matter to which the alternate member was initially called on to serve.

(g) The county board of zoning appeals shall establish rules and procedures for designating an alternate member. An alternate member shall have the same powers and duties of a regular board member.

(h) The members and alternate members of a county board of zoning appeals shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their official duties.

§8A-8-5. Board of zoning appeals meetings.

(a) A board of zoning appeals shall meet quarterly and may meet more frequently at the written request of the chairperson or by two or more members.

(b) Notice for a special meeting must be in writing, include the date, time and place of the special meeting, and be sent to all members at least two days before the special meeting.

(c) Written notice of a special meeting is not required if the date, time and place of the special meeting were set in a regular meeting.

§8A-8-6. Quorum.

A board of zoning appeals must have quorum to conduct a meeting. A majority of the members of a board of zoning
appeals is a quorum. No action of a board is official unless authorized by a majority of the members present at a regular or properly called special meeting.

§8A-8-7. Officers.

At its first regular meeting each year, a board of zoning appeals shall elect a chairperson and vice chairperson from its membership. The vice chairperson shall have the power and authority to act as chairperson during the absence or disability of the chairperson.

§8A-8-8. Governing body’s duties.

The county commission in the case of a county board of zoning appeals, and the governing body of the municipality in the case of a municipal board of zoning appeals, shall provide the board of zoning appeals with:

(1) Suitable offices for the holding of meetings and the preservation of plans, maps, documents and accounts; and

(2) Appropriate money to defray the reasonable expenses of the board.


A board of zoning appeals has the following powers and duties:

(1) Hear, review and determine appeals from an order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance or rule and regulation adopted pursuant thereto;

(2) Authorize exceptions to the district rules and regulations only in the classes of cases or in particular situations, as specified in the zoning ordinance;
10. Hear and decide conditional uses of the zoning ordinance upon which the board is required to act under the zoning ordinance;

11. (4) Authorize, upon appeal in specific cases, a variance to the zoning ordinance;

12. (5) Reverse, affirm or modify the order, requirement, decision or determination appealed from and have all the powers and authority of the official or board from which the appeal was taken;

13. (6) Adopt rules and regulations concerning:

14. (A) The filing of appeals, including the process and forms for the appeal;

15. (B) Applications for variances and conditional uses;

16. (C) The giving of notice; and

17. (D) The conduct of hearings necessary to carry out the board’s duties under the terms of this article;

18. (7) Keep minutes of its proceedings;

19. (8) Keep an accurate and complete audio record of all the board’s proceedings and official actions and keep the audio record in a safe manner, which audio record is accessible within twenty-four hours of demand, for three years;

20. (9) Record the vote on all actions taken;

21. (10) Take responsibility for the custody and preservation of all papers and documents of the board. All minutes and records shall be filed in the office of the board and shall be public records;
(11) With consent from the governing body, hire employees necessary to carry out the duties and responsibilities of the board: Provided, That the governing body sets the salaries; and

(12) Supervise the fiscal affairs and responsibilities of the board.

PART II. APPEAL PROCESS TO BOARD OF ZONING APPEALS.

§8A-8-10. Appeal to board of zoning appeals.

(a) An appeal from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance, or rule and regulation adopted pursuant to a zoning ordinance, shall be filed with the board of zoning appeals.

(b) The appeal shall:

(1) Specify the grounds of the appeal;

(2) Be filed within thirty days of the original order, requirement, decision or determination made by an administrative official or board charged with the enforcement of a zoning ordinance; and

(3) Be on a form prescribed by the board.

(c) Upon request of the board of zoning appeals, the administrative official or board shall transmit all documents, plans and papers constituting the record of the action from which the appeal was taken.


(a) Within ten days of receipt of the appeal by the board of zoning appeals, the board shall set a time for the hearing of the
appeal and give notice. The hearing on the appeal must be held  
within forty-five days of receipt of the appeal by the board.

(b) At least fifteen days prior to the date set for the hearing  
on the appeal, the board of zoning appeals shall publish a notice  
of the date, time and place of the hearing on the appeal as a  
Class I legal advertisement in compliance with the provisions  
of article three, chapter fifty-nine of this code, and written  
notice shall be given to the interested parties. The publication  
area shall be the area covered in the appeal.

(c) The board of zoning appeals may require the party  
taking the appeal to pay for the cost of public notice and written  
notice to interested parties.

(d) At the hearing, any party may appear in person, by  
agent or by an attorney licensed to practice in this state.

(e) Every decision by the board must be in writing and state  
findings of fact and conclusions of law on which the board  
based its decision. If the board fails to provide findings of fact  
and conclusions of law adequate for decision by the circuit  
court, and as a result of the failure, the circuit court returns an  
appealed matter to the board and dismisses jurisdiction over an  
applicant's appeal without deciding the matter, whether the  
court returns the matter with or without restrictions, the board  
shall pay any additional costs for court filing fees, service of  
process and reasonable attorneys' fees required to permit the  
person appealing the board's decision to return the matter to the  
circuit court for completion of the appeal.

§8A-8-12. Stays; exception.

When an appeal has been filed with the board of zoning  
appeals, all proceedings and work on the premises in question  
shall be stayed, unless the official or board from where the  
appeal was taken certifies in writing to the board of zoning
appeals, that a stay would cause imminent peril to life or property. If the written certification is filed, proceedings or work on the premises shall not be stayed. Nothing in this section prevents obtaining a restraining order.

ARTICLE 9. APPEAL PROCESS.

§8A-9-1. Petition for writ of certiorari.
§8A-9-3. Court action on petition.
§8A-9-5. Return to writ.
§8A-9-6. Action by circuit court or judge.
§8A-9-7. Appeal from final judgment of circuit court or judge.

§8A-9-1. Petition for writ of certiorari.

(a) Every decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals is subject to review by certiorari.

(b) Within thirty days after a decision or order by the planning commission, board of subdivision and land development appeals, or board of zoning appeals, any aggrieved person may present to the circuit court of the county in which the affected premises are located, a duly verified petition for a writ of certiorari setting forth:

(1) That the decision or order by the planning commission, board of subdivision and land development appeals, or board of zoning appeals is illegal in whole or in part; and

(2) Specify the grounds of the alleged illegality.


(a) Upon filing a petition for a writ of certiorari with the clerk of the circuit court of the county in which the affected
3 premises are located, the petitioner shall cause a notice to be
4 issued and served by the sheriff of the county upon:

5 (1) The adverse party, as shown by the record of the appeal
6 in the office of the planning commission, board of subdivision
7 and land development appeals, or board of zoning appeals: and

8 (2) The chairperson or secretary of the planning commis-
9 sion, board of subdivision and land development appeals, or
10 board of zoning appeals, as applicable.

11 (b) The adverse party is any property owner appearing at
12 the hearing before the planning commission, board of subdivi-
13 sion and land development appeals, or board of zoning appeals
14 in opposition to the petitioner.

15 (c) If the record shows a written document containing the
16 names of more than three property owners opposing the request
17 of the petitioner, then the petitioner is required to cause notice
18 to be issued and served upon the three property owners whose
19 names first appear upon the written document. Notice to the
20 other parties named in the written document is not required.

21 (d) The notice shall:

22 (1) State that a petition for a writ of certiorari has been filed
23 in the circuit court of the county asking for a review of the
24 decision or order of the planning commission, board of subdivi-
25 sion and land development appeals, or board of zoning appeals;

26 (2) Designate the affected premises; and

27 (3) Specify the date of the decision or order that is the
28 subject of the petition for a writ of certiorari.

29 (e) Service of the notice by the sheriff on the chairperson or
30 secretary of the planning commission, board of subdivision and
land development appeals, or board of zoning appeals shall constitute notice to the commission or boards. Service of the notice by the sheriff to the governing body and to any official or board thereof charged with the enforcement of the subdivision and land development ordinance, subdivision or land development plan and plat, or zoning ordinance. No further summons or notice with reference to the filing of such petition shall be necessary.

(f) As an alternative to the requirements for notice prescribed in the preceding subsections of this section, notice is sufficient upon a showing that the chairperson or secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals and all adjacent landowners to the affected premises have received personal service of process of the notice containing information as required in subsection (d) of this section. As to all other interested parties, notice shall be sufficient if notice containing information as required in subsection (d) of this section, is published as a Class III-0 legal advertisement, in the county or counties wherein the affected premises are located.

§8A-9-3. Court action on petition.

(a) Within twenty days after a petition for a writ of certiorari is presented, the planning commission, board of subdivision and land development appeals, or board of zoning appeals must show the circuit court, or a judge in vacation, of the county in which the affected premises are located, cause why a writ of certiorari should not be issued.

(b) If the planning commission, board of subdivision and land development appeals, or board of zoning appeals fails to show the court or judge that a writ should not be issued, then the court or judge may allow a writ of certiorari directed to the planning commission, board of subdivision and land development appeals, or board of zoning appeals.
(c) The writ shall prescribe the time in which a return shall be made to it. This time shall be not less than ten days from the date of issuance of the writ and may be extended by the court or judge.


(a) The allowance of the writ of certiorari shall not stay proceedings or work on the premises affected by the decision or order to be brought up for review.

(b) The court or judge may, upon application and on notice to all parties to the decision or order and on due cause shown, grant such relief as the circumstances of the case may require, including an order staying the proceedings or work until final determination of the case by the court or judge.

(c) The staying order may be issued by the court or judge without requiring the petitioner to enter into a written undertaking with the adverse party or parties affected thereby for the payment of damages by reason of such staying order.

§8A-9-5. Return to writ.

(a) The return to the writ of certiorari by the planning commission, board of subdivision and land development appeals, or board of zoning appeals must concisely set forth the pertinent facts and data and present material to show the grounds of the decision or order appealed. The return must be verified by the secretary of the planning commission, board of subdivision and land development appeals, or board of zoning appeals.

(b) The planning commission, board of subdivision and land development appeals, or board of zoning appeals does not have to return the original papers acted upon by it. It shall be
sufficient to return certified copies of all or such portion of the papers as may be called for by the writ.

§SA-9-6. Action by circuit court or judge.

(a) The court or judge may consider and determine the sufficiency of the allegations of illegality contained in the petition without further pleadings and may make a determination and render a judgment with reference to the legality of the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals on the facts set out in the petition and return to the writ of certiorari.

(b) If it appears to the court or judge that testimony is necessary for the proper disposition of the matter, the court or judge may take evidence to supplement the evidence and facts disclosed by the petition and return to the writ of certiorari, but no such review shall be by trial de novo.

(c) In passing upon the legality of the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals, the court or judge may reverse, affirm or modify, in whole or in part, the decision or order.

§SA-9-7. Appeal from final judgment of circuit court or judge.

An appeal may be taken to the West Virginia Supreme Court of Appeals from the final judgment of the court or judge reversing, affirming or modifying the decision or order of the planning commission, board of subdivision and land development appeals, or board of zoning appeals within the same time, in the same manner, and upon the same terms, conditions and limitations as appeals in other civil cases.
ARTICLE 10. ENFORCEMENT PROVISIONS.

§8A-10-1. Enforcement.
§8A-10-3. Injunction.
§8A-10-5. General repealer.

§8A-10-1. Enforcement.

The governing body of a municipality or county may:

1. Enforce penalties, set out in section two of this article, for failure to comply with the provisions of any ordinance or rule and regulation adopted pursuant to the provisions of this chapter; and

2. Declare that any buildings erected, raised or converted, or land or premises used in violation of any provision of any ordinance or rule and regulation adopted under the authority of this chapter shall be a common nuisance and the owner of the building, land or premises shall be liable for maintaining a common nuisance.


A person who violates any provision of this chapter is guilty of a misdemeanor, and upon conviction, shall be fined not less than fifty dollars nor more than five hundred dollars.

§8A-10-3. Injunction.

(a) The planning commission, board of subdivision and land development appeals, the board of zoning appeals or any designated enforcement official may seek an injunction in the circuit court of the county where the affected property is located, to restrain a person or unit of government from violating the provisions of this chapter or of any ordinance or rule and regulation adopted pursuant hereto.
(b) The planning commission, board of subdivision and land development appeals, the board of zoning appeals or any designated enforcement official may also seek a mandatory injunction in the circuit court where the affected property is located, directing a person or unit of government to remove a structure erected in violation of the provisions of this chapter or of any ordinance or rule and regulation adopted pursuant hereto.

(c) If the planning commission, board of subdivision and land development appeals, the board of zoning appeals or the designated enforcement official is successful in any such suit, the respondent shall bear the costs of the action.


(a) The planning and zoning provisions of this chapter are supplemental to and do not abrogate the powers and authority extended to agencies, bureaus, departments, commissions, divisions and officials of the state government by other state statute and those powers and authority shall remain in full force and effect.

(b) The powers of supervision and regulation by the divisions of the state government over municipal, county and other local governmental units and persons are also not abrogated and shall continue in full force and effect.

§8A-10-5. General repealer.

All acts or parts of acts, including special legislative charters, inconsistent with the provisions of this chapter are hereby repealed to the extent of their inconsistency, except as provided in this chapter.

ARTICLE 11. SPECIAL PROVISIONS.


§8A-11-2. Permitted use for group residential facility.

(a) Notwithstanding any existing provisions of law, municipal or county ordinance, or local building code, but excluding any provisions relating to zoning or land use control, the standards for factory-built homes, housing prototypes, subsystems, materials and components certified as acceptable by the federal department of housing and urban development are considered acceptable and are approved for use in housing construction in this state.

(b) A certificate from the state director of the federal housing administration of the department of housing and urban development shall constitute prima facie evidence that the products or materials listed therein are acceptable and such certificates shall be furnished by the building contractor to any local building inspector or other local housing authority upon request.

§8A-11-2. Permitted use for group residential facility.

(a) A group residential facility as defined in article seventeen, chapter twenty-seven of this code, shall be a permitted residential use of property for the purposes of zoning and is a permitted use in zones or districts where single family dwelling units or multifamily dwelling units are permitted.

(b) A governing body of a municipality or a county, and a planning commission, cannot discriminate in regard to housing and cannot require a group residential facility or its owner or operator, to obtain a conditional use permit, special use permit, special exception or variance to locate a group residential facility in a zone or district where single family dwelling units or multi-family dwelling units are permitted.
ARTICLE 12. VOLUNTARY FARMLAND PROTECTION PROGRAMS.

§8A-12-1. Legislative findings and purpose.

(a) The Legislature hereby finds and declares that agriculture is a unique "life support" industry and that a need exists to assist those agricultural areas of the state which are experiencing the irreversible loss of agricultural land.
(b) It is the intent of the Legislature to provide persons and other entities an opportunity to voluntarily protect agricultural land and woodland in order to:

1. Assist in sustaining the farming community;
2. Provide sources of agricultural products within the state for the citizens of the state;
3. Control the urban expansion which is consuming the agricultural land, topsoil and woodland of the state;
4. Curb the spread of urban blight and deterioration;
5. Protect agricultural land and woodland as open-space land;
6. Enhance tourism; and
7. Protect worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming.

(c) Further, it is the intent of the Legislature to establish a West Virginia agricultural land protection authority, hereinafter "authority", to assist persons, other entities and counties to obtain funding from any source available to accomplish the purposes of the voluntary farmland protection programs.

§8A-12-2. County farmland protection programs and farmland protection boards authorized; authority of county commission to approve purchase of farmland easements; expense reimbursement of actual expenses for the board members.

(a) The county commission of each county may adopt and implement a farmland protection program within the county. The county commission of each county which decides to adopt and implement a farmland protection program shall appoint a
farmland protection board. The farmland protection board shall
administer on behalf of the county commission all matters
concerning farmland protection. The county commission has
final approval authority for any and all purchases of easements
for the farmland protection program by the board.

(b) The farmland protection board shall adopt bylaws
prescribing the board’s officers, meeting dates, record-keeping
procedures, meeting attendance requirements and other internal
operational procedures. The member of the farmland protection
board who is a county commissioner shall serve as temporary
chairman of the board until the board’s bylaws are adopted and
until the board’s officers are selected as prescribed by those
bylaws. The farmland protection board shall prepare a docu-
ment proposing a farmland protection program which is
consistent with the Legislature’s intent.

(c) Each member of the board shall receive expense
reimbursement for actual expenses incurred while engaged in
the discharge of official duties, the actual expenses not to
exceed the amount paid to members of the Legislature.

§8A-12-3. Content and requirements of farmland protection
programs.

(a) An adopted farmland protection program shall include
only those qualifying properties which are voluntarily offered
into the program by the landowners of the properties.

(b) An adopted farmland protection program shall meet the
following minimum requirements:

(1) The program shall be developed by the county farmland
protection board and approved by the county commission. The
county farmland protection board, in consultation with the local
conservation district, shall administer the farmland protection
program;
(2) The board shall establish uniform standards and guidelines for the eligibility of properties for the program. The standards and guidelines shall take into consideration the following: Current and past uses of the property; existing property improvements, property tract size and shape; location of the property tract in relation to other potential agricultural property tracts; impending threat of conversion of the property to nonagricultural uses; property ownership and existing deed covenants; and restrictions with respect to the property; and

(3) The guidelines established by the board shall outline the various methods of farmland protection which are available to prospective participating property owners and the procedures to be followed in applying for program consideration.

§8A-12-4. Farmland protection boards — appointment, composition, terms.

(a) Composition. — A farmland protection board shall be composed of seven members, each serving without compensation. Membership on the farmland protection board shall consist of the following: One county commissioner; the executive director of the county development authority; one farmer who is a county resident and a member of the county farm bureau; one farmer who is a county resident and a member of a conservation district; one farmer who is a county resident; and two county residents who are not members of any of the foregoing organizations. All members of the farmland protection board shall be voting members, except the county commissioner who shall serve in an advisory capacity as a nonvoting member.

(b) Terms. — Each member of a farmland protection board shall be appointed for a term of office of four years except the initial appointment of two voting board members shall be for a term of two years:
(1) No member may serve for more than two consecutive full terms; and

(2) An appointment to fill a vacancy shall be for the remainder of the unexpired term.

§8A-12-5. Farmland protection boards – powers.

A farmland protection board has the following general powers:

(a) Power to sue. -- To sue and be sued in contractual matters in its own name;

(b) Power to contract. -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(c) Power to restrict use of land. -- To acquire or cohold, by gift, purchase, devise, bequest or grant, easements in gross, fee or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland: Provided, That the county commission has final approval authority for any and all purchases of easements for the farmland protection program by the board;

(d) Power to implement rules. -- To implement rules necessary to achieve the purposes of the voluntary farmland protection programs;

(e) Power to disseminate information. -- To promote the dissemination of information throughout the county concerning the activities of the farmland protection board; and

(f) Power to seek funding. -- To pursue and apply for any and all county, state, federal and private funding available,
consistent with the purpose of the voluntary farmland protection programs.

§8A-12-6. Farmland protection board duties.

The duties of each farmland protection board are as follows:

(a) To report to the county commission with respect to the acquisition of easements by the farmland protection board within the county and to obtain final approval authority for any and all purchases of easements for the farmland protection program by the board;

(b) To advise the authority concerning county priorities for agricultural protection;

(c) To promote protection of agriculture within the county by offering information and assistance to landowners with respect to the acquisition of easements;

(d) To seek and apply for all available funds from federal, state, county and private sources to accomplish the purposes of the voluntary farmland protection programs; and

(e) To perform any other duties assigned by the county commission.

§8A-12-7. West Virginia agricultural land protection authority — established.

A West Virginia agricultural land protection authority is established within the department of agriculture. The authority has the powers and duties provided in this article.

§8A-12-8. West Virginia agricultural land protection authority — board of trustees.
(a) Composition; chairman; quorum; qualifications. -- The authority established on the first day of July, two thousand two, shall be governed and administered by a board of trustees composed of the state treasurer, the auditor and the commissioner of agriculture, who shall serve as ex officio members, and nine members to be appointed by the governor, by and with the advice and consent of the Senate, at least five of whom shall be representative of farmers from different areas of the state. The state treasurer, auditor and the commissioner of agriculture may appoint designees to serve on the board of trustees. One of the appointed members who is not a representative of farmers shall be a representative of the division of natural resources; one of the appointed members who is not a representative of farmers shall be a representative of the conservation district; and one of the appointed members who is not a representative of farmers shall be a representative of an I.R.C. 501(c)(3) qualified land trust. Three of the five representatives of farmers shall be appointed as follows:

(1) Two from a list of five nominees submitted by the West Virginia department of agriculture; and

(2) One from a list of three nominees submitted by the West Virginia farm bureau.

The governor shall appoint the chairman of the board from among the nine appointed members. A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

Notwithstanding any provision of law to the contrary, a person may be appointed to and serve on the board as an appointed member even if prior to the appointment the person conveyed an easement on the person's land to the authority.
(b) Terms. -- (1) The governor, with the advice and consent of the Senate, shall appoint the nine members for the following terms:

(A) Three for a term of four years;

(B) Three for a term of three years; and

(C) Three for a term of two years.

(2) Successors to appointed members whose terms expire shall be appointed for terms of four years. Vacancies shall be filled for the unexpired term. An appointed member may not serve more than two successive terms. Appointment to fill a vacancy may not be considered as one of two terms.

(c) Oath. -- Appointed members shall take the oath of office as prescribed by law.

(d) Compensation and expenses. -- Members shall not receive compensation. Each member of the board shall receive expense reimbursement for actual expenses incurred while engaged in the discharge of official duties, the actual expenses not to exceed the amount paid to members of the Legislature.


The authority has the following general powers:

(a) Power to sue. -- To sue and be sued in contractual matters in its own name;

(b) Power to contract. -- To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;
(c) *Power to restrict use of land.* -- To acquire or cohold, by gift, purchase, devise, bequest or grant, easements in gross, fee or other rights to restrict the use of agricultural land and woodland as may be designated to maintain the character of the land as agricultural land or woodland;

(d) *Power to disseminate information.* -- To promote the dissemination of information throughout the state concerning the activities of the farmland protection board; and

(e) *Power to seek funding.* -- To pursue and apply for any and all state, federal and private funding available consistent with the purpose of the voluntary farmland protection programs.

§8A-12-10. West Virginia agricultural land protection authority – duties.

The authority shall:

(a) Disseminate information regarding agricultural land protection and promote the protection of agricultural land;

(b) Assist county farmland protection boards in applying for and obtaining all state and federal funding available consistent with the purposes of the farmland protection programs;

(c) Upon request of a farmland protection board, provide technical and legal services necessary to procure, acquire, draft, file and record conservation and preservation easements;

(d) Prepare and file electronically with the governor’s office and with the Legislature by the thirty-first day of August of each year a report including, but not limited to, the following information:

(1) The cost per easement obtained;
(2) The identity of all applicants for conservation and preservation easements; and

(3) The identity of all applicants from whom conservation and preservation easements have been acquired;

(e) Seek and apply for all available funds from federal, state and private sources to accomplish the purposes of the farmland protection programs.


For purposes of the voluntary farmland protection programs, the following terms have the meanings set forth in this section.

(a) Acquisition of easement. -- The holding or coholding of land-use restrictions as defined in this article, whether obtained through purchase, gift, devise, bequest, grant or contract to cohold with another holder.

(b) Conservation easement. -- This article incorporates the definition of a conservation easement found in section three, article twelve, chapter twenty of this code, except that a conservation easement created under this article must be held or coheld by at least one "holder" as defined in that section in perpetuity.

(c) Farm, farmland or agricultural land. -- A tract, or contiguous tracts of land, of any size, used or useable for agriculture, horticulture or grazing and includes all real property designated as wetlands that are part of a property used or useable as farmland.

(d) Preservation easement. -- This article incorporates the definition of a preservation easement found in section three, article twelve, chapter twenty of this code, except that a
preservation easement created under this article must be held or
coheld by at least one "holder" as defined in that section and
must be perpetual in its duration.

(c) Woodland. -- Woodland shall be considered land of a
farm only if it is part of or appurtenant to a tract of land which
is a farm, or held by common ownership of a person or entity
owning a farm, but in no event may woodland include land used
primarily in commercial forestry or the growing of timber for
commercial purposes or any other use inconsistent with farm
use.

(f) Opt-out provision. -- A provision which may be inserted
into any conservation or preservation easement agreement
entered into pursuant to this article which would act as a
mechanism to place the easement selling price into an escrow
fund for the purpose of allowing the owner or owners up to five
years to rescind the decision to enter into the farmland protec-
tion program.

§8A-12-12. Methods of farmland protection.

(a) The authority or a county farmland protection board
may negotiate with and compensate eligible property owners to
ensure the protection of farmland within the county or state.
Methods of protecting farmland may include, but are not
limited to, the following:

(1) Acquisition of conservation easement or preservation
easement. -- With the consent of a property owner, the county
farmland protection board or the authority may acquire and
place on record a conservation or preservation easement.
Acquired easements apply only to those properties which
qualify for consideration under the terms established by an
adopted farmland protection program; and
(2) **Acquisition of land and disposition.** -- With the consent of a property owner, the county farmland protection board or the authority may acquire any property which qualifies for agricultural protection under terms established by an adopted farmland protection program. The county farmland protection board or the authority may lease, as lessor, acquired property for agricultural uses or may restrict the property to agricultural uses and sell the property at fair market value for use as a farm. Any property acquired by a county farmland protection board or the authority and then sold shall be sold subject to a conservation or preservation easement. If the property is leased, the lessee shall pay to the county commission, in addition to rent, an annual fee set by the county commission. The amount of this annual fee shall be commensurate with the amount of property taxes which would be assessed in accordance with the provisions of this code upon the property if the property were held by a private landowner.

(b) Revenues from the sale of properties restricted to agricultural uses shall be used to recover the original purchase costs of the properties and shall be returned to the applicable funds which were used by the county farmland protection board or the authority to purchase the property. Any profits resulting from the sale of property restricted to agricultural uses shall be deposited in a farmland protection fund.

§8A-12-13. **Offer of conservation or preservation easements.**

(a) **Owner may offer to sell or donate a conservation or preservation easement.** -- An owner of farmland may offer by written application to sell or donate a conservation or preservation easement on all or any portion of the farm to a county farmland board or the authority.

(b) **Requirements for application to sell or donate.** -- In order to be considered by a county farmland protection board or the authority, an application to sell or donate shall:
(1) Include an asking price, if any, at which the owner is willing to sell a conservation or preservation easement and shall specify the terms under which the offer is made; and

(2) Include a complete description of the land, including, but not limited to, an itemization of all debts secured by the land and the identity and amount of all liens.

§8A-12-14. Value of conservation or preservation easement.

(a) Maximum value. -- The maximum value of any conservation or preservation easement acquired by the county farmland protection board or the authority is the asking price or the difference between the fair market value of the land and the agricultural value of the land, whichever is lower.

(b) Fair market value. -- The fair market value of the land is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property was not subject to any restriction imposed under this article.

(c) Agricultural value. -- The agricultural value of land is the price as of the valuation date which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property subject to the restrictions placed upon it by the conservation or preservation easement.

(d) Determination of values. -- The value of the easement is determined at the time the county farmland protection board or the authority is requested in writing to acquire the easement. The fair market value is determined by the county farmland protection board or the authority based on one or more apprais-
ars obtained by the county farmland protection board or the
authority, and appraisals, if any, of the landowner.

(e) Arbitration. -- If the landowner and the county farmland
protection board or the authority do not agree on the value of
the easement as determined by the state, the landowner, the
county farmland protection board or the authority may request
that the matter be referred to a mutually agreed upon mediator
for arbitration as to the value of the easement. The arbitration
shall be conducted in accordance with the rules promulgated by
the American arbitration association. The value determined at
arbitration is binding upon the owner and the county farmland
protection board or the authority in a purchase of the easement
made subsequent to the arbitration for a period of two years,
unless the landowner and the county farmland protection board
or the authority agree upon a lesser value or the landowner, the
county farmland protection board or the authority appeals the
results of the arbitration to the circuit court.

§8A-12-15. Criteria for acquisition of conservation and preserva-
tion easements by county farmland protection boards and the authority.

The authority and county farmland protection boards, in
ranking applications for conservation and preservation eases-
ments, shall consider the following factors as priorities:

(a) The imminence of residential, commercial or industrial
development;

(b) The total acreage offered for conservation or preserva-
tion easement;

(c) The presence of prime farmland, unique farmland,
 farmland of statewide importance, other locally significant
 farmlands and the productive capacity of the acreage;
(d) Whether the property offered is contiguous or appurtenant to working farms;

(e) The ratio of the asking price, if any, of the easement to the fair market value of the easement;

(f) The historical, architectural, archaeological, cultural, recreational, natural, scenic, source water protection or unique value of the easement. Provided, That determinations of the authority or a county farmland protection board are not a substitute for and do not have the effect of other procedures under state or federal law for granting protected status to land, including, but not limited to, procedures under the National Historic Preservation Act of 1966, as amended, or rules of the director of the historic preservation section of the division of culture and history authorized in section eight, article one, chapter twenty-nine of this code, or procedures under the authority of the tourism commissioner or the parks and recreation section of the division of natural resources;

(g) The existence and amount of secured debt upon the property, as determined by a title search, and whether the total exceeds the agricultural value of the land as determined by the appraisal as required in subsection (d), section fourteen of this article; and

(h) The length of the protective easement.

§8A-12-16. Use of land for which conservation or preservation easement acquired.

(a) Provisions to be included in conservation or preservation easement and county farmland protection board rules, or the authority rules. -- Farmland upon which a conservation or preservation easement has been recorded may be used for the following:
(1) Farm use;

(2) Businesses directly related to the retail sale of farm products;

(3) Any activity performed for religious, charitable or educational purposes or to foster tourism; and

(4) Any home-based business that does not require a division of environmental protection permit to operate.

Notwithstanding any of the exceptions in this subsection, any use of land under preservation or conservation easement must be consistent with the purpose of the farmland protection programs.

(b) Use for commercial, industrial or residential purposes. -- Excepting existing and future uses described in subsections (c), (d) and (e) of this section, a landowner whose land is subject to a conservation or preservation easement may not develop the land for any commercial, industrial, residential or other nonfarm purpose. Nonresidential, noncommercial, nonindustrial farm support buildings or structures are permitted.

(c) Exclusion for single residential dwelling. -- On request to a county farmland protection board or the authority, an owner may exclude two acres per each single residential dwelling, which existed at the time of the sale of the easement, from the easement prohibitions on residential development. A land survey and recordation identifying each single residential dwelling shall be provided at the expense of the owner. However, before any exclusion is granted, an owner shall agree with the county farmland protection board or the authority not to subdivide further for residential purposes any acreage allowed to be excluded. This agreement shall be recorded among the land records where the land is located and shall bind all future owners.
(d) Exclusion for certain existing and future uses. -- This article neither abrogates nor creates any preexisting rights in the land owned by any person not joining as a grantor of a conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent existing or future use of the land based on a preexisting right, or prevent any existing or future use consistent with state law with respect to transmission and telecommunications facilities’ rights-of-way, easements and licenses.

(e) Condemnation of private property for public use. -- This article neither abrogates nor creates any rights inconsistent with state or federal law respecting the power of condemnation of private property for public use. Any person or entity exercising the power of eminent domain must pay compensation at not less than the fair market value of the land to the court having jurisdiction of the proceeding or as directed by the court. The term "fair market value" as used in this subsection shall be determined without regard to the existence of the conservation or preservation easement. Neither the creation nor the existence of a conservation or preservation easement shall prevent acquisition of real property, or any right or interest in the property, for public use.

§8A-12-17. Funding of farmland protection programs.

(a) County funds. --

(1) Creation of county funds. -- Once having created a county farmland protection program, a county commission may authorize the county farmland protection board to create and maintain a farmland protection fund and hire staff as it considers appropriate.

(2) Sources. -- A county farmland protection fund is comprised of:
(A) Any moneys not specifically limited to other uses and dedicated to the fund by a county commission;

(B) Any moneys collected pursuant to section twenty-one of this article;

(C) Any money made available to the fund by grants or transfers from governmental or private sources; and

(D) Any money realized by investments, interest, dividends or distributions.

(b) State fund. --

(1) Created and continued. -- The West Virginia farmland protection fund is created for the purposes specified in this article.

(2) Sources. -- The West Virginia farmland protection fund is comprised of:

(A) Any money made available to the fund by general or special fund appropriations;

(B) Any money made available to the fund by grants or transfers from governmental or private sources;

(C) Any money realized by investments, interest, dividends or distributions; and

(D) Any money appropriated by the Legislature for the West Virginia farmland protection fund.

(3) Disbursements. -- The treasurer may not disburse any money from the fund other than:

(A) For costs associated with the staffing, administration, and technical and legal duties of the authority;
(B) For reasonable expenses incurred by the members of the board of trustees of the authority in the performance of official duties; and

(C) For consideration in the purchase of farmland conservation and preservation easements.

(4) *Money remaining at end of fiscal year.* -- Any money remaining in the fund at the end of a fiscal year shall not revert to the general revenue fund of the state, but shall remain in the West Virginia farmland protection fund to be used for the purposes specified in this article.

(5) *Budget.* -- The estimated budget of the authority for the next fiscal year shall be included with the budget of the West Virginia department of agriculture.

(6) *Audit.* -- The fund shall be audited annually.

§8A-12-18. Disbursements by the authority to county farmland protection boards.

(a) *Applications; amount.* -- If a county has established a county farmland protection program, the authority shall distribute within sixty days after the end of its fiscal year at least eighty percent of that fiscal year's remaining funds to county farmland protection boards who have certified to the authority that there is then pending an application for one or more conservation or preservation easements. Each certification shall include:

(1) The name of each applicant for an easement and the date of each application for an easement during the fiscal year;

(2) A description of the property upon which an easement is offered; and
An appraisal of the value of the conservation or preservation easement as provided in section fourteen of this article.

(b) **Disbursement formula.** -- Disbursement of authority funds to qualifying counties shall be based on the ratio of each county farmland protection board's appraisal value of conservation and preservation easement applications, including those applications to donate easements, received during the fiscal year to the total of the appraisal value of all applications for conservation and preservation easements for the fiscal year received by the authority from county farmland protection boards. Applications for easement donations may only be counted if the county farmland protection board holds or coholds the easement.

§8A-12-19. **Classification of land subject to conservation or preservation easement.**

Notwithstanding any statute or rule to the contrary, any property held or coheld by a holder under a conservation or preservation easement as defined in this article, regardless of ownership, shall be taxed as "agricultural lands" for ad valorem property tax purposes without further requirement, restriction or disqualification. For ad valorem property tax purposes, any property held or coheld by a holder under a perpetual conservation or preservation easement as defined by this article, regardless of ownership, shall be taxed as "agricultural lands" without further requirement, restriction or disqualification.

§8A-12-20. **Authorization for commissioner of agriculture to promulgate proposed rules.**

The commissioner of agriculture may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article.
§8A-12-21. Tax on privilege of transferring real property.

(a) Notwithstanding the provisions of section two, article twenty-two, chapter eleven, and effective the first day of January, two thousand three, and thereafter, in addition to the tax imposed pursuant to article twenty-two, chapter eleven of this code, any county commission that has created a farmland protection program may impose an additional county excise tax for the privilege of transferring title to real estate at the rate of no more than one dollar and ten cents for each five hundred dollars' value or fraction thereof, as represented by any document as defined in section one, article twenty-two, chapter eleven of this code, payable at the time of delivery, acceptance or presentation for recording of the document.

(b) The tax imposed pursuant to this section is to be administered and collected as the tax on the privilege of transferring title to real estate imposed pursuant to the provisions of article twenty-two, chapter eleven of this code.

(c) The tax imposed pursuant to this section is to be used exclusively for the purpose of funding farmland preservation.

CHAPTER 154

(S. B. 200 — By Senators Bowman, Unger, Jenkins, McCabe, Kessler, Plymale, White, Caldwell, Rowe, Minard, Hunter and Fanning)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-7 of the code of West Virginia, 1931, as amended, relating to requiring the superintendent of the
state police to report annually to the Legislature about the effectiveness of its efforts in recruiting minorities.

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

That §15-2-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. WEST VIRGINIA STATE POLICE.**

**§15-2-7. Cadet selection board; qualifications for and appointment to membership in division; civilian employees.**

(a) The superintendent shall establish within the West Virginia state police a cadet selection board which shall be representative of commissioned and noncommissioned officers within the division.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than twenty-one years of age of sound constitution and good moral character; shall be required to pass any mental and physical examination; and meet other requirements as may be provided for in rules promulgated by the cadet selection board: *Provided, That a former member may, at the discretion of the superintendent, be reenlisted.*
(d) No person may be barred from becoming a member of the division because of his or her religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in article eleven, chapter five of this code and shall take positive steps to encourage applications for division membership from females and minority groups within the state. An annual report shall be filed with the Legislature on or before the first day of January of each year by the superintendent which includes a summary of the efforts and the effectiveness of those efforts intended to recruit females, African-Americans and other minorities into the ranks of the state police.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the division at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint such civilian employees as may be necessary and all employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of article six, chapter twenty-nine of this code.

(h) Effective the first day of July, two thousand one, civilian employees with a minimum of five years' service shall receive a salary increase equal to one hundred dollars a year for each year of service as a civilian employee. Every three years thereafter, civilian employees who have five or more years of service shall receive an annual salary increase of three hundred dollars. The increases in salary provided by this subsection are in addition to any other increases to which the civilian employees might otherwise be entitled.
CHAPTER 155

(Com. Sub. for S. B. 208 — By Senators Unger, Kessler, Prezioso, Sharpe, Jenkins, Caldwell, Rowe, Smith, McKenzie, Boley, White, McCabe, Fanning, Dempsey, Hunter and Facemyer)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-13 of the code of West Virginia, 1931, as amended, relating to allowing members of the state police to engage in certain political activities while out of uniform and off duty.

Be it enacted by the Legislature of West Virginia:

That §15-2-13 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-13. Limitations upon members; exceptions.

1 (a) No member of the West Virginia state police may in any way interfere with the rights or property of any person except for the prevention of crime.

4 (b) No member of the West Virginia state police may in any way become active or take part in any political contest or at any time participate in any political party caucus, committee, primary, assembly or convention or in any general or special election while in uniform, except to cast his or her ballot.

9 (c) No member of the West Virginia state police may be detailed or ordered to duty at or near any voting precinct where
any election or convention is held on the day of an election or
convention; nor may any member thereof remain in, about or
near the voting precinct or place of convention, except to cast
his or her vote. After voting he or she shall forthwith retire
from the voting precinct. No member may act as an election
official. If any member of the West Virginia state police is
found guilty of violating any of the provisions of this section,
he or she shall be dismissed by the superintendent as hereinafter
provided.

(d) While out of uniform and off duty, no member of the
West Virginia state police may participate in any political
activity except:

(1) Campaign for and hold office in political clubs and
organizations;

(2) Actively campaign for candidates for public office in
partisan and nonpartisan elections; and

(3) Contribute money to political organizations and attend
political fund-raising functions.

(e) No member of the West Virginia state police may at any
time:

(1) Be a candidate for public office in a nonpartisan or
partisan election;

(2) Use official authority or influence to interfere with or
affect the results of an election or nomination; or

(3) Directly or indirectly coerce contributions from subordi-
nates in support of a political party or candidate.

(f) No officer or member of the West Virginia state police
may, in any labor trouble or dispute between employer and
39 employee, aid or assist either party thereto, but shall in these
40 cases see that the statutes and laws of this state are enforced in
41 a legal way and manner.

CHAPTER 156

(Com. Sub. for S. B. 181 — By Senators Unger, Kessler, McCabe,
Caldwell, Harrison, Snyder, Oliverio, Ross, Smith, Sprouse,
Hunter, Love, Dempsey, Weeks, White, Fanning, Prezioso,
Jenkins, Rowe, Plymale, Bowman, Edgell, Sharpe,
Minear, Minard and Tomblin, Mr. President)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-25 of the code of West Vir­
ginia, 1931, as amended, relating to permitting a retired member
of the state police to carry a concealed weapon for the life of the
member.

Be it enacted by the Legislature of West Virginia:

That §15-2-25 of the code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-25. Rules generally; carrying of weapons upon retirement
or medical discharge.

1 Subject to the written approval of the governor and the
2 provisions of this article, the superintendent may make and
3 promulgate proper rules for the government, discipline and
4 control of the West Virginia state police and shall also cause to
5 be established proper rules for the examinations of all appli-
6 cants for appointment thereto. The members of the West
Virginia state police shall be permitted to carry arms and weapons and no license may be required for the privilege.

Upon retirement or medical discharge from the West Virginia state police and with the written consent of the superintendent, any retired or medically discharged member may carry a handgun for the life of the member following retirement or medical discharge notwithstanding the provisions of article seven, chapter sixty-one of this code: Provided, That the superintendent's written letter of consent to carry a handgun may not last for more than five years at a time and a retired or medically discharged member who wishes to continue to carry a handgun beyond five years of the date of his or her initial retirement or medical discharge must request and obtain a renewal of the superintendent's written permission to carry a handgun at least once every five years. A retired or medically discharged member desiring to carry a handgun after retirement or medical discharge must provide his or her own handgun. Upon request, each member shall be presented with a letter of authorization signed by the superintendent authorizing the retired or medically discharged member to carry a handgun. The written authorization shall be carried by the retired or medically discharged member at all times that he or she has a handgun on his or her person. The superintendent may not issue a letter of authorization to any retired or medically discharged member who is no longer employed by the state police due to a mental disability or who the superintendent has reason to believe is mentally incapacitated to the extent it would present a threat of physical harm to one or more persons for the member to carry a concealed weapon. The superintendent may revoke the authority at any time without cause and without recourse. Conviction of the retired or medically discharged member for the commission of any felony or for a misdemeanor involving the improper or illegal use of a firearm shall cause this authority to terminate immediately without a hearing or other recourse and without any action on the part of the superintendent. The superintendent shall promulgate a
43 legislative rule in accordance with the provisions of chapter twenty-nine-a of this code, which rule shall prescribe requirements necessary for the issuance and continuance of the authority herein granted.

CHAPTER 157

(H. B. 4671 — By Delegates Michael, Boggs, Proudfoot, Ashley, Browning, G. White and Stalnaker)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §15-2-43 of the code of West Virginia, 1931, as amended; and to amend and reenact §20-7-1d of said code, all relating to the disposal of law-enforcement weapons when replaced due to routine wear.

Be it enacted by the Legislature of West Virginia:

That §15-2-43 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §20-7-1d of said code be amended and reenacted, all to read as follows:

Chapter
15. Public Safety.
20. Natural Resources.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-43. Awarding service revolver upon retirement and disposal of service weapon when replaced due to routine wear.
(a) Upon the retirement of a member of the West Virginia state police, the superintendent shall award to the retiring member his or her service revolver, without charge, upon determining:

(1) That the retiring member is retiring honorably with at least twenty years of service; or

(2) Such retiring member is retiring with less than twenty years of service based upon a determination that such member is totally physically disabled as a result of his or her service with the West Virginia state police.

(b) Notwithstanding the provisions of subsection (a) of this section, the superintendent may not award his or her service revolver to any member whom the superintendent finds to be mentally incapacitated or who constitutes a danger to any person or the community.

(c) The disposal of state police service weapons, when replaced due to routine wear, shall not fall under the jurisdiction of the agency for surplus property, within the purchasing division of the department of administration. The superintendent may offer these surplus weapons for sale to any active or retired member of the state police, at fair market value, with the proceeds from any sales used to offset the cost of the new weapons.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1d. Awarding service revolver upon retirement; disposal of service weapon when replaced due to routine wear; and furnishing uniform for burial.
(a) Upon the retirement of any full-time salaried conservation officer, the chief conservation officer shall award to the retiring conservation officer his or her service revolver, without charge, upon determining:

(1) That the conservation officer is retiring honorably with at least twenty-five years of recognized law-enforcement service as determined by the chief conservation officer; or

(2) That such conservation officer is retiring with less than twenty-five years of service based upon a determination that he or she is totally physically disabled as a result of service with the division.

(b) Notwithstanding the provisions of subsection (a) of this section, the chief conservation officer shall not award a service revolver to any conservation officer who has been declared mentally incompetent by a licensed physician or any court of law, or who, in the opinion of the chief conservation officer, constitutes a danger to any person or the community.

(c) The disposal of law-enforcement service weapons, when replaced due to routine wear, shall not fall under the jurisdiction of the agency for surplus property, within the purchasing division of the department of administration. The chief conservation officer may offer these surplus weapons for sale to any active or retired division of natural resources law-enforcement officer, at fair market value, with the proceeds from any sales used to offset the cost of the new weapons.

(d) Upon the death of any current or honorably retired conservation officer, the chief conservation officer shall, upon request of the deceased officer's family, furnish a full uniform for burial of the deceased officer.
AN ACT to amend and reenact §15-10-3, §15-10-4 and §15-10-5 of the code of West Virginia, 1931, as amended, all relating to authorizing cooperation of campus police and rangers employed by the Hatfield-McCoy regional recreation authority with other law-enforcement agencies.

Be it enacted by the Legislature of West Virginia:

That §15-10-3, §15-10-4 and §15-10-5 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.
§15-10-4. Cooperation between law-enforcement agencies and other groups of state or local law-enforcement officers.
§15-10-5. Federal officers' peace-keeping authority.

§15-10-3. Definitions.

1 For purposes of this article only, and unless a different meaning plainly is required:

3 (1) "Criminal justice enforcement personnel" means those persons within the state criminal justice system who are
actually employed as members of the division of public safety, members of the division of protective services, state conservation 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 division of public safety, the director of the division of protective services, the chief conservation officer of the division of natural resources, a chief of police of an incorporated municipality or a county sheriff.

(3) "State or local law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking 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, although those institutions 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.

(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 administra-
tive 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 four-
teen, chapter twenty of this code.

§15-10-4. Cooperation between law-enforcement agencies and
other groups of state or local law-enforcement
officers.

(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
declared 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 enhanc-
ing 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 the provisions of 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 the provisions of this article shall remain in force and effect for a period of more
than twelve months unless renewed in writing by the parties thereto nor shall any request or agreement made or entered into pursuant to the provisions of this article have 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. 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.

§15-10-5. Federal officers' peace-keeping authority.

(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; and

(9) Law-enforcement commissioned rangers of the national park 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.
AN ACT to amend and reenact §60A-9-5 of the code of West Virginia, 1931, as amended, relating to authorizing local law-enforcement officers who are members of drug task forces to have access to prescription drug monitoring data.

Be it enacted by the Legislature of West Virginia:

That §60A-9-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

The information required by this article to be kept by the state board of pharmacy is confidential and is open to inspection only by inspectors and agents of the state board of pharmacy, members of the West Virginia state police expressly authorized by the superintendent of the West Virginia state police to have access to the information, authorized agents of local law-enforcement agencies as a member of a drug task force, authorized agents of the federal drug enforcement agency, duly authorized agents of licensing boards of practitioners in this state and other states authorized to prescribe Schedules II, III and IV controlled substances, prescribing practitioners and pharmacists and persons with an enforceable
court order or regulatory agency administrative subpoena:

Provided, That all information released by the state board of pharmacy must be related to a specific patient or a specific individual or entity under investigation by any of the above parties except that practitioners who prescribe controlled substances may request specific data related to their drug enforcement administration controlled substance registration number or for the purpose of providing treatment to a patient. The board shall maintain the information required by this article for a period of not less than five years. Notwithstanding any other provisions of this code to the contrary, data obtained under the provisions of this article may be used for compilation of educational, scholarly or statistical purposes as long as the identities of persons or entities remain confidential. No individual or entity required to report under section four of this article may be subject to a claim for civil damages or other civil relief for the reporting of information to the board of pharmacy as required under and in accordance with the provisions of this article.

CHAPTER 160

(Com. Sub. for H. B. 4536 — By Delegates Stemple, Varner, Swartzmiller, Staton, Kominar, Michael and Amores)

(Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §15-10A-1, §15-10A-2, §15-10A-3, §15-10A-4, §15-10A-5 and §15-10A-6, all relating to establishing the law-enforcement re-employment act; legislative findings; authorizing the re-employment of retired county and
municipality law-enforcement officers, and division of natural resource law-enforcement officers; examination requirements; coverage for illness or injury; ineligibility for contributions to pensions; and employment status, civil service and retirement benefits.

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 §15-10A-1, §15-10A-2, §15-10A-3, §15-10A-4, §15-10A-5 and §15-10A-6, all to read as follows:

ARTICLE 10A. LAW-ENFORCEMENT RE-EMPLOYMENT ACT.

§15-10A-1. Legislative findings.
§15-10A-3. Examination requirements.
§15-10A-4. Coverage for illness or injury.
§15-10A-5. Ineligibility for contributions to pensions.
§15-10A-6. Employment status; civil service; and retirement benefits.

§15-10A-1. Legislative findings.

The Legislature finds:

1. That West Virginia law enforcement is currently suffering from an unacceptably high number of vacant law-enforcement positions because of military service obligations, and that given the time factors and expense associated with the hiring and training of personnel with no prior law-enforcement experience, it is in the interest of the state to re-employ retired law-enforcement officers in order to temporarily fill only the vacant positions of those law-enforcement officers called to active military duty;

2. That no pension rights of any kind shall accrue or attach pursuant to re-employment under this article; and

(a) Notwithstanding any provision of this code to the contrary, any honorably retired law-enforcement officer may, at the discretion of the head of a law-enforcement agency, be re-employed subject to the provisions of this article: Provided, That a retired law-enforcement officer employed pursuant to this article must be certified pursuant to article twenty-nine, chapter thirty.

(b) Any person re-employed pursuant to the provisions of this article shall:

(1) Receive the same compensation as a regularly enlisted officer of the same rank;

(2) Receive credit for all years of service accrued prior to their retirement, as well as service rendered after the date of their re-employment;

(3) Exercise the same authority as a regularly enlisted officer of the law-enforcement agency;

(4) Wear the same uniform and insignia;

(5) Be subject to the same oath;

(6) Execute the same bond; and
(7) Exercise the same powers and be subject to the same limitations as a regularly enlisted officer of the law-enforcement agency.

(c) A person re-employed pursuant to the provisions of this article is ineligible for promotion or reclassification of any type nor eligible for appointment to a temporary rank.

(d) A person re-employed pursuant to the provisions of this article may be employed for a period not to exceed two years from the date on which he or she is hired.

(e) As used in this article:

(1) “Law-enforcement officer” or “officer” means: (A) Any sheriff and any deputy sheriff of any county; (B) any member of a police department in any municipality as defined in section two, article one, chapter eight of this code; and (C) any conservation officer of the division of natural resources; and

(2) “Head of a law-enforcement agency” means the chief of police of an incorporated municipality; a county sheriff, or the chief conservation officer of the division of natural resources.

§15-10A-3. Examination requirements.

A retired law-enforcement officer applying for re-employment under this article is required to pass mental and physical examinations as required, and meet such other requirements, as may be provided in rules promulgated by the head of the applicable law-enforcement agency.

§15-10A-4. Coverage for illness or injury.

(a) Notwithstanding any provision of this code to the contrary, the head of the law-enforcement agency shall make provisions for coverage of personnel employed pursuant to this article by the workers’ compensation division and bureau of employment programs. In the event an individual re-employed
pursuant to this article sustains an illness or injury which is
work related in origin, any cost associated with the treatment
must be defrayed in this manner.

(b) In the event a work-related illness or injury renders an
individual employed pursuant to the provisions of this article
permanently physically or mentally disabled, the applicable
law-enforcement agencies’ disability coverage through the
workers’ compensation division shall apply, and the individ-
ual’s existing pension shall be recalculated as though the
disabling event had occurred coincident with the individual’s
original retirement. Any change in benefits resulting from this
recalculation may not be retroactive in nature.

(c) The provisions of this section do not apply in the event
a person employed pursuant to this article is disabled because
of some cause or event which is determined not to be work
related.

§15-10A-5. Ineligibility for contributions to pensions.

Any person re-employed pursuant to this article is not
eligible to contribute to any pension plan administered by the
consolidated public retirement board, nor may he or she
establish or accrue any new pension eligibility as a result of
such re-employment.

§15-10A-6. Employment status; civil service; and retirement
benefits.

(a) Notwithstanding any provision of this code to the
contrary, any person re-employed pursuant to this article shall
serve at the will and pleasure of the head of the law-enforce-
ment agency, and is subject to termination without cause.

(b) Any person re-employed pursuant to this article may not
be included in the classified service of the civil service system.

(c) Notwithstanding any provision of this code to the
contrary, compensation paid to any person re-employed
pursuant to this article shall be in addition to any public
employees insurance act retirement benefits, or any other
retirement payments or pension benefits which he or she is
already entitled to receive or is receiving.

CHAPTER 161

(Com. Sub. for S. B. 327 — By Senators Ross, Minard,
Snyder, Unger, Boley and Minear)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §64-1-1 of the code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all 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 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; disapproving certain legislative rules; authorizing the department of administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing the department of administration to promulgate a legislative rule relating to parking; 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 benefit determination and appeal; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the teachers defined benefit plan; authorizing the consolidated public retirement board to promulgate a legislative rule relating to the West Virginia state police disability determination and appeal process; authorizing the board of risk and insurance management to promulgate a legislative rule relating to the public entities insurance program; and disapproving the board of risk and insurance management legislative rule relating to the terms and conditions pertaining to members of self-insurance pools who wish to participate in state insurance programs.

Be it enacted by the Legislature of West Virginia:

That §64-1-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code be amended and reenacted, all to read as follows:

Article

2. Authorization for Department of Administration to Promulgate Legislative Rules.

ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.

§64-1-1. Legislative authorization.

Under the provisions of article three, chapter twenty-nine-a of the code of West Virginia, the Legislature expressly authorizes the promulgation of the rules described in articles two through eleven, inclusive, of this chapter, subject only to the limitations set forth with respect to each such rule in the section or sections of this chapter authorizing its promulgation. Legislative rules promulgated pursuant to the provisions of articles one through eleven, inclusive, of this chapter in effect at the effective date of this section shall continue in full force and effect until reauthorized in this chapter by legislative enactment or until amended by emergency rule pursuant to the provisions of article three, chapter twenty-nine-a of this code.
ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-1. Department of administration.
§64-2-3. Board of risk and insurance management.

§64-2-1. Department of administration.

(a) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section forty-two, article three, 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-third day of January, two thousand four, relating to the department of administration (leasing space on behalf of state spending units, 148 CSR 2), is authorized with the following amendments:

On page one, subdivision 1.1, on the ninth line, by striking out the words “those spending units who are exempt or who have independent leasing authority.” and inserting in lieu thereof the words “the division of highways, the higher education policy commission, the lottery commission, or a spending unit of the state with independent leasing authority pursuant to the code of West Virginia. This exemption does not apply to the office space of spending units of the executive branch.”

On page one, subsection 2.1, by designating the first paragraph as subdivision 2.1.a and by designating the second paragraph as subdivision 2.1.b;

On page one, subsection 2.2, line three, after the words “describing the space” by striking out the remainder of the subsection and by inserting in lieu thereof the words “and a letter justifying the agency’s need for leasing the new space.”;

On page two, subdivision 4.2.b, line three, after the word “considered”, by inserting the words “by the leasing officer”;
On page two, subdivision 4.2.c, line two, by inserting the words "Class II";

On page two, section four, following subsection 4.3, by inserting the following and renumbering the remaining subsections:

"4.4. Notification.

The Leasing Office shall provide written notification of its site selection recommendation to the spending unit within thirty (30) days of the evaluation of the spending unit’s request for space which includes the review of bids, evaluation of bids by the Leasing Office and any negotiations conducted by the Leasing Office pursuant to Subsection 4.3 of this rule prior to final location selection."

On page two, section four, subsection 4.4, by striking the second paragraph;

On page two, subsection 4.5, after the period, by inserting the words "The leasing office shall provide written notification to the spending unit regarding the agency’s authorization to occupy the space within thirty (30) days of an evaluation period."

On page three, section six, subsection 6.3, line 1, following the word "Administration" by inserting "or the Director of the Purchasing Division of the Department of Administration";

On page three, section six, subsection 6.3, line seven, following the word "Administration" by inserting "or the Director of the Purchasing Division";

On page three, section six, subsection 6.3, line nine, following the word "Secretary" and the comma, by inserting the words "the Director";

On page three, section six, subsection 6.3, line 14, following the word "Secretary", by inserting the words "or Director";
On page three, section six, subsection 6.4, line two, following the word "Administration" by inserting "or the Director of the Purchasing Division";

On page four, section seven, subsection 7.1, line seven, following the word "Administration" by inserting "or the Director of the Purchasing Division"; and

On page four, section ten, subsection 10.1, line five, following the word "Administration" by inserting "or the Director of the Purchasing Division".

On page four, subsection 11.1, line two, after the words "other emergency situation", by inserting the words "as determined by the Secretary,");

On page four, subsection 11.1, line three, after the period, by inserting the words "In the event of a natural disaster or emergency situation, the Secretary of Administration shall continue to have the authority to select and to acquire by contract or lease, in the name of the State, all grounds, buildings, office space or other space for and on behalf of any spending unit.");

On page four, subsection 11.2, by striking out the entire subsection and by renumbering the subsequent subsections;

On page four, subsection 11.3, line one, by striking out the words "At no time does the" and inserting in lieu thereof the word "The", and after the words "spending unit", by inserting the words "does not";

On page four, subsection 11.4, line one, by striking out the words "To the degree" and by inserting in lieu thereof the word "When";

On page four, subsection 11.4, line three, after the word "unit", by striking out the words "shall get" and by inserting in lieu thereof the words "will obtain";
On page five, subsection 11.5, line one, by striking out the words "To the degree" and by inserting in lieu thereof the word "When";

And,

On page five, subsection 11.5, line two, after the words "will put a", by inserting the words "Class II".

(b) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section five, article four, 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-third day of January, two thousand four, relating to the department of administration (parking, 148 CSR 6), is authorized with the following amendment:

On page two, subsection 5, on the eleventh line, by adding after "2007." the following sentence: "The maximum fee that can be charged thereafter for parking is twenty dollars ($20.00) per month."


(a) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand three, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of October, two thousand three, 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-eighth day of July, two thousand three, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of
October, two thousand three, relating to the consolidated public retirement board (benefit determination and appeal, 162 CSR 2), is authorized.

(c) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand three, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of October, two thousand three, relating to the consolidated public retirement board (teachers defined benefit plan, 162 CSR 4), is authorized.

(d) The legislative rule filed in the state register on the twenty-eighth day of July, two thousand three, authorized under the authority of section one, article ten-d, chapter five of this code, modified by the consolidated public retirement board to meet the objections of the legislative rule-making review committee and refiled in the state register on the thirtieth day of October, two thousand three, relating to the consolidated public retirement board (West Virginia state police disability determination and appeal process, 162 CSR 9), is authorized.

§64-2-3. Board of risk and insurance management.

(a) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section one, article twelve, chapter twenty-nine of this code, modified by the board of risk and insurance management to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-third day of January, two thousand four, relating to the board of risk and insurance management (public entities insurance program, 115 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section fourteen, article twelve, chapter twenty-nine of this code, modified by the board of risk and insurance
management to meet the objections of the legislative rule-
making review committee and refiled in the state register on the
twenty-third day of January, two thousand four, relating to the
board of risk and insurance management (terms and conditions
pertaining to members of self insurance pools who wish to
participate in state insurance programs, 115 CSR 7), is not
authorized.

CHAPTER 162

(Com. Sub. for H. B. 4193 — By Delegates Mahan, R. Thompson,
Cann, Kominar, Armstead and Faircloth)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 3, chapter 64 of the code of
West Virginia, 1931, as amended, all 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 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 promul-
gate certain legislative rules as amended by the Legislature;
authorizing certain of the agencies to promulgate certain legisla-
tive rules with various modifications presented to and recom-
mended by the legislative rule-making review committee and as
amended by the Legislature; disapproving certain legislative rules
presented to the Legislature for authorization; authorizing the
department of environmental protection to promulgate a legisla-
tive rule relating to the Nox budget trading program as a means
of control and reduction of nitrogen oxides from nonelectric generating units; authorizing the department of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the department of environmental protection to promulgate a legislative rule relating to standards of performance for new stationary sources pursuant to 40 CFR Part 60; authorizing the department of environmental protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; authorizing the department of environmental protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the department of environmental protection to promulgate a legislative rule relating to requirements for determining conformity of transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the federal transit laws applicable air quality implementation plans (transportation conformity); 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 solid waste management; authorizing the department of environmental protection to promulgate a legislative rule relating to hazardous waste management; authorizing the department of environmental protection to promulgate a legislative rule relating to the West Virginia NPDES rule for coal mining facilities; authorizing the environmental quality board to promulgate a legislative rule relating to requirements governing water quality standards; and authorizing the environmental quality board to promulgate emergency and legislative rules on or before the first day of October, two thousand four to revise the aquatic life aluminum criteria.

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.

§64-3-2. Environmental quality board.

§64-3-1. Department of environmental protection.

(a) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (Nox budget trading program as a means of control and reduction of nitrogen oxides from non-electric generating units, 45 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the thirtieth day of July, two thousand three, 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 pursuant to 40 CFR Part 61, 45 CSR 15), is authorized.

(c) The legislative rule filed in the state register on the thirtieth day of July, two thousand three, 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 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized with the following amendment:

Wherever the rule has been amended to insert the term "Division of Water and Waste Management" the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(d) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, authorized under the authority of section four, article five, chapter twenty-two of
this code, relating to the department of environmental protection (to prevent and control air pollution from hazardous waste treatment, storage or disposal facilities, 45 CSR 25), is authorized with the following amendment:

Wherever the rule has been amended to insert the term "Division of Water and Waste Management", the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(e) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, 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 for source categories pursuant to 40 CFR Part 63, 45 CSR 34), is authorized with the following amendment:

Wherever the rule has been amended to insert the term "Division of Water and Waste Management", the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(f) The legislative rule filed in the state register on the thirtieth day of July, two thousand three, authorized under the authority of section four, article five, chapter twenty-two of this code, relating to the department of environmental protection (requirements for determining conformity of transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the federal transit laws applicable to air quality implementation plans (transportation conformity), 45 CSR 36), is authorized with the following amendment:

Wherever the rule has been amended to insert the term "Division of Water and Waste Management", the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(g) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, 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 sixteenth day of January, two thousand four, relating to the department of environmental protection (surface mining reclamation, 38 CSR 2), is authorized.

(h) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section five, article fifteen, 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 second day of December, two thousand three, relating to the department of environmental protection (solid waste management, 33 CSR 1), is authorized with the following amendment:

Wherever the rule has been amended to insert the term “Division of Water and Waste Management”, the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(i) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, authorized under the authority of section one, 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 second day of December, two thousand three, relating to the department of environmental protection (hazardous waste management, 33 CSR 20), is authorized with the following amendment:

Wherever the rule has been amended to insert the term “Division of Water and Waste Management”, the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

(j) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, authorized under the
authority of section four, article eleven, 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 twentieth day of November, two thousand three, relating to the department of environmental protection (West Virginia NPDES rule for coal mining facilities, 47 CSR 30), is authorized with the following amendment:

Wherever the rule has been amended to insert the term "Division of Water and Waste Management", the existing language of the rule prior to the amendment denoting a change in the name of the agency of reference shall be retained.

§64-3-2. Environmental quality board.

The legislative rule filed in the state register on the first day of August, two thousand three, under the authority of section four, article three, chapter twenty-two-b of this code, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is not authorized.

(1) The legislative rule filed in the state register on the fourteenth day of April, two thousand three, and effective the twenty-fifth day of June, two thousand three, authorized under the authority of section four, article three, chapter twenty-two-b of this code, authorized by the Legislature during the regular session of the Legislature in two thousand three, relating to the environmental quality board (requirements governing water quality standards, 46 CSR 1), is reauthorized with the following amendments:

On page seven, section 6.2.d., after the words "(requirements for Category A waters.)", by striking out the words "The manganese human health criteria shall not apply where the discharge point of the manganese is located more than five miles upstream from a known drinking water source." and inserting the following:
“The manganese human health criterion shall only apply within the five-mile zone immediately upstream above a known public or private water supply used for human consumption.”;

On page ten, section 7.2.a.2., after the words “(to its headwaters.)” by striking out the words “Until September 1, 2004, the one-half mile zone described in this section shall not apply to the Ohio River main channel (between Brown’s Island and the left descending bank) between river mile points 61.0 and 63.5.” and inserting in lieu thereof the words “Until September 1, 2010, or until action by the Environmental Quality Board to revise this provision, whichever comes first, the one-half (½) mile zone described in this section shall not apply to the Ohio River main channel (between Brown’s Island and the left descending bank) between river mile points 61.0 and 63.5 for the Category A criterion for iron as set forth in §8 herein. Weirton Steel Corporation shall conduct monthly monitoring of the treated water at its drinking water plant for iron and submit the results of such monitoring to the West Virginia Bureau for Public Health and the Office of Water Resources of the West Virginia Department of Environmental Protection. In addition, Weirton Steel Corporation shall submit a written report regarding the status of its drinking water plant and the issues pertaining thereto to the Environmental Quality Board on or before March 1, 2007.”;

On pages twelve and thirteen, section 7.2.d.16.2. after the words “the following instream criteria:” by striking the remainder of 7.2.d.16.2. and inserting in lieu thereof, the following:

“Lead 14 ug/l, Daily Maximum, Temperature 100 degree F (monitored per Footnote 12 of the permit); Iron 4.0 mg/l, monthly average and 8.0 mg/l Daily Maximum (monitored per Footnote 12 of the permit). Weirton Steel Corporation shall continue to submit to the Office of Water Resources of the West Virginia Department of Environmental Protection, on an annual basis summary reports on the water quality of the discharge from Outlet 004 and the efforts made by Weirton Steel Corporation during the previous year to improve the
quality of the discharge. These exceptions shall be in effect
until action by the Environmental Quality Board to revise the
exceptions or until July 1, 2007, whichever comes first.”;

On page thirteen, section 7.2.d.19. by adding a new
paragraph designated 7.2.d.19.3. to read as follows:

7.2.d.19.3. Except that in Ward Hollow of Davis Creek, the
following site-specific numeric criterion for chloride shall apply
for Category A and Category B1 (chronic aquatic life protec-
tion):310,000 ug/L.;

On page 30, APPENDIX E, TABLE 1, column one, by
striking out the words “The concentration of un-ionized
ammonia (NH3) shall not exceed 50 ug/L.; and

On page 30, APPENDIX E, TABLE 1, by striking the all
the provisions of 8.2. and on page 31, by renumbering 8.2.1. as
8.2.

(2) In addition to the forgoing amendments to the rule the
environmental quality board shall, in cooperation with the
regulated community and the department of environmental
protection, propose for promulgation in accordance with the
provisions of article three, chapter twenty-nine-a of this code,
an emergency and legislative rule on or before the first day of
October, two thousand four, to revise the aquatic life aluminum
criteria.

CHAPTER 163

(Com. Sub. for H. B. 4205 — By Delegates Mahan, R. Thompson,
Cann, Kominar, Armstead and Faircloth)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]
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 various executive or administrative agencies and the procedures relating thereto; 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 department of health and human resources to promulgate a legislative rule relating to eligibility standards for economic assistance from the James "Tiger" Morton catastrophic illness fund; authorizing the division of health to promulgate a legislative rule relating to assisted living residences; authorizing the division of health to promulgate a legislative rule relating to cross connection and backflow prevention; authorizing the division of health to promulgate a legislative rule relating to the certification of backflow prevention assembly testers; authorizing the division of health to promulgate a legislative rule relating to the state-wide trauma/emergency care system; authorizing the division of health to promulgate a legislative rule relating to public water systems; authorizing the division of health to promulgate a legislative rule relating to childhood lead screening; authorizing the division of health to promulgate a legislative rule relating to fees for services; authorizing the division of health to promulgate a legislative rule relating to residential board and care homes; and authorizing the division of health to promulgate a legislative rule relating to the birth defects information system.

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.
§64-5-2. Division of health.

§64-5-1. Department of health and human resources.

The legislative rule filed in the state register on the eighth day of July, two thousand three, authorized under the authority of section two, article five-q, 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 second day of December, two thousand three, relating to the department of health and human resources (eligibility standards for economic assistance from the James “Tiger” Morton catastrophic illness fund, 72 CSR 1), is authorized, with the following amendments:

On page one, section 2, lines one and two, by striking out the words “has a catastrophic illness and has applied” and inserting in lieu thereof the word “applies”;

On page one, subsection 2.1, line three, by striking out the word “that” and inserting in lieu thereof the word “catastrophic”;

On page two, subsection 3.4, after the words “A life-threatening illness” by striking out the remainder of the subsection and inserting in lieu thereof the words “presenting an applicant with an imminent risk of death.”;

On page two, subsection 3.6, by striking out the subsection in its entirety and inserting in lieu thereof the following:
"3.6. Eligible applicant. - An applicant who is suffering from a catastrophic illness and who meets the financial eligibility standards established by subsection 6.3 of this rule."

On page two, section 4, by striking out the section in its entirety and inserting in lieu thereof the following:

"4.1. A West Virginia citizen may request economic assistance from the commission by contacting the commission and providing information by telephone.

4.2. Any person who obtains or attempts to obtain funds from the commission by willful, false statement or misrepresentation or by impersonation or any other fraudulent device may be investigated by the Department of Health and Human Resources, Office of Inspector General, and may be prosecuted to the full extent of the law."

On page four, section 5, by striking out the section in its entirety and renumbering subsequent sections accordingly;

On page two, section 6, by striking out the words "If funding is available, the Commission may consider an applicant eligible" and inserting in lieu thereof the words "An applicant is eligible";

On page three, subsection 8.1, by striking out the subsection in its entirety and inserting in lieu thereof the following:

"8.1. Requests for pharmaceutical purchases other than those approved under section 7 of this rule;"

On page three, subsection 8.3, line one, after the word "days", by inserting the words "or more";

On page four, subsection 9.1, by striking out the subsection in its entirety and inserting in lieu thereof the following:

"9.1. If funding is available, the commissioner may order an award of economic assistance to an eligible applicant."
On page four, subsection 9.2, line two, after the words "amount of an award." by striking out the remainder of the subsection and inserting in lieu thereof the following:

"The decision to make an award is within the discretion of the commission or, where permitted by this rule, its executive director."

On page four, subsection 9.3, by striking out the subsection in its entirety and inserting in lieu thereof the following:

"9.3. Within each budget year, similarly situated applicants shall be treated similarly."

On page four, section 10, by striking out the section in its entirety and inserting in lieu thereof the following:

"Records of the Commission are confidential and may not be disclosed except as required by W. Va. Code §29B-1-1 et seq. Any employee of the commission who has access to confidential information regarding an applicant must sign a written statement acknowledging that he or she fully understands and will maintain the confidential nature of the information."

And,

On page five, section 11, line eight, after the word "conclusion." by striking out the quotation marks.

§64-5-2. Division of health.

(a) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand three, authorized under the authority of section five, article five-d, chapter sixteen of this code, modified by the division of health 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 three, relating to the division of health (assisted living residences, 64 CSR 14), is authorized.
(b) The legislative rule filed in the state register on the twenty-second day of July, two thousand three, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of December, two thousand three, relating to the division of health (cross connection and backflow prevention, 64 CSR 15), is authorized.

(c) The legislative rule filed in the state register on the twenty-second day of July, two thousand three, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the division of health to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of December, two thousand three, relating to the division of health (certification of backflow prevention assembly testers, 64 CSR 25), is authorized with the following amendment:

"On page two, section four, following subdivision 4.1.b., by striking the remainder of the subsection and inserting the following:

'and

4.1.c. Either:

4.1.c.1. Complete and pass all parts of an approved forty (40) hour course of instruction in theory, design, performance, testing and maintenance of backflow prevention assemblies; or

4.1.c.2. Meet recertification, reinstatement or reciprocity requirements, as provided in sections 7 or 8 of this rule.'"

(d) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, authorized under the authority of section nine-c, article seven-b, chapter fifty-five of this code, modified by the division of health 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 three, relating to the division of health (statewide
trauma/emergency care system, 64 CSR 27), is authorized.

(e) The legislative rule filed in the state register on the
eleventh day of July, two thousand three, authorized under the
authority of section four, article one, chapter sixteen of this
code, relating to the division of health (public water systems, 64
CSR 3), is authorized.

(f) The legislative rule filed in the state register on the
twenty-eighth day of July, two thousand three, authorized under
the authority of section four-a, article thirty-five, chapter
sixteen of this code, modified by the division of health 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 three, relating to the division of health (childhood
lead screening, 64 CSR 42), is authorized with the following
amendments:

“On page two, subsection 3.6, line one, following the word
“Screening” and the dash, by striking out the remainder of the
sentence and inserting in lieu thereof the following: “The
assessment of a child’s environment and social conditions to
determine risk for lead poisoning.”;

On page two, subsection 4.1, line two, following the words
“years for” by inserting the words “risk of”;

On page two, subdivision 4.1.a, line one, following the
word “screened”, by inserting the words “using a risk assess-
ment”;

On page two, subdivision 4.1.a, line two, following the
word “age”, by striking out the words “shall be screened”;

On page two, subdivision 4.1.b, line one, following the
word “lead”, by inserting the words “risk assessment”;
On page two, subdivision 4.1.b, line three, following the word "conducted", by striking out the comma and inserting the word "and";

On page two, subdivision 4.1.b, line three, following the word "name", by striking out the remainder of the sentence.

On page two, section four, following subdivision 4.1.b, by inserting the following:

"4.1.c. If a child is determined to be at risk for lead poisoning, the health care provider shall perform or authorize a blood test to identify the blood lead level."

On page three, section six, line two, following the word "quarterly", by inserting the word "testing";

On page three, section six, line two, following the word "results", by striking out the words "of the screening";

And

On page three, subsection 7.2, line two, following the word "child's", by inserting the word "name" and a comma.

(g) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section four, article one, chapter sixteen of this code, modified by the division of health 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 three, relating to the division of health (fees for services, 64 CSR 51), is authorized, with the following amendments:

On page one, subsection 3.2 after the words "Ambulatory Surgical" by striking out the words "Center (ASC)" and inserting in lieu thereof the words "Facility (ASF)";

On page twenty-one, Appendix A. Laboratory Service Fees., subparagraph l.A.1.8.1, after the words "Active Sub-
On page twenty-one, Appendix A. Laboratory Service Fees., after subparagraph 1.A.1.8.1, by inserting a new subparagraph, designated subparagraph 1.A.1.8.1, and renumbering the remaining subsections, to read as follows:

"m. Nitrate $15.00;"

On page twenty-one, Appendix A. Laboratory Service Fees., subsection 1.B., by renumbering the subdivisions in the subsection;

On page twenty-two, Appendix A. Laboratory Service Fees., after subparagraph 1.B.3.A.3, by adding a new subparagraph, designated subparagraph 1.B.3.A.4, to read as follows:

"3. All Other Organic Tests $800.00
4. Total Organic Carbon (TOC) and/or Specific Ultraviolet Absorption (SUVA) $200.00"

and by renumbering the subsequent subparagraphs accordingly;

On page twenty-two, Appendix A. Laboratory Service Fees., paragraph 1.B.4.A., after the words "Newborn Screening", by striking out the numbers "$15.00" and inserting in lieu thereof the numbers "$28.00;"

On page twenty-seven, Appendix C. Maximum Health Facility Fees., subsection 2.B., after the words "Ambulatory Surgical", by striking out the word "Center" and inserting in lieu thereof the word "Facility";

And,

On page twenty-eight, Appendix C. Maximum Health Facility Fees., subsection 3.B., after the words "Ambulatory
Surgical”, by striking out the word “Center” and inserting in lieu thereof the word “Facility”.

(h) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand three, authorized under the authority of section five, article five-d, chapter sixteen of this code, relating to the division of health (residential board and care homes, 64 CSR 65), is authorized.

(i) The legislative rule filed in the state register on the twenty-fifth day of July, two thousand three, authorized under the authority of section seven, article forty, chapter sixteen of this code, modified by the division of health 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 three, relating to the division of health (birth defects information system, 64 CSR 81), is authorized.

CHAPTER 164

(Com. Sub. for H. B. 4200 — By Delegates Mahan, R. Thompson, Cann, Kominar, Armstead and Faircloth)

(Passed March 11, 2004; in effect from passage. Approved by the Governor.)

AN ACT to amend and reenact article 6, chapter 64 of the code of West Virginia, 1931, as amended; all 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 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 fire marshal to promulgate a legislative rule relating to the certification of electrical inspectors; authorizing the fire marshal to promulgate a legislative rule relating to fees for licenses, permits, inspections, plans review and other services rendered; and authorizing the state police to promulgate a legislative rule relating to the career progression system.

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 DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY TO PROMULGATE LEGISLATIVE RULES.

§64-6-1. Fire marshal.
§64-6-2. State police.

§64-6-1. Fire marshal.

1 (a) The legislative rule filed in the state register on the eighteenth day of February, two thousand three, authorized under the authority of section four, article three-c, chapter twenty-nine of this code, modified by the fire marshal to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of June, two thousand three, relating to the fire marshal (certification of
8 electrical inspectors, 103 CSR 1), is authorized, with the
9 following amendments:

10 On page 4, subsection 5.2, after the word “qualifications”
11 by striking out the word “forfeits” and inserting in lieu thereof
12 the words “and he or she shall also forfeit”;

13 On page five, subsection 7.4, line one, by striking out the
14 words “Duplicate license fee” and inserting in lieu thereof the
15 words “Duplicate certification fee”;

16 On page five, subsection 7.4, line five, by striking out the
17 word “license” and inserting in lieu thereof the words “certifi-
18 cation”;

19 And,

20 On page five, section 8, line five, by striking out the word
21 “offense” and inserting in lieu thereof the words “violation of
22 this rule”.

23 (b) The legislative rule filed in the state register on the
24 twenty-eighth day of July, two thousand three, authorized under
25 the authority of section twelve-b, article three, chapter twenty-
26 nine of this code, modified by the fire marshal to meet the
27 objections of the legislative rule-making review committee and
28 refiled in the state register on the fifteenth day of December,
29 two thousand three, relating to the fire marshal (fees for
30 licenses, permits, inspections, plans review and other services
31 rendered, 103 CSR 2), is authorized with the following amend-
32 ments:

33 On page four, subsection 6.12, by striking out the subsec-
34 tion in its entirety and renumbering subsequent subsections
35 accordingly;

36 On page five, subsection 6.14, by striking out the words
37 “Unjustified Complaint ——— Fee to complainant will be
§64-6-2. State police.

1 The legislative rule filed in the state register on the thirty-first day of July, two thousand three, authorized under the authority of section five, article two, chapter fifteen of this code, modified by the state police to meet the objections of the legislative rule-making review committee and refiled in the state register on the sixteenth day of December, two thousand three, relating to the state police (career progression system, 81 CSR 3), is authorized.

CHAPTER 165

(Com. Sub. H. B. 4217 — By Delegates Mahan, R. Thompson, Cann, Kominar, Armstead and Faircloth)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 7, chapter 64 of the code of West Virginia, 1931, as amended, all 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 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 division of banking to promulgate a legislative rule relating to residential mortgage lenders, brokers and loan originators; authorizing the insurance commissioner to promulgate a legislative rule relating to the licensing and conduct of individual insurance producers, agencies and solicitors; authorizing the insurance commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the insurance commissioner to promulgate a legislative rule relating to accident and sickness rate filing; authorizing the insurance commissioner to promulgate a legislative rule relating to credit for reinsurance; authorizing the insurance commissioner to promulgate a legislative rule relating to self-insurance pools for political subdivisions; authorizing the lottery commission to promulgate a legislative rule relating to the state lottery; authorizing the lottery commission to promulgate a legislative rule relating to limited video lottery; 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; and authorizing the
tax commissioner to promulgate a legislative rule relating the alternative resolution of tax disputes.

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 TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Division of banking.
§64-7-2. Insurance commissioner.
§64-7-3. Lottery commission.
§64-7-4. Racing commission.
§64-7-5. Tax commissioner.

§64-7-1. Division of banking.

The legislative rule filed in the state register on the fifteenth day of July, two thousand three, authorized under the authority of section three, article seventeen, chapter thirty-one, of this code, modified by the division of banking to meet the objections of the legislative rule-making review committee and refiled in the state register on the twentieth day of January, two thousand four, relating to the division of banking (residential mortgage lenders, brokers and loan originators, 106 CSR 5), is authorized, with the following amendments:

On page three, after section 3.1, by adding a new section to read "3.2 All records required to be maintained by section 3.1 shall be kept in the specific loan file relating to the individual borrower or loan applicant except for those records listed in subsections 3.1.z, 3.1.aa, 3.1.bb and 3.1.cc."

On page four, after section 4.1, by adding a new section to read "4.2 All records required to be maintained by section 4.1 shall be kept in the specific loan file relating to the individual
borrower or loan applicant except for those records listed in
subsections 4.1.g, 4.1.h, 4.1.i, 4.1.j and 4.1.k.”;

On page five, after section 5.1, by adding a new section to
read “5.2 All records required to be maintained by section 5.1
shall be kept in the specific loan file relating to the individual
borrower or loan applicant except for those records listed in
subsections 5.1.j, 5.1.k, 5.1.l, 5.1.m and 5.1.n.”;

And,

On page seven, after section 6.1, by adding a new section
to read “6.2 All records required to be maintained by section
6.1 shall be kept in the specific loan file relating to the individ-
ual borrower or loan applicant except for those records listed in
subsections 6.1.t, 6.1.u, 6.1.v, 6.1.w and 6.1.y.”

§64-7-2. Insurance commissioner.

(a) The legislative rule filed in the state register on the
twenty-ninth day of July, two thousand three, authorized under
the authority of section ten, 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 the fourth day of December, two
thousand three, relating to the insurance commissioner (licens-
ing and conduct of individual insurance producers, agencies and
solici tors, 114 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the
twenty-ninth day of July, two thousand three, authorized under
the authority of section ten, 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 the fourth day of December, two
thousand three, relating to the insurance commissioner (surplus
On page three, by striking out all of subdivision 4.1 and inserting in lieu thereof the following:

“4.1 Diligent Search – In accordance with the provisions of West Virginia code §33-12C-5(a)(3), insurance coverage written by a surplus lines insurer and placed by a surplus lines licensee may not be procured until a diligent search has been made by the individual insurance producer to place the risk with an admitted insurer. The surplus lines licensee shall submit to the commissioner a sworn notarized affidavit, as provided in subsection 4.5 of this rule, that a diligent search has been made by the individual insurance producer to place the risk with licensed insurers authorized to write and actually writing the particular risk sought to be placed in the excess lines market. This affidavit shall be maintained, as required by West Virginia code §33-12C-16, as part of the full and true record of each surplus lines contract procured.”;

On page three, section 4 (subdivision 4.2.a.) following the word “rule” and the period by inserting the following:

“The affidavit shall affirm that the insured was expressly advised prior to the placement of the insurance that:

(1) the surplus lines insurer with which the insurance is to be placed is not an admitted authorized insurer in this state and is not subject to the commissioner’s supervision; and,

(2) in the event the surplus lines insurance becomes insolvent, claims will not be paid nor will unearned premiums be returned by any West Virginia insurance guaranty fund.”;
On pages three and four by striking out all of subdivision 4.2.b. and inserting in lieu thereof the following:

"b. No individual insurance producer may solicit, procure, place, or renew any insurance with a nonadmitted insurer unless the producer has been unable to procure the requested insurance from an authorized insurer after conducting a diligent search. A diligent search requires the individual insurance producer to contact as many insurers as the individual insurance producer represents, that customarily write the kind of insurance requested by the insured. A diligent search is presumed if declinations are received from each authorized insured contacted."

And,

On pages eleven and twelve, by striking out all of subdivision 7.2.b. and inserting in lieu thereof the following:

"b. Insurance coverages and classes not included on the export list may only be placed with surplus lines insurers once a diligent search has been made."

(c) The legislative rule filed in the state register on the twenty-first day of March, two thousand three, authorized under the authority of section ten, article two, chapter thirty-three of this code, relating to the insurance commissioner (Medicare supplement insurance, 114 CSR 24), is authorized.

(d) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, authorized under the authority of section ten, 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 the fourth day of December, two thousand three, relating to the insurance commissioner (accident and sickness rate filing, 114 CSR 26), is authorized.
The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, authorized under the authority of section ten, 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 the twenty-third day of January, two thousand four, relating to the insurance commissioner (credit for reinsurance, 114 CSR 40), is authorized, with the following amendments:

On page one, subsection 2.2, line one, after the words “alien ceding insurer”, by inserting the words “which is”;

On page one, subsection 2.2, line two, by striking out the word “that” and inserting in lieu thereof the word “and”;

On page two, subdivision 4.1.d, line four, after the words “The accredited reinsurer”, by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page three, subsection 5.1, line two, after the words “insurer which”, by inserting a comma:

On page three, subsection 5.1, line three, after the words “on which”, by striking out the remainder of the subsection and inserting in lieu thereof the words “credit for reinsurance is claimed on the domestic insurer’s statutory financial statement”;

On page four, subdivision 6.2.b, line two, after the word “underwriters”, by inserting a comma;

On page four, subdivision 6.2.b, line three, after the words “United States”, by inserting a period, striking out the words “and in” and inserting in lieu thereof the word “In”;
On page seven, subsection 6.6, line three, after the word “dollars”, by changing the comma to a semi-colon;

On page seven, subsection 6.6, line four, after the terms “(f) and (g)”, by changing the comma to a semi-colon;

On page seven, subsection 6.6, line five, after the terms “(f) and (g)”, by changing the comma to a semi-colon;

On page ten, subparagraph 6.6.f.1.B, line five, by striking out the word “shall” and inserting in lieu thereof the word “may”;

On page eleven, subdivision 6.6.i, line three, by striking out the words “shall be” and inserting in lieu thereof the word “is”;

On page fifteen, subdivision 9.1.i, line three, by striking out the words “shall have” and inserting in lieu thereof the word “has”;

And,

On page fifteen, subdivision 9.1.j, line three, by striking out the words “shall be” and inserting in lieu thereof the word “is”.

(f) The legislative rule filed in the state register on the twenty-ninth day of July, two thousand three, authorized under the authority of section sixteen, article twelve-a, chapter twenty-nine of this code, relating to the insurance commissioner (self-insurance pools for political subdivisions, 114 CSR 65), is authorized.

§64-7-3. Lottery commission.

(a) The legislative rule filed in the state register on the tenth day of July, two thousand three, authorized under the authority of section five, article twenty-two, chapter twenty-nine of this
code, modified by the lottery commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of December, two thousand three, relating to the lottery commission (state lottery rules, 179 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-fourth day of July, two thousand three, authorized under the authority of section four hundred two, article twenty-two-b, chapter twenty-nine, of this code, modified by the lottery commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, two thousand four, relating to the lottery commission (limited video lottery, 179 CSR 5), is authorized with the following amendments:

On page three, section two, subsection 2.13, line four, following the words “operating on”, by inserting the word “that”;

On page four, section two, subsection 2.15, line two, following the word “Code”, by striking out the citation “§11-14-2”, and inserting in lieu thereof the citation “§11-14C-2”;

On page seven, section five, subsection 5.2, line one, following the word “subdivision”, by striking out the citation “5.1.a”, and inserting in lieu thereof the citation “5.1.b”;

On page twenty-one, beginning on line four, by striking out section 30 in its entirety and redesignating the remaining sections and parts thereof accordingly;

And,

On page twenty-four, section 34.2, by changing the period at the end of the sentence to a colon and inserting the words: “Provided, That a limited video lottery retailer may display a
sign on the exterior of the establishment that states ‘West Virginia Lottery Products available here,’ which sign is of uniform size and design, no greater than twelve inches by twelve inches, produced and distributed to retailers by the lottery commission.”

§64-7-4. Racing commission.

(a) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, 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 the fifth day of December, two thousand three, relating to the racing commission (thoroughbred racing, 178 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the thirty-first day of July, two thousand three, authorized under the authority of section six, article twenty-three, chapter nineteen, of this code, relating to the racing commission (greyhound racing, 178 CSR 2), is authorized.

§64-7-5. Tax commissioner.

The legislative rule filed in the state register on the eighteenth day of February, two thousand three, authorized under the authority of section twenty-three, article ten, chapter eleven, of this code, modified by the tax commissioner to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of April, two thousand three, relating to the tax commissioner (alternative resolution of tax disputes, 110 CSR 10g), is authorized, with the following amendments:

On page two, subdivision 3.1.1, line two, after the word “and”, by inserting a comma;
12 On page two, subsection 3.5, line three, by striking the
word “shall” and inserting the in lieu thereof the word “must”;

14 One page two, subsection 3.5, line six, after the word
“assessment” by inserting a comma;

16 One page two, subsection 3.5, line six, by striking the word
“commence” and inserting in lieu thereof the word “begin”;

18 On page two, subdivision 3.5.1, line two, by striking the
word “that” and inserting in lieu thereof the word “as”;

20 On page three, subsection 4.1, line two, after the word
“coordinator” by inserting a comma;

22 On page three, subdivision 4.2.1, line three, after the word
“approved” by striking the comma and inserting in lieu thereof
a period;

24 One page three, subdivision 4.2.1, line three, by striking the
word “and” and inserting in lieu thereof “The conciliation
coordinator or assistant conciliation coordinator”;

26 On page three, subdivision 4.2.1, line four, following the
word “date” by striking the comma and inserting in lieu thereof
a period;

28 On page three, subdivision 4.2.1, line five, by striking the
word “which” and inserting in lieu thereof the words “The
conference date”;

30 On page three, subsection 4.4, line one by striking out the
words “without regard to the rules of evidence”;

32 On page three, subsection 4.4, line three after the word
“dispute” by striking the period and inserting the words “and
without regard to the rules of evidence”.
AN ACT to amend and reenact article 8, chapter 64 of the code of West Virginia, 1931, as amended, all 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 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 division of highways to promulgate a legislative rule relating to the use of state road rights-of-way and adjacent areas; authorizing the division of highways to promulgate a legislative rule relating to the transportation of hazardous wastes upon the roads and highways; and authorizing the division of motor vehicles to promulgate a legislative rule relating to administrative due process.

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. Division of highways.
§64-8-2. Division of motor vehicles.

§64-8-1. Division of highways.

(a) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section eleven, article twenty-two, chapter seventeen of this code, modified by the division of highways to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-seventh day of January, two thousand four, relating to the division 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 eighteenth day of July, two thousand three, authorized under the authority of section seven, article eighteen, chapter twenty-two of this code, relating to the division of highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 7), is authorized, with the following amendment:

On page four, subdivision 6.3.2, on the third line, by striking out the words “Division of Water and” and inserting in lieu thereof the words “Office of”.

§64-8-2. Division of motor vehicles.

The legislative rule filed in the state register on the nineteenth day of November, two thousand three, authorized under the authority of section nine, article two, chapter seventeen-a of this code, relating to the division of motor vehicles (administra-
tive due process, 91 CSR 1), is authorized, with the following amendment:

On page five, subdivision 3.7.2., after the period, by inserting the following: "Provided, That, where the arresting officer fails to appear at the hearing, but the licensee appears, the revocation or suspension of license may not be based solely on the arresting officer's affidavit or other documentary evidence submitted by the arresting officer."

On page six, paragraph 3.9.4.a., by striking out the subdivision in its entirety and inserting in lieu thereof the following:

"a. The party carrying the burden of proof has the initial opportunity to present evidence."

On page six, paragraph 3.9.4.b, after the words "and accept as", by striking out the word "evidence" and inserting in lieu thereof the words "part of the record".

CHAPTER 167

(Com. Sub. for S. B. 399 — By Senators Ross, Minard, Snyder, Unger, Boley and Minear)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

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; continuing rules previously promulgated by state agencies and boards; 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; disapproving certain rules; authorizing the board of accountancy to promulgate a legislative rule relating to the board and rules of professional conduct; authorizing commissioner of agriculture to promulgate legislative rule relating to frozen desserts and imitation frozen desserts; authorizing commissioner of agriculture to promulgate legislative rule relating to dairy products and imitation dairy products; authorizing commissioner of agriculture to promulgate legislative rule relating to seed law; authorizing board of architects to promulgate legislative rule relating to registration of architects; authorizing auditor’s office to promulgate legislative rule relating to transaction fee and rate structure; authorizing auditor’s office to promulgate legislative rule relating to state purchasing card program; authorizing board of examiners in counseling to promulgate legislative rule relating to fees; authorizing board of registration for professional engineers to promulgate legislative rule relating to governance of board; authorizing board of examiners of land surveyors to promulgate legislative rule relating to minimum standards for practice of land surveying; authorizing board of examiners of land surveyors to promulgate legislative rule relating to mandatory continuing education for land surveyors; authorizing board of landscape architects to promulgate legislative rule relating to board; authorizing board of examiners for licensed practical nurses to promulgate legislative rule relating to policies and procedures for development and maintenance of
education programs in practical nursing; authorizing board of medicine to promulgate legislative rule relating to licensing and disciplinary procedures: physicians and podiatrists; authorizing board of optometry to promulgate legislative rule relating to board; authorizing board of examiners of psychologists to promulgate legislative rule relating to fees; authorizing public service commission to promulgate legislative rule relating to transportation of coal by commercial motor vehicles; authorizing records management and preservation board to promulgate legislative rule relating to general management and preservation of county records; and authorizing statewide addressing and mapping board to promulgate legislative rule relating to addressing and mapping standards and participation by public agencies in statewide addressing and mapping projects.

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 accountancy.
§64-9-4. Auditor's office.
§64-9-5. Board of examiners in counseling.
§64-9-6. Board of registration for professional engineers.
§64-9-10. Board of medicine.
§64-9-12. Board of examiners of psychologists.

§64-9-1. Board of accountancy.
The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section five, article nine, chapter thirty of this code, modified by the board of accountancy to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of January, two thousand four, relating to the board of accountancy (board rules and rules of professional conduct, 1 CSR 1), is authorized.


(a) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section ten, article eleven-b, 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 the twenty-fourth day of November, two thousand three, relating to the commissioner of agriculture (frozen desserts and imitation frozen desserts, 61 CSR 4B), is authorized with the following amendment:

On page one, section 2.1.f, after the words “Pasteurized Milk”, by deleting the term “Ordinance”, and by inserting in lieu thereof the word “Ordinance”.

(b) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section ten, article eleven-a, 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 the twenty-fourth day of November, two thousand three, relating to the commissioner of agriculture (dairy products and imitation dairy products, 61 CSR 4C), is authorized.

(c) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the
authority of section six, article sixteen, 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 the twenty-fourth day of November, two thousand three, relating to the commissioner of agriculture (West Virginia seed law, 61 CSR 9), is authorized.


The legislative rule filed in the state register on the third day of October, two thousand two, authorized under the authority of section one, article twelve, chapter thirty of this code, modified by the board of architects to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of April, two thousand three, relating to the board of architects (registration of architects, 2 CSR 1), is authorized.

§64-9-4. Auditor’s office.

(a) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section ten-c, article three, chapter twelve of this code, modified by the auditor’s office to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighteenth day of December, two thousand three, relating to the auditor’s office (transaction fee and rate structure, 155 CSR 4), is authorized.

(b) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section ten-a, article three, chapter twelve of this code, modified by the auditor’s office to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourth day of November, two thousand three, relating to the auditor’s office (state purchasing card
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program, 155 CSR 7), is authorized with the following amendments:

On page two, section two, subdivision 2.17.e, line one, following the words “Higher Education,” by inserting the words “not to exceed $5,000 for any purchase”;

On page two, section two, subdivision 2.17.f, line two, following the words “Higher Education,” by striking out the word “which” and inserting in lieu thereof the words “not to exceed $5,000 for any purchase unless approved by the Purchasing Division ‘Routine, regularly scheduled payments of Higher Education’”;

On page two, section two, subdivision 2.18.c, line three, following the words “Chapter 15”, by striking out the words “and WV Code 18B-5-9”; 

On page two, section two, subdivision 2.18.c, line five, following the words “with the card,” and the semicolon, by inserting the words “and as provided in WV Code 18B-5-9, the transaction limit for Higher Education is the credit limit associated with the card, not to exceed $5,000 for any purchase”, followed by a semicolon;

On page two, section two, subdivision 2.18.e, line four, following the words “with the card,” by striking out the period and inserting the words “except as provided in subdivision 2.17.f.”;

And,

On page three, section three, subsection 3.3, line one, following the words “an emergency”, by striking out the word “effecting” and inserting in lieu thereof the word “affecting”.

§64-9-5. Board of examiners in counseling.
The legislative rule filed in the state register on the fourth day of December, two thousand two, authorized under the authority of section five, article thirty-one, chapter thirty of this code, modified by the board of examiners in counseling to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-first day of April, two thousand three, relating to the board of examiners in counseling (fees, 27 CSR 2), is authorized.

§64-9-6. Board of registration for professional engineers.

The legislative rule filed in the state register on the thirtieth day of July, two thousand three, authorized under the authority of section nine, article thirteen, chapter thirty of this code, modified by the board of registration for professional engineers to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of January, two thousand four, relating to the board of registration for professional engineers (rule governing the West Virginia board of registration for professional engineers, 7 CSR 1), is authorized with the following amendments:

On page three, subsection 3.3, subdivision h, by striking out said subdivision h in its entirety;

And,

On page twenty-one, subsection 14.4, by striking out said subsection 14.4 in its entirety and inserting in lieu thereof the words:

The Board may assess administrative costs incurred in the performance of its enforcement or investigatory activities against any person or entity who violates the provisions referenced in subsection 14.1 of this rule, which shall be paid to the West Virginia State Board of Registration for Professional Engineers by check or money order within a period of

(a) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section four, article thirteen-a, chapter thirty of this code, relating to the board of examiners of land surveyors (minimum standards for practice of land surveying in West Virginia, 23 CSR 1), is authorized with the following amendments:

On page three, subsection 5.1, line eight, after the words “annual renewal fee” by striking out the comma and the words “determined by the board, not to exceed one hundred dollars ($100.00)” and by inserting in lieu thereof the words “of forty dollars ($40.00)”;

On page three, subsection 5.1, line nine, after the words “the fee shall increase”, by striking out the words “an amount determined by the Board, not to exceed twenty per cent (20%) of the annual renewal fee” and inserting in lieu thereof the words “one dollar ($1.00)”;

And,

On page four, subsection 5.1, line one, after the words “payment of a fee”, by striking out the words “determined by the Board, not to exceed fifty dollars ($50.00)” and by inserting in lieu thereof the words “of ten dollars ($10.00)”.

(b) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section four, article thirteen-a, chapter thirty of this code, relating to the board of examiners of land surveyors

The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section five, article twenty-two, chapter thirty of this code, modified by the board of landscape architects to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-fourth day of November, two thousand three, relating to the board of landscape architects (rule of the West Virginia board of landscape architects, 9 CSR 1), is authorized, with the following amendment:

On page one, section 1.1, line one, after the words “the Board”, by inserting the words “and the”;

On page three, section 4.15, line two, after the words “Section 8 of”, by striking out the words “these rules” and inserting in lieu thereof, the words “this rule”;

On page four, section 6.5, line two, after the words “Section 4.2 of”, by striking out the words “these rules” and inserting in lieu thereof, the words “this rule”;

On page five, section 6.6, line four, after the words “Section 4.17 of”, by striking out the words “these rules” and inserting in lieu thereof, the words “this rule”;

On page five, section 6.8, line three, after the words “10.6 of”, by striking out the words “these rules” and inserting in lieu thereof, the words “this rule”;

And,
On page seven, section 7.7, line four, after the word "or", by striking out the words "these rules" and inserting in lieu thereof, the words "this rule", and after the words "violation of", by striking out the words "these rules" and inserting in lieu thereof, the words "this rule".


The legislative rule filed in the state register on the twenty-third day of June, two thousand three, authorized under the authority of section one, article seven-a, chapter thirty of this code, relating to the board of examiners for licensed practical nurses (policies and procedures for development and maintenance of education programs in practical nursing, 10 CSR 1), is authorized.

§64-9-10. Board of medicine.

The legislative rule filed in the state register on the sixteenth day of July, two thousand three, authorized under the authority of section seven, article three, chapter thirty of this code, relating to the board of medicine (licensing and disciplinary procedures: physicians; podiatrists, 11 CSR 1a), is authorized.


The legislative rule filed in the state register on the thirty-first day of July, two thousand three, authorized under the authority of section three, 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 the eighteenth day of December, two thousand three, relating to the board of optometry (rule of the West Virginia board of optometry, 14 CSR 1), is authorized.

§64-9-12. Board of examiners of psychologists.
The legislative rule filed in the state register on the eighteenth day of June, two thousand three, authorized under the authority of section six, article twenty-one, chapter thirty of this code, modified by the board of examiners of psychologists to meet the objections of the legislative rule-making review committee and refiled in the state register on the eighth day of August, two thousand three, relating to the board of examiners of psychologists (fees, 17 CSR 1), is authorized.


The legislative rule filed in the state register on the twenty-first day of November, two thousand three, authorized under the authority of section three, article seventeen-a, chapter seventeen-c of this code, modified by the public service commission to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-sixth day of January, two thousand four, relating to the public service commission (transportation of coal by commercial motor vehicles, 150 CSR 27), is authorized.


The legislative rule filed in the state register on the thirteenth day of June, two thousand three, authorized under the authority of section fifteen, article eight, chapter five-a of this code, relating to the records management and preservation board (general management and preservation of county records, 100 CSR 2), is authorized with the following amendment:

On page seven, section five, subsection 5.2, line 1, by striking the word "shall" and inserting the word "may".


The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority
of section six, article one, chapter twenty-four-e of this code.  
modified by the statewide addressing and mapping board to  
meet the objections of the legislative rule-making review  
committee and refiled in the state register on the twenty-sixth  
day of January, two thousand four, relating to the statewide  
addressing and mapping board (addressing and mapping  
standards and participation by public agencies in statewide  
addressing and mapping projects, 169 CSR 2), is authorized.

CHAPTER 168

(Com. Sub. for S. B. 350 — By Senators Ross, Minard,  
Snyder, Unger, Boley and Minear)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article 10, 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;  
continuing rules previously promulgated by state agencies and  
boards; 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 promul-  
gate certain legislative rules as amended by the Legislature;  
authorizing certain of the agencies to promulgate certain legisla-  
tive rules with various modifications presented to and recom-  
mended by the legislative rule-making review committee and as
amended by the Legislature; disapproving certain legislative rules; authorizing the economic development authority to promulgate a legislative rule relating to the general administration of the West Virginia venture capital act; authorizing the economic development authority to promulgate a legislative rule relating to economic development and technology advancement centers; authorizing the infrastructure and jobs development council to promulgate a legislative rule relating to council; authorizing the division of labor to promulgate a legislative rule relating to psychophysiological detection of deception examinations; disapproving the manufactured housing construction and safety standards board to promulgate a legislative rule relating to the board; authorizing the office of miners' health, safety and training to promulgate a legislative rule relating to reporting requirements for independent contractors; authorizing the division of natural resources to promulgate a legislative rule relating to public land corporation rule controlling sale, lease, exchange or transfer of land and minerals; authorizing the division of natural resources to promulgate a legislative rule relating to revocation of hunting and fishing licenses; authorizing the division of natural resources to promulgate a legislative rule relating to special motorboating regulations; and authorizing the division of natural resources to promulgate a legislative rule relating to special fishing.

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. Economic development authority.
§64-10-2. Infrastructure and jobs development council.
§64-10-3. Division of labor.
§64-10-5. Office of miners health, safety and training.
§64-10-6. Division of natural resources.
§64-10-1. Economic development authority.

(a) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section three, article two, chapter five-e of this code, modified by the economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of December, two thousand three, relating to the economic development authority (general administration of the West Virginia venture capital act, 117 CSR 3), is authorized with the following amendments:

On page one, subsection 1.5, after the words “Series 3,” by striking out the remainder of the sentence and inserting in lieu thereof the words “§117-3-1, et seq.”;

On page two, section two, subsection 2.10, line 3, by striking the word “Subdivision” and inserting the word “Subsection”;

On page four, section four, subdivision 4.2.a, line 3, following the word “with” by striking the word “Subdivision” and inserting the word “Subsection”;

On page six, subdivision 5.2.c.9., line one by striking the words “A signed commitment” and inserting in lieu thereof the words “An irrevocable letter of credit”;

On page six, paragraph 5.2.c.9, line three, after the words “certified check for”, by striking out the word “the” and inserting in lieu thereof the word “any”, and after the word “call”, by striking out the comma and the words “if required by the Authority”;

On page six, subdivision 5.2.c.9, line three, following the words “by the authority”, by inserting a colon and the words
“Provided, That the economic development authority may authorize a reduction in the amount of the irrevocable letter of credit to correspond to a payment made towards the proposed investment”;

On page twelve, subdivision 7.4.1, line six, after the words “applicable where”, by striking out the remainder of the subdivision and inserting in lieu thereof the words “the Fund Manager’s economic relationship is solely the result of the fact that the Fund Manager has made a previous investment in the West Virginia Business pursuant to the Act or this Rule.”;

On page twelve, subdivision 7.4.2, line seven, after the words “applicable where”, by striking out the remainder of the subdivision and inserting in lieu thereof the words “the investor’s economic relationship is solely the result of the fact that the Fund Manager has made a previous investment in the West Virginia Business pursuant to the Act or this Rule.”;

And,

On page sixteen, section ten, subsection 10.10, line 1, following the words “described in” by striking the words “Section 10” and inserting “this section”.

(b) The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section five, article one, chapter five-e of this code, modified by the economic development authority to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-second day of December, two thousand three, relating to the economic development authority (economic development and technology advancement centers, 117 CSR 4), is authorized with the following amendments:
§64-10-2. Infrastructure and jobs development council.

The legislative rule filed in the state register on the twenty-third day of June, two thousand three, authorized under the authority of section four, article fifteen-a, chapter thirty-one of this code, modified by the infrastructure and jobs development council to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of August, two thousand three, relating to the infrastructure and jobs development council (infrastructure and jobs development council, 167 CSR 1), is authorized with the following amendments:

On page nine, section five, subdivision 5.13.6, line 9, following the citation "WVC 22C-2-1 et seq." by inserting words "and WVC 16-13C-1 et seq.";

On page nine, section five, subdivision 5.13.6, line 11, following the word "State" by striking the words "as delineated";
17 And,

18 On page nine, section five, subdivision 5.13.6, line 13, following the word "Code" by striking the word "in".

§64-10-3. Division of labor.

1 The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section five-c, article five, 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 fifth day of December, two thousand three, relating to the division of labor (psychophysiological detection of deception examinations, limitations of use, requirements, licenses and penalties, 42 CSR 6), is authorized with the following amendments:

11 On page one, subsection 1.1, line one, after the words "W. Va. Code", by striking out the words "§21-5-5(c)" and inserting in lieu thereof the words "§21-5-5c";

14 On page one, subsection 1.1, line three, after the words "W. Va. Code", by striking out the words "§21-5-5(a)-(d)" and inserting in lieu thereof the words "§§21-5-5a, -5b, -5c, and -5d";

18 On page one, subsection 2.4, line three, after the words "W. Va. Code", by striking out the words "§21-5-5c(c)" and inserting in lieu thereof the words "§§21-5-5a, -5b, -5c, and -5d";

22 On page two, subsection 3.1, line two, after the words "issue a license", by striking out the word "to";
On page two, subsection 3.1, line five, after the words “W. Va. Code”, by striking out the words “§21-5-5a, b, c, and d” and inserting in lieu thereof the words “§§21-5-5a, -5b, -5c, and -5d”;

On page two, subsection 3.3, line one, after the words “Subsection 3.2”, by inserting the words “of this section”;

On page three, subdivision 3.10(b), line one, after the words “in the violation of.”, by striking out the words “this article” and inserting in lieu thereof the words “W. Va. Code §§21-5-5a, -5b, -5c, and -5d”;

On page three, subdivision 3.10(c), line one, after the words “The licensee”, by striking out the word “is” and inserting in lieu thereof the words “has been”;

On page three, subdivision 3.10(d), line one, after the words “The licensee”, by striking out the word “makes” and inserting in lieu thereof the words “has been”, and after the words “false promises”, by striking out the word “cause” and inserting in lieu thereof the words “has caused”;

On page four, subdivision 3.10(f), line one, after the words “The licensee”, by striking out the word “allows” and inserting in lieu thereof the words “has allowed”;

On page four, subdivision 3.10(g), line one, after the words “The licensee”, by striking out the word “fails” and inserting in lieu thereof the words “has failed”;

On page four, subdivision 4.2, line one, after the words “The intern”, by striking out the words “shall have” and inserting in lieu thereof the word “has”;

On page four, subparagraph 4.2.1.b.(1), line one, after the words “W. Va. Code”, by striking out the words “§21-5-5a, b,
c, and d” and inserting in lieu thereof the words “§§21-5-5a, - 5b, -5c, and -5d”;

On page six, paragraph 4.2.3.A, line three, after the word “but”, by striking out the word “compliance” and inserting in lieu thereof the words “must comply” and, after the words “with all other”, by striking out the rest of the paragraph and inserting in lieu thereof the words “requirements of this subsection”;

On page six, subsection 5.1, line one, after the words “issue a license”, by inserting the words “without examination” and, after the words “applicant who is”, by striking out the words “an examiner” and inserting in lieu thereof the word “a”;

On page six, subsection 5.1, line two, after the word “licensed”, by inserting the word “examiner”;

On page six, subsection 5.1, line three, by striking out the words “without examination”;

On page seven, section 6, line two, by striking out the words “this article, it is the policy of the Commissioner that” and inserting in lieu thereof the words “W. Va. Code §§21-5-5a, -5b, -5c, and -5d,”;

On page eight, subdivision 8.1.(b), line three, after the words “unfit for the”, by striking out the word “an”;

And,

On page nine, subdivision 8.2.(c), line two, after the words “record of the”, by striking out the term “PDD” and inserting in lieu thereof the words “psychophysiological detection of deception”.

The legislative rule filed in the state register on the first day of August, two thousand three, authorized under the authority of section four, article nine, chapter twenty-one of this code, modified by the manufactured housing construction and safety standards board to meet the objections of the legislative rule-making review committee and refiled in the state register on the fifth day of December, two thousand three, relating to the manufactured housing construction and safety standards board (West Virginia manufactured housing construction and safety standards board, 42 CSR 19), is not authorized.

§64-10-5. Office of miners health, safety and training.

The legislative rule filed in the state register on the eighth day of November, two thousand two, authorized under the authority of section six, article one, chapter twenty-two-a of this code, modified by the office of miners health, safety and training to meet the objections of the legislative rule-making review committee and refiled in the state register on the fourteenth day of April, two thousand three, relating to the office of miners health, safety and training (reporting requirements for independent contractors, 56 CSR 10), is authorized.

§64-10-6. Division of natural resources.

(a) The legislative rule filed in the state register on the eleventh day of September, two thousand three, authorized under the authority of section seven, article one, 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-sixth day of January, two thousand four, relating to the division of natural resources (public land corporation rule controlling the
(b) The legislative rule filed in the state register on the second day of July, two thousand three, authorized under the authority of section seven, article one, 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 fifteenth day of September, two thousand three, relating to the division of natural resources (revocation of hunting and fishing licenses, 58 CSR 23), is authorized with the following amendment:

On page one, subsection 2.4, on the first line by striking out the words “Class A-1-L” and inserting in lieu thereof the words “Lifetime Class A-1”.

(c) The legislative rule filed in the state register on the tenth day of July, two thousand three, authorized under the authority of section twenty-two, article seven, chapter twenty of this code, relating to the division of natural resources (special motorboating regulations, 58 CSR 27), is authorized.

(d) The legislative rule filed in the state register on the fourteenth day of July, two thousand three, authorized under the authority of section seventeen, article one, chapter twenty of this code, relating to the division of natural resources (special fishing, 58 CSR 61), is authorized with the following amendment:

On page one, section 3, by striking out all of subsection 3.1 and renumbering the remaining subsections.
AN ACT to amend and reenact §38-8-1 of the code of West Virginia, 1931, as amended, relating to increasing the monetary value of exemptions from levy, forced sale, attachment or execution of certain personal property.

Be it enacted by the Legislature of West Virginia:

That §38-8-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-1. Exemptions of personal property.

(a) Any individual residing in this state or the dependent of such individual may set apart and hold as exempt from execution or other process the following personal property:

1. (1) Such individual’s interest, not to exceed five thousand dollars in value, in one motor vehicle;

   (2) Such individual’s interest, not to exceed eight thousand dollars in aggregate value, in household goods, furniture, toys, animals, appliances, books and wearing apparel that are held primarily for the personal, family or household use of such individual;
(3) Such individual’s aggregate interest, not to exceed three thousand dollars, in any implements, professional books or tools of such individual’s trade;

(4) Such individual’s funds on deposit in a federally insured financial institution, wages or salary, not to exceed the greater of: (i) One thousand dollars; or (ii) one hundred twenty-five percent of the amount of the annualized federal poverty level of such individual’s household divided by the number of pay periods for such individual per year; and

(5) Funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP), in the name of such individual: Provided, That the amount is exempt only to the extent it is not or has not been subject to an excise or other tax on excess contributions under Section 4973 or Section 4979 of the Internal Revenue Code of 1986, or both sections, or any successor provisions, regardless of whether the tax is or has been paid.

(b) Notwithstanding the foregoing, in no case may an individual residing in this state or the dependent of such individual exempt from execution or other process more than fifteen thousand dollars in the aggregate in personal property listed in subdivisions (1), (2), (3) and (4), subsection (a) of this section.

CHAPTER 170

(Com. Sub. for S. B. 320 — By Senators Hunter, Helmick and Ross)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §11-5-12 of the code of West Virginia, 1931, as amended; to amend and reenact §17A-3-4 of said code; and to amend said code by adding thereto a new section, designated §17A-3-12b, all relating to certificates of title; permitting the filing of canceled certificates of title in the office of the clerk of the county commission; exempting mobile and manufactured homes from the prohibition against the transfer, purchase or sale of a mobile or manufactured home when a certificate of title has been cancelled; exempting modular homes from the need for certificates of title; and cancellation of certificates of title for mobile and manufactured homes permanently attached to real estate.

Be it enacted by the Legislature of West Virginia:

That §11-5-12 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-3-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17A-3-12b, all to read as follows:

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

CHAPTER 11. TAXATION.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-12. Mobile homes situate upon property owned by a person other than owner of mobile home.

1 Mobile homes situate upon property owned by a person other than the owner of the mobile home shall be classified as personal property whether or not said mobile home is permanently affixed to the real estate and, unless subject to assessment as Class II property under section eleven of this article or section two, article four of this chapter, shall be assessed as
Class III or Class IV personal property, as may be appropriate in the circumstances.

A mobile home permanently attached to the real estate of the owner may not be classified as personal property if the owner has filed a canceled certificate of title with the clerk of the county commission and has recorded it in the same manner as deeds are recorded and indexed.

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

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

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

§17A-3-12b. Canceled certificates of title for certain mobile and manufactured homes.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; fee on payments for leased vehicles; penalty for false swearing.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the division of motor vehicles or any other officer or agent charged with the duty, unless the applicant already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the division of motor vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a
statement of the applicant's title and of any liens or encum-
brances upon the vehicle, the names and addresses of the
holders of the liens and any other information as the division of
motor vehicles may require. The application shall be signed
and sworn to by the applicant. A duly certified copy of the
division's electronic record of a certificate of title is admissible
in any civil, criminal or administrative proceeding in this state
as evidence of ownership.

(b) A tax is imposed upon the privilege of effecting the
certification of title of each vehicle in the amount equal to five
percent of the value of the motor vehicle at the time of the
certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or
consideration to the purchaser of the vehicle is the value of the
vehicle. If the vehicle is a used or secondhand vehicle, the
present market value at time of transfer or purchase is the value
of the vehicle for the purposes of this section: Provided, That
so much of the purchase price or consideration as is represented
by the exchange of other vehicles on which the tax imposed by
this section has been paid by the purchaser shall be deducted
from the total actual price or consideration paid for the vehicle,
whether the vehicle be new or secondhand. If the vehicle is
acquired through gift or by any manner whatsoever, unless
specifically exempted in this section, the present market value
of the vehicle at the time of the gift or transfer is the value of
the vehicle for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to
any applicant unless the applicant has paid to the division of
motor vehicles the tax imposed by this section which is five
percent of the true and actual value of the vehicle whether the
vehicle is acquired through purchase, by gift or by any other
manner whatsoever, except gifts between husband and wife or
between parents and children: Provided, That the husband or
wife, or the parents or children, previously have paid the tax on
the vehicles transferred to the state of West Virginia.

(3) The division of motor vehicles may issue a certificate of
registration and title to an applicant if the applicant provides
sufficient proof to the division of motor vehicles that the
applicant has paid the taxes and fees required by this section to
a motor vehicle dealership that has gone out of business or has
filed bankruptcy proceedings in the United States bankruptcy
court and the taxes and fees so required to be paid by the
applicant have not been sent to the division by the motor
vehicle dealership or have been impounded due to the bank-
ruptcy proceedings: Provided, That the applicant makes an
affidavit of the same and assigns all rights to claims for money
the applicant may have against the motor vehicle dealership to
the division of motor vehicles.

(4) The division of motor vehicles shall issue a certificate
of registration and title to an applicant without payment of the
tax imposed by this section if the applicant is a corporation,
partnership or limited liability company transferring the vehicle
to another corporation, partnership or limited liability company
when the entities involved in the transfer are members of the
same controlled group and the transferring entity has previously
paid the tax on the vehicle transferred. For the purposes of this
section, control means ownership, directly or indirectly, of
stock or equity interests possessing fifty percent or more of the
total combined voting power of all classes of the stock of a
corporation or equity interests of a partnership or limited
liability company entitled to vote or ownership, directly or
indirectly, of stock or equity interests possessing fifty percent
or more of the value of the corporation, partnership or limited
liability company.

(5) The tax imposed by this section does not apply to
vehicles to be registered as Class H vehicles or Class M
vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C semitrailers, full trailers, pole trailers and converter gear: Provided, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: Provided, however, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the division of motor vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or
ambulance squad organized and incorporated under the laws of
the state of West Virginia as a nonprofit corporation for
protection of life or property. The total amount of revenue
collected by reason of this tax shall be paid into the state road
fund and expended by the commissioner of highways for
matching federal funds allocated for West Virginia. In addition
to the tax, there is a charge of five dollars for each original
certificate of title or duplicate certificate of title so issued:
Provided, That this state or any political subdivision of this
state or any volunteer fire department or duly chartered rescue
squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long
as the vehicle is owned or held by the original holder of the
certificate, and need not be renewed annually, or any other
time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the
owner of a motor vehicle and the tax imposed by this section
previously has been paid to the division of motor vehicles on
that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section
is not required to pay the tax a second time for the same motor
vehicle, but is required to pay a charge of five dollars for the
certificate of retitle of that motor vehicle, except that the tax
shall be paid by the person when the title to the vehicle has
been transferred either in this or another state from the person
to another person and transferred back to the person.

(11) The tax imposed by this section does not apply to any
passenger vehicle offered for rent in the normal course of
business by a daily passenger rental car business as licensed
under the provisions of article six-d of this chapter. For
purposes of this section, a daily passenger car means a Class A
motor vehicle having a gross weight of eight thousand pounds
or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than one dollar nor more than one dollar and fifty cents for each day or part of the rental period. The commissioner shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(12) The tax imposed by this article does not apply to the titling of any vehicle purchased by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and which is recognized to be a bonafide senior citizen service organization by the senior services bureau existing under the provisions of article five, chapter sixteen of this code.

(c) Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter are subject to the privilege tax imposed by this section: Provided, That the certification of title of any recreational vehicle owned by the applicant on the thirtieth day of June, one thousand nine hundred eighty-nine, is not subject to the tax imposed by this section: Provided, however, That mobile homes, manufactured homes, modular homes and similar nonmotive propelled vehicles, except recreational vehicles and house trailers, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of mentally retarded or physically handicapped children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the
transportation of mentally retarded and physically handicapped children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Any person making any affidavit required under any provision of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, or any person, while acting as an agent of the division of motor vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or be confined in jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars or be imprisoned in a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both fined and imprisoned.

(e) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia or his or her dependents who possess a motor vehicle with valid registration are exempt from the provisions of this article for a period of nine months from the date the person returns to this state or the date his or her dependent returns to this state, whichever is later.

(f) No person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is
guilty of a misdemeanor and, upon conviction thereof, shall for
the first offense be fined not less than one hundred dollars nor
more than one thousand dollars, or be confined in jail for not
more than one year or, both fined and confined. For each
subsequent offense, the fine may be increased to not more than
two thousand dollars, with confinement in jail not more than
one year or, both fined and confined.

(2) Failure of the seller to transfer a certificate of title upon
sale or transfer of the factory-built home gives rise to a cause of
action, upon prosecution thereof, and allows for the recovery of
damages, costs and reasonable attorney fees.

(3) This subsection does not apply to a mobile or manufac-
tured home for which a certificate of title has been canceled
pursuant to section twelve-b of this article.

(g) Notwithstanding any other provision to the contrary,
whenever reference is made to the application for or issuance
of any title or the recordation or release of any lien, it includes
the application, transmission, recordation, transfer of ownership
and storage of information in an electronic format.

(h) Notwithstanding any other provision contained in this
section, nothing herein shall be considered to include modular
homes as defined in subsection (i), section two, article fifteen,
chapter thirty-seven of this code and built to the state building
code as established by legislative rules promulgated by the state
fire commission pursuant to section five-b, article three, chapter
twenty-nine of this code.

§17A-3-12b. Canceled certificates of title for certain mobile and
manufactured homes.

The commissioner may cancel a certificate of title for a
mobile or manufactured home affixed to the real property of the
owner of the mobile or manufactured home. The person
requesting the cancellation shall submit to the commissioner an application for cancellation together with the certificate of title. The application shall be on a form prescribed by the commissioner. The commissioner shall return one copy of the cancellation certificate to the owner and shall send a copy of the cancellation certificate to the clerk of the county commission to be recorded and indexed in the deed book with the owner’s name being indexed in the grantor index. The commissioner shall charge a fee of ten dollars per certificate of title canceled. Upon recordation in the county clerk’s office the mobile or manufactured home shall be treated for all purposes as an appurtenance to the real estate to which it is affixed and be transferred only as real estate and the ownership interest in the mobile or manufactured home, together with all liens and encumbrances on the home, shall be transferred to and shall encumber the real property to which the mobile or manufactured home has become affixed.

CHAPTER 171

(Com. Sub. for H. B. 4374 — By Delegates Kuhn, Butcher and Martin)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §21-9-4, §21-9-11 and §21-9-12 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §21-9-12a, all relating to manufactured housing construction and safety standards; removing out-dated language; providing for inspections and the payment of the costs of inspection; authorizing the issuance of cease and desist orders; and establishing civil and criminal penalties.
Be it enacted by the Legislature of West Virginia:

That §21-9-4, §21-9-11 and §21-9-12 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 §21-9-12a, all to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-4. General powers and duties; persons adversely affected entitled to hearing.

(a) The board shall have the power to:

(1) Regulate its own procedure and practice;

(2) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article and the federal standards;

(3) Advise the commissioner in all matters within his jurisdiction under this article;

(4) Prepare and submit to HUD a state plan application seeking the designation of the board as a state administrative agency for the purpose of administering and enforcing the federal standards and take all other action necessary to enable the board to serve as a state administrative agency;

(5) Study and report to the governor and the Legislature on matters pertinent to the manufacture, distribution and sale of
manufactured housing in this state and recommend changes in
the law determined by the board to be necessary to promote
consumer safety and protect purchasers of manufactured
housing;

(6) Conduct hearings and presentations of views consistent
with its rules and the federal standards;

(7) Approve or disapprove applications for licenses to
manufacturers, dealers, distributors and contractors in accor-
dance with section nine of this article, and revoke or suspend
licenses in accordance with that section, and set the amounts of
license fees and bonds or other forms of assurance in accor-
dance with sections nine and ten of this article;

(8) Delegate to and authorize the commissioner to exercise
the powers and duties of the board that the board may deter-
mine, including without limitation, the authority to approve,
disapprove, revoke or suspend licenses in accordance with
section nine of this article.

(b) Any person adversely affected by a decision of the
board or the commissioner shall be afforded an opportunity for
hearing before the board in accordance with section one, article
five, chapter twenty-nine-a of this code.

§21-9-11. State may act as primary inspection agency.

(a) This state, acting through the board, is hereby granted
all powers and authority necessary to act as a primary inspec-
tion agency and to perform the functions of a “design approval
primary inspection agency” and a “production inspection
primary inspection agency”, as the terms are defined in the
federal standards. The board may apply to the secretary of HUD
on behalf of this state to act as the primary inspection agency,
including application for approval to act as the exclusive
production inspection primary inspection agency in this state.
The board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to enable the board to act on behalf of this state as the primary inspection agency.

(b) The board may provide inspections to private home sites to aid in the resolution of a consumer complaint filed with the board by the home owner. The board may provide, free of charge, one initial and one follow-up inspection related to each consumer complaint: Provided, That the board may charge a licensee an inspection fee for any follow-up inspections which are necessitated by a licensee’s failure to comply with an order of the board. The inspection fee may not exceed seventy-five dollars per hour, plus expenses.

§21-9-12. Violation of article; penalties; injunction.

(a) Any person who violates any of the following provisions relating to manufactured homes or any legislative rule proposed by the board pursuant to the provisions of this article, is liable to the state for a penalty, as determined by the board, not to exceed one thousand dollars for each violation. Each violation constitutes a separate violation with respect to each manufactured home, except that the maximum penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation. No person may:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into this state any manufactured home which is manufactured on or after the effective date of any applicable standard established by a rule promulgated by the board pursuant to the provisions of this article, or any applicable federal standard, which does not comply with that standard.
(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information or fail or refuse to permit entry or inspection as required by the provisions of this article.

(3) Fail to furnish notification of any defect as required by the provisions of 42 U.S.C. §5414.

(4) Fail to issue a certification required by the provisions of 42 U.S.C. §5415 or issue a certification to the effect that a manufactured home conforms to all applicable federal standards, when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(5) Fail to establish and maintain records, make reports, and provide information as the board may reasonably require to enable the board to determine whether there is compliance with the federal standards; or fail to permit, upon request of a person duly authorized by the board, the inspection of appropriate books, papers, records and documents relative to determining whether a manufacturer, dealer, distributor or contractor has acted or is acting in compliance with the provisions of this article or applicable federal standards.

(6) Issue a certification pursuant to the provisions of 42 U.S.C. §5403(a), when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(b) Subdivision (1), subsection (a) of this section does not apply to:

(1) The sale or the offer for sale of any manufactured home after the first purchase of it in good faith for purposes other than resale;
(2) Any person who establishes that he did not have reason to know in the exercise of due care that the manufactured home is not in conformity with applicable federal standards; or

(3) Any person who, prior to the first purchase, holds a certificate by the manufacturer or importer of the manufactured home to the effect that the manufactured home conforms to all applicable federal standards, unless that person knows that the manufactured home does not conform to those standards.

(c) Any manufacturer, dealer, distributor or contractor who engages in business in this state without furnishing a bond or other form of assurance as required by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars for each day the violation continues.

(d) The board may institute proceedings in the circuit court of the county in which the alleged violation occurred or are occurring to enjoin any violation of the provisions of this article.

(e) Any person or officer, director, partner or agent of a corporation, partnership or other entity who willfully or knowingly violates any of the provisions listed in subsection (a) of this section, in any manner which threatens the health or safety of any purchaser, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period of not more than one year, or both fined and imprisoned.

(f) Nothing in this article applies to any bank or financial institution engaged in the disposal of foreclosed or repossessed manufactured homes.

§21-9-12a. Violation of cease and desist order; penalties.
(a) Upon a determination that a person is engaging in business without a valid license as required under the provisions of section nine of this article, the board or commissioner may immediately issue a cease and desist order requiring the person to cease all operations within this state. After a hearing, the board may impose a penalty of not less than two hundred dollars nor more than one thousand dollars upon any person found to have been engaging in business in this state without a valid license as required under the provisions of section nine of this article.

(b) The board may institute proceedings in the circuit court of the county where the violation occurred, against any person violating a cease and desist order issued under the provisions of subsection (a) of this section.

(c) Any person continuing to engage in business in this state without a valid license as required under the provisions of section nine of this article, after the issuance of a cease and desist order under the provisions of subsection (a) of this section, is guilty of a misdemeanor and, upon conviction thereof, is subject to the following penalties:

(1) For a first offense, a fine of not less than two hundred dollars nor more than one thousand dollars;

(2) For a second offense, a fine of not less than five hundred dollars nor more than five thousand dollars, or confinement in a county or regional jail for not less than thirty days nor more than six months or both a fine and confinement; and

(3) For a third or subsequent offense, a fine of not less than one thousand dollars nor more than five thousand dollars, and confinement in the county or regional jail for not less than thirty days nor more than one year.
AN ACT to amend and reenact §37-15-2, §37-15-3 and §37-15-6 of the code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §37-15-3a; and to amend said code by adding thereto a new article, designated §55-3B-1, §55-3B-2, §55-3B-3, §55-3B-4, §55-3B-5, §55-3B-6 and §55-3B-7, all relating to factory-built home sites; definition of good cause and section; written agreements for factory-built home sites; adoption of rules and regulations by owners of factory-built home sites; terms of written agreement related to termination of tenancy; remedies for wrongful occupation of factory-built home site; definitions; tenancy of factory-built home site; termination of tenancy; petition for summary relief for wrongful occupation; defenses; proceedings; final order; disposition of abandoned property; and waiver of rights.

Be it enacted by the Legislature of West Virginia:

That §37-15-2, §37-15-3 and §37-15-6 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 §37-15-3a; and that said code be amended by adding thereto a new article, designated §55-3B-1, §55-3B-2, §55-3B-3, §55-3B-4, §55-3B-5, §55-3B-6 and §55-3B-7, all to read as follows:

Chapter
37. Real Property.
55. Actions, Suits and Arbitration; Judicial Sale.
CHAPTER 37. REAL PROPERTY.

ARTICLE 15. HOUSE TRAILERS, MOBILE HOMES, MANUFACTURED HOMES AND MODULAR HOMES.

§37-15-3. Written agreement required.


For the purposes of this article, unless expressly stated otherwise:

(a) "Abandoned factory-built home" means a factory-built home occupying a factory-built home site pursuant to a written agreement under which the tenant has defaulted in rent or the landlord has exercised any right to terminate the rental agreement;

(b) "Factory-built home" includes modular homes, mobile homes, house trailers and manufactured homes;

(c) "Factory-built home rental community" means a parcel of land under single or common ownership upon which two or more factory-built homes are located on a continual, nonrecreational basis together with any structure, equipment, road or facility intended for use incidental to the occupancy of the factory-built homes, but does not include premises used solely for storage or display of uninhabited factory-built homes or premises occupied solely by a landowner and members of his family;

(d) "Factory-built home site" means a parcel of land within the boundaries of a factory-built home rental community provided for the placement of a single factory-built home and the exclusive use of its occupants;
(e) "Good cause" means:

(1) The tenant is in arrears in the payment of periodic payments or other charges;

(2) The tenant has breached a material term of a written rental agreement or has repeatedly breached other terms of the rental agreement;

(3) Where there is no written agreement, or where the written agreement does not cover the subject matter of a warranty or leasehold covenant, the tenant breached a material warranty or leasehold covenant or has repeatedly breached other terms of a warranty or a leasehold covenant;

(4) The tenant has deliberately or negligently damaged the property or knowingly permitted another person to do so.

(f) "House trailers" means all trailers designed or intended for human occupancy and commonly referred to as mobile homes or house trailers and shall include fold down camping and travel trailers as these terms are defined in section one, article six, chapter seventeen-a of this code, but only when such camping and travel trailers are located in a factory-built home rental community, as defined in this section, on a continual, nonrecreational basis.

(g) "Landlord" means the factory-built home rental community owner, lessor or sublessor of the factory-built home rental community, or an agent or representative authorized to act on his or her behalf in connection with matters relating to tenancy in the community.

(h) "Manufactured home" has the same meaning as the term is defined in section two, article nine, chapter twenty-one of this code which meets the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401,
et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and the federal manufactured home construction and safety standards and regulations promulgated by the secretary of the United States department of housing and urban development.

(i) "Mobile home" means a transportable structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and built prior to enactment of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, et seq.), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American national standards institute (ANSI)--A119.1 standards for mobile homes.

(j) "Modular home" means any structure that is wholly, or in substantial part, made, fabricated, formed or assembled in manufacturing facilities for installation or assembly and installation on a building site and designed for long-term residential use and is certified as meeting the standards contained in the state fire code encompassed in the legislative rules promulgated by the state fire commission pursuant to section five-b, article three, chapter twenty-nine of this code.

(k) "Owner" means one or more persons, jointly or severally, in whom is vested: (i) All or part of the legal title to the factory-built home rental community; or (ii) all or part of the beneficial ownership and right to present use and enjoyment of the factory-built homesite or other areas specified in the rental agreement and the term includes a mortgagee in possession.

(l) "Rent" means payments made by the tenant to the landlord for use of a factory-built home site and as payment for other facilities or services provided by the landlord.
(m) "Section" means a unit of a factory-built home which is transported and delivered as a whole and which contains some or all of the indoor living area.

(n) "Tenant" means a person entitled pursuant to a rental agreement to occupy a factory-built home site to the exclusion of others.

§37-15-3. Written agreement required.

(a) The rental and occupancy of a factory-built home site shall be governed by a written agreement which shall be dated and signed by all parties thereto prior to commencement of tenancy. A copy of the signed and dated written agreement and a copy of this article shall be given by the landlord to the tenant within seven days after the tenant signs the written agreement.

(b) The written agreement, in addition to the provisions otherwise required by law to be included, shall contain:

(1) The terms of the tenancy and the rent therefor;

(2) The rules and regulations of the factory-built home rental community. A copy of the text of the rules and regulations attached as an exhibit satisfies this requirement;

(3) The language of the provisions of this article. A copy of the text of this article attached as an exhibit satisfies this requirement;

(4) A description of the physical improvements and maintenance to be provided by the tenant and the landlord during the tenancy; and

(5) A provision listing those services which will be provided at the time the rental agreement is executed and will continue to be offered for the term of tenancy and the fees, if any, to be charged for those services.
(c) The written agreement for a factory-built home site on which is placed a factory-built home that is comprised of one section, other than a camping or travel trailer, may not allow for the termination of the tenancy by the landlord during the first twelve months that the factory-built home is placed on the site except for good cause. The written agreement for a factory-built home site upon which is placed a factory-built home that is comprised of more than one section may not allow for the termination of the tenancy by the landlord during the first five years the factory-built home is placed on the site except for good cause.

(d) The written agreement may not contain:

(1) Any provisions contrary to the provisions of this article and shall not contain a provision prohibiting the tenant who owns his or her factory-built home from selling his or her factory-built home;

(2) Any provision that requires the tenant to pay any recurring charges except fixed rent, utility charges or reasonable incidental charges for services or facilities supplied by the landlord; or

(3) Any provision by which the tenant waives his or her rights under the provisions of this article.

(e) When any person possesses a security interest in the factory-built home, the written agreement or rental application shall contain the name and address of any secured parties. The written agreement shall require the tenant to notify the landlord within ten days of any new security interest, change of existing security interest or settlement or release of the security interest.

(f) When a factory-built home owner sells a factory-built home, the new owner shall enter into a written agreement if the factory-built home continues to occupy the site: Provided, That
the new owner meets the standards and restrictions contained in the prior rental agreement.


(a) An owner, from time to time, may adopt rules or regulations concerning the tenant’s use and occupancy of the premises. A rule or regulation is enforceable against the tenant if the rule or regulation:

(1) Is reasonably related to the purpose for which it is adopted;

(2) Applies to all tenants in the factory-built home rental community in a fair manner;

(3) Is sufficiently explicit in its prohibition, direction, or limitation of the tenant’s conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(4) Is not for the purpose of evading the obligations of the landlord; and

(5) The tenant has been given written notice of the rule at the time the tenant enters into the rental agreement, or when it is adopted by the owner.

(b) A rule or regulation adopted by the owner after the tenant has entered into a rental agreement that results in a substantial modification of the tenant’s original rental agreement does not become effective until the current rental agreement expires and a new agreement is made in writing.


(a) The tenancy for a factory-built home site upon which is placed a factory-built home that is comprised of one section, other than a camping or travel trailer, may not be terminated
until twelve months after the home is placed on the site except for good cause. The tenancy for a factory-built home site on which is placed a factory-built home that is comprised of two or more sections may not be terminated until five years after the home has been placed on the site except for good cause.

(b) The tenancy for a factory-built home, other than a camping or travel trailer, may be terminated at the time set forth in this subsection.

(1) Either party may terminate a rental agreement at the end of its stated term or at the end of the time period set out in subsection (a) of this section, whichever is later, for any reason, unless the rental agreement states that reasons for termination must exist.

(2) Either party may terminate a tenancy which has continued after its stated term and longer than the period set out in subsection (a) of this section for no reason, unless the rental agreement states that reasons must exist.

(3) A tenancy that has not reached the end of its stated term or has not existed for the time periods stated in subsection (a) of this section may be terminated only for good cause.

(c) A tenancy governed by subdivision (1) or (2), subsection (b) of this section may be terminated only by written notice at least three months before the termination date of the tenancy. A tenancy governed by subdivision (3), subsection (a) of this section may be terminated only by a written notice at least three months before the termination date of the tenancy. The rental agreement may specify a period of notice in excess of the periods of time set out in this subsection.

(d) A landlord may not cause the eviction of a tenant by willfully interrupting gas, electricity, water or any other essential service, or by removal of the factory-built home from
the factory-built home site, or by any other willful self-help measure.

(e) The landlord shall set forth in a notice of termination the reason relied upon for the termination with specific facts to permit determination of the date, place, witnesses and circumstances concerning that reason.

(f) Unless the landlord is changing the use of the site, if a tenancy is ended by the landlord at the later of its stated term or at the end of the time period set out in subsection (a) of this section with no good cause, the owner may not prevent the sale of the factory-built home in place to another tenant who meets the standards and restrictions in effect for other new tenants prior to the termination of the tenancy.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 3B. REMEDIES FOR WRONGFUL OCCUPATION OF FACTORY-BUILT HOME SITE.

§55-3B-1. Definitions.
§55-3B-2. Tenancy of factory-built home site.
§55-3B-3. Termination of tenancy.
§55-3B-4. Petition for summary relief for wrongful occupation of residential rental property.
§55-3B-5. Defenses available.
§55-3B-6. Proceedings in court; final order; disposition of abandoned personal property.
§55-3B-7. Waiver.

§55-3B-1. Definitions.

For the purposes of this article, unless expressly stated otherwise:

(a) "Factory-built home" has the same meaning given to that term in West Virginia code section two, article fifteen, chapter thirty-seven of this code.
(b) "Factory-built home site" means a parcel of land provided for the placement of a factory-built home for occupancy as a residence whether or not in a factory-built home community. A factory-built home site is not residential rental property for the purposes of article three-a of this chapter.

(c) "Good cause" means:

(1) The tenant is in arrears in the payment of periodic payments or other charges related to the tenancy;

(2) The tenant has breached a material term of a written rental agreement or repeatedly breached other terms of a written rental agreement including those agreements required in section three, article fifteen, chapter thirty-seven of this code;

(3) Where there is no written agreement, or where the written agreement does not cover the subject matter of a warranty or leasehold covenant, the tenant breached a material term of a warranty or leasehold covenant or repeatedly breached other terms of a warranty of leasehold covenant;

(4) The tenant has deliberately or negligently damaged the property or knowingly permitted another person to do so.

(d) "Section" means a unit of a factory-built home which is transported and delivered as a whole and which contains some or all of the indoor living area.

§55-3B-2. Tenancy of factory-built home site.

(a) The tenancy of the site of a factory-built home that is comprised of one section and that is not subject to a written agreement is from month to month. The tenancy of the site of a factory-built home that is comprised of two or more sections that is not subject to a written agreement is from year to year.
(b) The tenancy of a factory-built home site that has placed
on it a factory-built home that is comprised of one section,
other than a camping or travel trailer, may not be terminated by
the landlord until twelve months after the tenancy began except
for good cause. The tenancy of a factory-built home site that
has placed on it a factory-built home that is comprised of two
or more sections may not be terminated by the landlord until
five years after the tenancy began except for good cause. A
written agreement may provide that the tenant may not termi-
nate the tenancy for the same or greater periods of time. A
written agreement may provide that the landlord may not
terminate the tenancy for greater periods of time.

(c) For a month-to-month or year-to-year tenancy or a
tenancy that is created by a written agreement for a definite
period of time, the tenancy does not terminate at the end of the
month, year or stated period of time unless either party gives
timely notice as required in section three of this article. If no
notice is given and if no new agreement is made, the tenancy of
a factory-built home site that is comprised of one section
becomes a month-to-month tenancy and the tenancy of a
factory-built home that is comprised of two or more sections
becomes a year-to-year tenancy.

§55-3B-3. Termination of tenancy.

(a) The tenancy of a factory-built home site may be
terminated by either party only by giving at least three months’
otice in writing to the other of his or her intention to terminate
the tenancy. When such notice is to the tenant, it may be served
upon him, or upon anyone holding under him the leased
premises or any part thereof. When it is by the tenant, it may
be served upon anyone who at the time owns the premises, in
whole or in part, or the agent of such owner or according to the
common law.
(b) Unless the landlord is changing the use of the site, if a tenancy is ended by the landlord at the later of its stated term or at the end of the time period set out in subsection (b), section two of this article, with no good cause, the owner may not prevent the sale of the factory-built home in place to another tenant who meets the standards and criteria in effect for new tenants prior to the termination of the tenancy.

§55-3B-4. Petition for summary relief for wrongful occupation of residential rental property.

(a) A person desiring to remove a tenant and factory-built home from a factory-built home site may apply for such relief to the magistrate court or the circuit court of the county in which such property is located, by verified petition, setting forth the following:

(1) That he is the owner or agent of the owner and as such has a right to evict the tenant and have the factory-built home of the tenant removed;

(2) A brief description of the factory-built home site sufficient to identify it;

(3) That the tenant is wrongfully occupying such property in that the tenant is:

(A) Holding over after having been given proper notice of termination of tenancy, whether or not the tenant has continued to pay and the landlord has accepted rent; or

(B) The landlord has good cause; and

(4) A prayer for eviction of the tenant and removal of the tenant's factory-built home.

(b) Previous to the filing of the petition the person shall
request from the court the time and place at which the petitioner
shall be heard. The court shall fix a time for such hearing,
which time shall not be less than five nor more than ten judicial
days following such request.

(c) Immediately upon being apprised of the time and place
for hearing the petitioner shall cause a notice of the same to be
served upon the tenant in accordance with the provisions of rule
4 of the West Virginia rules of civil procedure or by certified
mail, return receipt requested. Such notice shall inform the
tenant that any defense to the petition must be submitted in
writing to the petitioner within five days of the receipt by the
tenant of the notice and in no case later than the fifth day next
preceding the date of hearing. Upon receipt of the return of
service or the return receipt as the case may be, evidencing
service upon the tenant, the petitioner shall file with the court
his petition and such proof of service.

§55-3B-5. Defenses available.

In a proceeding under the provisions of this article, a tenant
against whom a petition has been brought may assert any and
all defenses which might be raised in an action for ejectment or
an action for unlawful detainer or provided by this article or
article fifteen, chapter thirty-seven of this code.

§55-3B-6. Proceedings in court; final order; disposition of aban-
donned personal property.

(a) If at the time of the hearing there has been no appear-
ance, answer or other responsive pleading filed by the tenant,
the court shall make and enter an order evicting the tenant and
ordering the tenant to have the factory-built home removed.

(b) In the case of a petition alleging good cause or holding
over after proper termination of a tenancy, if the tenant files an
answer raising the defense of breach by the landlord of a
8 material covenant upon which the tenant’s duties depend or
9 other defenses to the claim or claims set forth in the petition,
10 the court shall proceed to a hearing on such issues.

11 (c) Continuances of the hearing provided for in this section
12 shall be for good cause only and the judge or magistrate shall
13 not grant a continuance to either party as a matter of right. If a
14 continuance is granted upon request by a tenant, the tenant shall
15 be required to pay into court any periodic rent becoming due
16 during the period of such continuance.

17 (d) At the conclusion of the hearing, if the court finds that
18 the landlord is entitled to evict the tenants and have the factory-
19 built home of the tenants removed, the court shall make and
20 enter an order evicting the tenants and ordering the tenants to
21 have the factory-built home removed. In the case of a proceed-
22 ing pursuant to subsection (a) of this section, the court may also
23 make a written finding and include in its order such relief on the
24 issue of arrearage in the payment of periodic payments or other
25 agreed charges related to the tenancy as the evidence may
26 require. The court may disburse any moneys paid into court by
27 the tenant in accordance with the provisions of this section.

28 (e) The court order shall specify the time when the tenant
29 shall vacate the property, taking into consideration such factors
30 as the nature of the factory-built home, the possibility of
31 relative harm to the parties and other material facts deemed
32 relevant by the court in considering when the tenant might
33 reasonably be expected to vacate the property. The court shall
34 not order the tenant to vacate the premises in less than one
35 month unless the tenant refuses or fails to pay rent for that
36 period in advance as it becomes due or unless the court finds
37 that the tenant has deliberately or negligently damaged the
38 property or the property of other tenants or materially threat-
39 ened or harmed the quiet enjoyment of the property of other
40 tenants or neighbors or knowingly permitted another person to
do so. The court shall not order the tenant to remove the factory-built home in less than three months unless the tenant refuses or fails to pay rent in advance as it becomes due for that period or unless the court finds that the presence of the factory-built home poses an imminent threat to the health or safety of other tenants or neighbors: Provided, That the court may order the home to be removed in not less than thirty days if the factory-built home is a single section and the tenant had held over after having been given notice pursuant to section three of this article. The order shall further provide that if the tenant continues to wrongfully occupy the property beyond such time or if the tenant refuses or fails to remove the factory-built home in the time required, the landlord may apply for a writ of possession and the sheriff shall forthwith remove the tenant, taking precautions to guard against damage to the property of the landlord and the tenant.

(f) In the event an appeal is taken and the tenant prevails upon appeal, and if the term of the lease has expired and proper termination notice was given pursuant to section three of this article, absent an issue of title, retaliatory eviction or breach of warranty, the relief ordered by the appellate court shall be for monetary damages only and shall not restore the tenant to possession. During the pendency of any such appeal, if the period of the tenancy has otherwise expired and proper termination notice was given pursuant to section three of this article, the tenant is not entitled to remain in possession of the property.

(g) When an order is issued pursuant to this section evicting the tenant and ordering the tenant to remove the factory-built home and the tenant fails to remove the factory-built home by the date specified by the order issued pursuant to subsection (e) of this section, the landlord may:

(1) Dispose of the tenant's factory-built home without incurring any liability or responsibility to the tenant or any
other person if the tenant informs the landlord in writing that the tenant is abandoning the factory-built home;

(2) Remove and store the factory-built home after the date and time by which the court ordered the tenant to remove the factory-built home. The landlord may sell the stored factory-built home after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored factory-built home; or (ii) the costs of storage equal the value of the factory-built home being stored; or

(3) Leave the factory-built home on the property. The landlord may sell the factory-built home left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the factory-built home on the landlord’s property and has not taken possession of the factory-built home.

(h) The sale shall be conducted and the proceeds distributed pursuant to article nine, chapter forty-six of this code as if the landlord became the holder of a security interest on the day the tenant was to have the factory-built home removed from the site except that the landlord shall have first priority to recover unpaid rent and may require as a condition of the sale that the buyer post security or place in escrow the cost of moving the factory-built home from the site.

(i) When an order is issued pursuant to this section granting possession of the property to the landlord and the tenant removes the factory-built home, but fails to remove all other personal property by the date and time specified by the order issued pursuant to subsection (e) of this section, the landlord may:
(1) Dispose of the tenant’s personal property without incurring any liability or responsibility to the tenant or any other person if the tenant informs the landlord in writing that the other personal property is abandoned or if the property is garbage;

(2) Remove and store the other personal property after the date and time by which the court ordered the tenant to vacate the property. The landlord may dispose of the stored personal property after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored personal property; or (ii) the costs of storage equal the value of the personal property being stored; or

(3) Leave the personal property on the property. The landlord may dispose of personal property left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the personal property on the landlord’s property and has not taken possession of the personal property.

(j) Notwithstanding the provisions of subsections (g) and (i) of this section, if the personal property is worth more than three hundred dollars and was not removed from the property or place of storage within thirty days with the required fees paid as provided in subsection (i) of this section, or if the factory-built home was not removed within thirty days with the required fees paid as provided in subsection (g) of this section, the landlord shall store the personal property or factory-built home for up to thirty additional days if the tenant or any person holding a security interest in the abandoned personal property or factory-built home informs the landlord of their intent to remove the property: Provided, That the tenant or person
§55-3B-7. Waiver.

A tenant’s rights under this article may not be waived by agreement.

CHAPTER 173
(H. B. 4560 — By Delegates Browning and Kuhn)

[Passed March 4, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-1B-26, relating to the West Virginia national guard generally; and requiring that guards and firefighters employed by the adjutant general be members of the national guard.

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 §15-1B-26, to read as follows:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-26. Firefighters and security guards to be members of the national guard.

Only firefighters and security guards who are members of the West Virginia national guard may be employed by the
adjutant general as firefighters and security guards: Provided,
That any person employed as a firefighter on the effective date
of this section who is not a member of the West Virginia air
national guard may continue to be employed as a firefighter:
Provided, however, That no person who is not employed on the
effective date of this section as a firefighter and who is not a
member of the West Virginia air national guard may be
employed as a firefighter for the West Virginia air national
guard.

CHAPTER 174

(Com. Sub. for H. B. 4156 — By Delegates Palumbo, Staton,
Kominar, Amores, Craig and Webster)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §36-3-5a of the code of West Virginia,
1931, as amended, relating to excepting the description require­
ments from deeds or instruments for easements and rights-of-way
for mineral leases.

Be it enacted by the Legislature of West Virginia:

That §36-3-5a of the code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:

ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.

§36-3-5a. Easement and right-of-way; description of property;
exception for certain public utility facilities and
mineral leases.
(a) Any deed or instrument that initially grants or reserves an easement or right-of-way shall describe the easement or right-of-way by metes and bounds, or by specification of the centerline of the easement or right-of-way, or by station and offset, or by reference to an attached drawing or plat which may not require a survey, or instrument based on the use of the global positioning system which may not require a survey: Provided, That oil and gas, gas storage and mineral leases shall not be required to describe the easement, but shall describe the land on which the easement or right of way will be situate by source of title or reference to a tax map and parcel, recorded deed, recorded lease, plat or survey sufficient to reasonably identify and locate the property on which the easement or right-of-way is situate: Provided, however, That the easement or right-of-way is not invalid because of the failure of the easement or right-of-way to meet the requirements of this subsection.

(b) This section does not apply to the construction of a service extension from a main distribution system of a public utility when such service extension is located entirely on, below, or above the property to which the utility service is to be provided.

(c) The clerk of the county commission of any county in which an easement or right-of-way is recorded pursuant to this section shall only accept for recordation any document that complies with this section and that otherwise complies with the requirements of article one, chapter thirty-nine of this code, without need for a survey or certification under section twelve, article thirteen-a, chapter thirty of this code.
Ch. 175] MINES AND MINING

CHAPTER 175

(Com. Sub. for H. B. 4491—By Delegates Frederick, Caputo, Kuhn, Varner, Pethtel, Stemple and Kominar)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12 and §22A-1-13 of the code of West Virginia, 1931, as amended, all relating to mine inspectors and instructors employed by the office of miners' health, safety and training; regions and districts; and qualifications, examinations, appointments, salaries, expense reimbursements, tenure and removal of mine safety instructors, electrical inspectors and mine inspectors.

Be it enacted by the Legislature of West Virginia:

That §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12 and §22A-1-13 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.

§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.

§22A-1-9. Mine safety instructors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to mine safety instructors.

§22A-1-11. Employment of electrical inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to electrical inspectors.

§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications; examinations; salary and expenses; reinstatement; removal.

§22A-1-13. Employment of surface mine inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.
§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.

Notwithstanding any other provisions of this code to the contrary, mine inspectors shall be selected, serve and be removed as provided in this article.

The director shall divide the state into a sufficient number of regions, so as to equalize, as far as practical, the work of each inspector. The director may assign inspectors to districts and may designate and assign not more than one inspector-at-large and one assistant inspector-at-large to each region. The director may designate the places of abode of inspectors at points convenient to the mines of their respective districts, and, in the case of inspectors-at-large and assistant inspectors-at-large, their respective regions.

All mine inspectors appointed after the mine inspectors' examining board has certified to the director an adequate register of qualified eligible candidates, so long as the register contains the names of at least three qualified eligible candidates, shall be appointed from the names on such register. Each original appointment shall be made by the director for a probationary period of not more than one year.

The director shall make each appointment from among the three qualified eligible candidates on the register having the highest grades: Provided, That the director may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the director shall immediately notify in writing each member of the mine inspectors' examining board of the action, together with a detailed statement of the reasons therefor. Thereafter, if the mine inspectors' examining board finds, after hearing, that the action of the director was arbitrary or unreasonable, it may then order the name of any candidate so stricken
from the register to be reinstated thereon. The reinstatement is
effective from the date of removal from the register.

The name of any candidate passed over for appointment for
three years shall be deleted from the register.

After having served for a probationary period of one year
to the satisfaction of the director, a mine inspector has perma-
nent tenure, subject to dismissal only for cause in accordance
with the applicable provisions of section twelve of this article.
No mine inspector, while in office, may be directly or indirectly
interested as an employee, owner, lessor, operator, stockholder,
superintendent or engineer of any coal mine. Before entering
upon the discharge of the duties as a mine inspector, he or she
shall take the oath of office prescribed by section 5, article IV
of the Constitution of West Virginia, a certificate of which oath
shall be filed in the office of the secretary of state.

The inspectors, inspectors-at-large and assistant inspec-
tors-at-large, together with the director, shall make all inspec-
tions authorized by this article and article two of this chapter
and shall perform such other duties as are imposed upon mine
inspectors by this chapter and by any applicable legislative
rules.

§22A-1-9. Mine safety instructors; eligibility; qualifications;
examinations; salary; provisions relating to
underground mine inspectors applicable to mine
safety instructors.

(a) The office shall employ a sufficient number of mine
safety instructors as the director determines to be reasonably
necessary in fully and effectively carrying out the applicable
provisions of this chapter.

(b) To be eligible for employment as a mine safety instruc-
tor, the applicant shall be: (1) A citizen of West Virginia, in
good health, not less than twenty-four years of age, of good character and reputation, and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which has been in mines in this state: Provided, That graduation from any accredited college of mining engineering may be considered equivalent to two years of practical experience; (3) a person who has had practical experience with dangerous gases found in coal mines, and who has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws and rules; and (4) a person who possesses a West Virginia foreman-fireboss certification; or a person who has had at least three years of experience as an actual working team member of a mine rescue team, or at least three years of experience as a member of a first aid team or emergency medical technician team; or a person who has had at least three years of experience as the safety director, or the equivalent as approved by the mine inspectors' examining board, of a mine; or a person who has had at least three years of experience as an active member of a mine safety committee.

For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced miner prior to actually performing such duties.

(c)(1) In order to qualify for appointment as a mine safety instructor, an eligible applicant shall submit to written, oral and practical examinations administered by the mine inspectors’ examining board and furnish evidence of good health, character and other facts establishing eligibility as the board may require. The examinations shall relate to the duties to be performed by a mine safety instructor and, subject to the approval of the mine inspectors’ examining board, may be prepared by the director.

(2) If the board finds after investigation and examination that an applicant: (A) Is eligible for appointment; and (B) has
passed each required examination with a grade of at least seventy-five percent or an overall combined average score of eighty percent, the board shall add the applicant's name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the director. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Mine safety instructors shall be paid an annual salary of not less than thirty-seven thousand four hundred dollars, which shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. Mine safety instructors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to mine safety instructors.

§22A-1-11. Employment of electrical inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to electrical inspectors.

(a) The office shall employ a sufficient number of electrical inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as an electrical inspector, the applicant shall be: (1) A citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and reputation, and of temperate habits; and (2) a person who has had five years of practical electrical experience in coal
mines, at least two of which were in mines in this state, or a
degree in electrical engineering from an accredited electrical
engineering school and three years of practical electrical
experience in underground coal mining. For the purposes of this
section, practical electrical experience means the performance
of duties requiring a person to be a certified electrician, as that
term is defined in subdivision (2), subsection (d), section two
of this article, prior to actually performing such duties.

(c)(1) In order to qualify for appointment as an electrical
inspector, an eligible applicant shall submit to written, oral and
practical examinations administered by the mine inspectors’
examining board and furnish evidence of good health, character
and other facts establishing eligibility as the board may require.
The examinations shall relate to the duties to be performed by
an electrical inspector and, subject to approval of the mine
inspectors’ examining board, may be prepared by the director.

(2) If the board finds after investigation and examination
that an applicant: (A) Is eligible for appointment; and (B) has
passed the required examinations with an average grade of at
least ninety percent, the board shall add the applicant’s name
and grades to the register of qualified eligible candidates and
promptly certify its action in writing to the director. The
director shall then appoint one of the candidates from the three
having the highest grades.

(d) Electrical inspectors shall be paid an annual salary of
not less than forty-two thousand eight hundred twenty-eight
dollars, which shall be fixed by the director, who shall take into
consideration ability, performance of duty and experience.
Electrical inspectors shall devote all of their time to the duties
of the office.

(e) Except as expressly provided in this section to the
contrary, all provisions of this article relating to the eligibility,
§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications; examinations; salary and expenses; reinstatement; removal.

(a) The office shall employ as many underground mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a mine inspector the applicant shall be: (1) A citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and reputation and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which have been in mines of this state: Provided, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; (3) a person who has had practical experience with dangerous gases found in coal mines; and (4) a person who has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced underground miner prior to actually performing such duties.

(c) In order to qualify for appointment as an underground mine inspector, an eligible applicant shall submit to written, oral and practical examinations administered by the mine inspectors’ examining board and furnish evidence of good
health, character and other facts establishing eligibility as the
board may require. The examinations shall relate to the duties
to be performed by an underground mine inspector and, subject
to the approval of the mine inspectors' examining board, may
be prepared by the director. If the board finds after investigation
and examination that an applicant: (1) Is eligible for appoint-
ment; and (2) has passed each required examination, with a
grade of at least seventy-five percent or an overall combined
average score of eighty percent, the board shall add
the applicant's name and grades to the register of qualified
eligible candidates and promptly certify its action in writing to
the director. The director shall then appoint one of the candi-
dates from the three having the highest grades.

(d) Underground mine inspectors shall be paid an annual
salary of not less than thirty-eight thousand one hundred sixty
dollars; assistant inspectors-at-large, not less than forty-four
thousand four hundred forty-eight dollars; inspectors-at-large,
not less than forty-six thousand one hundred four dollars, each
of which shall be fixed by the director, who shall take into
consideration ability, performance of duty, and experience. In
accordance with established rules of the state's travel manage-
ment office, underground mine inspectors shall also be allowed
and paid expenses necessarily incident to the performance of
their official duties: Provided, That no reimbursement for
expenses may be made other than upon the timely submittal of
a properly itemized expense account settlement completed by
the underground mine inspector, approved and countersigned
by the director, or his or her designated representative, verify-
ing that the expenses were actually incurred in the performance
of official duties. Underground mine inspectors shall devote all
of their time to the duties of the office and shall be afforded
compensatory time or compensation of at least the regular rate
for all time in excess of forty hours per week.
An underground mine inspector, after having received a permanent appointment, may be removed from office only for physical or mental impairment, incompetency, neglect of duty, public intoxication, malfeasance in office or other similarly good cause.

Proceedings for the removal of an underground mine inspector may be initiated by the director whenever there is reasonable cause to believe that adequate cause exists, warranting removal. The proceeding may be initiated by a verified petition, filed with the mine inspectors’ examining board by the director, setting forth with particularity the facts alleged. Not less than twenty reputable citizens, who are operators or employees in mines in this state, may petition the director for the removal of an underground mine inspector. If the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the alleged facts to be made. If, after the investigation, the director finds that there is substantial evidence, which, if true, warrants removal of the inspector, the director shall file a petition with the board requesting removal of the inspector.

On receipt of a petition by the director seeking removal of an underground mine inspector, the board shall promptly notify the inspector to appear before it at a time and place designated in the notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

At the time and place designated in the notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings
had at the hearing. No continuance may be granted except for
good cause shown. The chair of the board and the director have
power to administer oaths and subpoena witnesses.

(5) If any mine inspector against whom a petition has been
filed willfully refuses or fails to appear before the board, or
having appeared, refuses to answer under oath any relevant
question on the basis that the testimony or answer might
incriminate him or her or refuses to waive immunity from
prosecution because of any relevant matter about which the
inspector may be asked to testify, then the inspector shall forfeit
his or her position.

(6) If, after hearing, the board finds that the inspector
should be removed, it shall enter an order to that effect. The
decision of the board is final and is not subject to judicial
review.

§22A-1-13. Employment of surface mine inspectors; eligibility;
qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to surface mine inspectors.

(a) The office shall employ as many surface mine inspec-
tors as the director determines to be reasonably necessary in
fully and effectively carrying out the applicable provisions of
this chapter.

(b) To be eligible for employment as a surface mine
inspector the applicant shall be: (1) A citizen of West Virginia,
in good health, not less than twenty-four years of age, of good
character and reputation and of temperate habits; (2) a person
who has had at least five years of practical experience in coal
mines, at least two years of which have been in surface mines
in this state: Provided, That graduation from any accredited
college of mining engineering may be considered the equivalent
of two years of practical experience; and (3) a person who has
a good theoretical and practical knowledge of surface mines,
surface mining methods, sound safety practices and applicable
mining laws and rules. For the purpose of this section, practical
experience means the performance of normal mining duties
requiring a person to hold a certificate of competency and
qualification as an experienced surface miner prior to actually
performing such duties.

(c)(1) In order to qualify for appointment as a surface mine
inspector, an eligible applicant shall submit to written, oral and
practical examinations administered by the mine inspectors’
examining board and furnish evidence of good health, character
and other facts establishing eligibility as the board may require.
The examinations shall relate to the duties to be performed by
a surface mine inspector and, subject to the approval of the
mine inspectors’ examining board, may be prepared by the
director.

(2) If the board finds after investigation and examination
that an applicant is: (A) Eligible for appointment; and (B) has
passed each required examination with a grade of at least
seventy-five percent, or an overall combined average score of
eighty percent, the board shall add the applicant’s name and
grades to the register of qualified eligible candidates and
promptly certify its action in writing to the director. The
director shall then appoint one of the candidates from the three
having the highest grades.

(d) Surface mine inspectors shall be paid an annual salary
of not less than thirty-seven thousand three hundred thirty-two
dollars, which shall be fixed by the director, who shall take into
consideration ability, performance of duty, and experience.
Surface mine inspectors shall devote all of their time to the
duties of the office.
(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to surface mine inspectors.

CHAPTER 176

(S. B. 697 — By Senators Tomblin, Mr. President, Helmick and Bowman)

[Passed March 13, 2004; ia effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §24A-7-7 of the code of West Virginia, 1931, as amended, relating to authorizing the public service commission to delegate motor carrier inspector duties to weight enforcement officers and vice versa.

Be it enacted by the Legislature of West Virginia:

That §24A-7-7 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. COMPLAINTS, DAMAGES AND VIOLATIONS.

§24A-7-7. Authority of motor carrier inspectors to enforce all traffic rules as to commercial vehicles; use of radar as evidence.

(a) The employees of the commission designated as motor carrier inspectors have the same authority as law-enforcement officers generally to enforce the provisions of chapter
seventeen-c of this code with respect to commercial motor
vehicles owned or operated by motor carriers, exempt carriers
or private commercial carriers where vehicles have a gross
vehicle weight rating of ten thousand pounds or more.

The commission is authorized to delegate motor carrier
inspector duties to weight enforcement officers as it considers
appropriate, following successful training and certification of
individual officers, who shall then have the same authority as
motor carrier inspectors under this section. The commission is
also authorized to delegate weight enforcement duties to motor
carrier inspectors.

(b) The speed of a commercial motor vehicle owned or
operated by a motor carrier, exempt carrier or private commer-
cial carrier may be proved by evidence obtained by use of any
device designed to measure and indicate or record the speed of
a moving object by means of microwaves, when the evidence
is obtained by employees of the commission designated as
motor carrier inspectors. The evidence so obtained is prima
facie evidence of the speed of the vehicle.

(c) Motor carrier inspectors shall also perform a north
American standard safety inspection of each commercial motor
vehicle stopped for enforcement purposes pursuant to this
section.

(d) Before exercising the provisions of this section, the
motor carrier inspectors shall receive adequate training.

(e) Nothing in this section affects the existing authority of
law-enforcement officers not employed by the commission to
enforce the provisions of chapter seventeen-c of this code.
AN ACT to amend and reenact §17A-1-1 of the code of West Virginia, 1931, as amended; to amend and reenact §17A-3-2 of said code; and to amend and reenact §17A-6-3 and §17A-6-18 of said code, all relating to creating a motor vehicle classification of "low-speed vehicle".

Be it enacted by the Legislature of West Virginia:

That §17A-1-1 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §17A-3-2 of said code be amended and reenacted; and that §17A-6-3 and §17A-6-18 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17A-1-1. Definitions.

Except as otherwise provided in this chapter, the following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this article:

(a) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a
6 highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

8 (b) “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.

12 (c) “Motorcycle” means every motor vehicle, including motor-driven cycles and mopeds as defined in sections five and five-a, article one, chapter seventeen-c of this code, having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

18 (d) “School bus” means every motor vehicle owned by a public governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.

23 (e) “Bus” means every motor vehicle designed to carry more than seven passengers and used to transport persons; and every motor vehicle, other than a taxicab, designed and used to transport persons for compensation.

27 (f) “Truck tractor” means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

31 (g) “Farm tractor” means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry.

34 (h) “Road tractor” means every motor vehicle designed, used or maintained for drawing other vehicles and not so
constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn.

38 (i) “Truck” means every motor vehicle designed, used or maintained primarily for the transportation of property.

39 (j) “Trailer” means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle, but excluding recreational vehicles.

40 (k) “Semitrailer” means every vehicle with or without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

41 (l) “Pole trailer” means every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach, or pole, or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

42 (m) “Specially constructed vehicles” means every vehicle of a type required to be registered hereunder not originally constructed under a distinctive name, make, model or type by a generally recognized manufacturer of vehicles and not materially altered from its original construction.

43 (n) “Reconstructed vehicle” means every vehicle of a type required to be registered hereunder materially altered from its original construction by the removal, addition or substitution of essential parts, new or used.
(o) "Essential parts" means all integral and body parts of a vehicle of a type required to be registered hereunder, the removal, alteration or substitution of which would tend to conceal the identity of the vehicle or substantially alter its appearance, model, type or mode of operation.

(p) "Foreign vehicle" means every vehicle of a type required to be registered hereunder brought into this state from another state, territory or country other than in the ordinary course of business by or through a manufacturer or dealer and not registered in this state.

(q) "Implement of husbandry" means every vehicle which is designed for or adapted to agricultural purposes and used by the owner thereof primarily in the conduct of his agricultural operations, including, but not limited to, trucks used for spraying trees and plants: Provided, That the vehicle may not be let for hire at any time.

(r) "Special mobile equipment" means every self-propelled vehicle not designed or used primarily for the transportation of persons or property and incidentally operated or moved over the highways, including, without limitation, road construction or maintenance machinery, ditch-digging apparatus, stone crushers, air compressors, power shovels, graders, rollers, well-drillers, wood-sawing equipment, asphalt spreaders, bituminous mixers, bucket loaders, ditches, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earth-moving carryalls, scrapers, drag lines, rock-drilling equipment and earth-moving equipment. The foregoing enumeration shall be deemed partial and may not operate to exclude other such vehicles which are within the general terms of this subdivision.

(s) "Pneumatic tire" means every tire in which compressed air is designed to support the load.
(t) “Solid tire” means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load.

(u) “Metal tire” means every tire the surface of which in contact with the highway is wholly or partly of metal or other hard, nonresilient material.

(v) “Commissioner” means the commissioner of motor vehicles of this state.

(w) “Division” means the division of motor vehicles of this state acting directly or through its duly authorized officers and agents.

(x) “Person” means every natural person, firm, copartnership, association or corporation.

(y) “Owner” means a person who holds the legal title to a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter.

(z) “Nonresident” means every person who is not a resident of this state.

(aa) “Dealer” or “dealers” is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, factory-built home dealer, recreational vehicle dealer, trailer dealer or motorcycle dealer, as defined in section one, article six of this chapter, or
all of the dealers or a combination thereof and, in some instances, a new motor vehicle dealer or dealers in another state.

(bb) "Registered dealer" or "registered dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of the dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(cc) "Licensed dealer" or "licensed dealers" is a general term meaning, depending upon the context in which used, either a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer or motorcycle dealer, or all of the dealers or a combination thereof, licensed under the provisions of article six of this chapter.

(dd) "Transporter" means every person engaged in the business of delivering vehicles of a type required to be registered hereunder from a manufacturing, assembling or distributing plant to dealers or sales agents of a manufacturer.

(ee) "Manufacturer" means every person engaged in the business of constructing or assembling vehicles of a type required to be registered hereunder at a place of business in this state which is actually occupied either continuously or at regular periods by the manufacturer where his books and records are kept and a large share of his business is transacted.

(ff) "Street" or "highway" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.
(gg) "Motorboat" means any vessel propelled by an electrical, steam, gas, diesel or other fuel propelled or driven motor, whether or not the motor is the principal source of propulsion, but may not include a vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto.

(hh) "Motorboat trailer" means every vehicle designed for or ordinarily used for the transportation of a motorboat.

(ii) "All-terrain vehicle" (ATV) means any motor vehicle designed for off-highway use having a seat or saddle designed to be straddled by the operator and handlebars for steering control.

(jj) "Travel trailer" means every vehicle, mounted on wheels, designed to provide temporary living quarters for recreational, camping or travel use of such size or weight as not to require special highway movement permits when towed by a motor vehicle and of gross trailer area less than four hundred square feet.

(kk) "Fold down camping trailer" means every vehicle consisting of a portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping or travel use.

(ll) "Motor home" means every vehicle, designed to provide temporary living quarters, built into an integral part of or permanently attached to a self-propelled motor vehicle, chassis or van including: (1) Type A motor home built on an incomplete truck chassis with the truck cab constructed by the second stage manufacturer; (2) Type B motor home consisting of a van-type vehicle which has been altered to provide temporary living quarters; and (3) Type C motor home built on
an incomplete van or truck chassis with a cab constructed by
the chassis manufacturer.

(mm) “Snowmobile” means a self-propelled vehicle
intended for travel primarily on snow and driven by a track or
tracks in contact with the snow and steered by a ski or skis in
contact with the snow.

(nn) “Recreational vehicle” means a motorboat, motorboat
trailer, all-terrain vehicle, travel trailer, fold down camping
trailer, motor home or snowmobile.

(oo) “Mobile equipment” means every self-propelled
vehicle not designed or used primarily for the transportation of
persons or property over the highway but which may infre-
quently or incidentally travel over the highways among job
sites, equipment storage sites or repair sites, including farm
equipment, implements of husbandry, well-drillers, cranes and
wood-sawing equipment.

(pp) “Factory-built home” includes mobile homes, house
trailers and manufactured homes.

(qq) “Manufactured home” has the same meaning as the
term is defined in section two, article nine, chapter twenty-one
of this code which meets the federal Manufactured Housing
Construction and Safety Standards Act of 1974 (42 U. S. C.
§5401, et seq.), effective on the fifteenth day of June, one
thousand nine hundred seventy-six, and the federal manufac-
tured home construction and safety standards and regulations
promulgated by the secretary of the United States department
of housing and urban development.

(rr) “Mobile home” means a transportable structure that is
wholly, or in substantial part, made, fabricated, formed or
assembled in manufacturing facilities for installation or
assembly and installation on a building site and designed for
long-term residential use and built prior to enactment of the federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 U. S. C. §5401, *et seq.*), effective on the fifteenth day of June, one thousand nine hundred seventy-six, and usually built to the voluntary industry standard of the American national standards institute (ANSI) -- A119.1 standards for mobile homes.

(ss) “House trailers” means all trailers designed and used for human occupancy on a continual nonrecreational basis, but may not include fold down camping and travel trailers, mobile homes or manufactured homes.

(tt) “Parking enforcement vehicle” means a motor vehicle which does not fit into any other classification of vehicle in this chapter, has three or four wheels and is designed for use in an incorporated municipality by a city, county, state or other governmental entity primarily for parking enforcement or other governmental purposes with an operator area with sides permanently enclosed with rigid construction and a top which may be convertible, sealed beam headlights, turn signals, brake lights, horn, at least one rear view mirror on each side and such other equipment that will enable it to pass a standard motorcycle vehicle inspection.

(uu) “Low-speed vehicle” means a four-wheeled motor vehicle whose attainable speed in one mile on a paved level surface is more than twenty miles per hour but not more than twenty-five miles per hour.

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

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.
Every motor vehicle, trailer, semitrailer, pole trailer and recreational vehicle when driven or moved upon a highway is subject to the registration and certificate of title provisions of this chapter except:

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

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

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

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

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

(i) The farm-use exemption certificate shall be provided by the commissioner and shall be issued annually by the assessor of the applicant's county of residence. The assessor shall issue a farm-use exemption certificate to the applicant upon his or her determination pursuant to an examination of the property books or documentation provided by the applicant that the vehicle has
been properly assessed as Class I personal property. The assessor shall charge a fee of two dollars for each certificate, which shall be retained by the assessor;

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

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

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

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

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

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

(7) Any special mobile equipment as defined in subsection (r), section one, article one of this chapter.
(b) Notwithstanding the provisions of subsection (a) of this section:

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

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

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

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

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

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

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

(4) Any person operating a low-speed vehicle must hold a valid driver's license, not an instruction permit.
ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-3. License certificate required; engaging in more than one business; established place of business required; civil penalties.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

PART II. LICENSE CERTIFICATE PROVISIONS.

§17A-6-3. License certificate required; engaging in more than one business; established place of business required; civil penalties.

1 (a) No person shall engage or represent or advertise that he or she is engaged or intends to engage in the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer or wrecker or dismantler in this state unless and until he or she first obtains a license certificate therefor as provided in this article, which license certificate remains unexpired, unsuspended and unrevoked. Any person desiring to engage in more than one such business must, subject to the provisions of section five of this article, apply for and obtain a separate license certificate for each such business.

(b) A person in business as a new motor vehicle or recreational vehicle dealer may sell low-speed vehicles as defined in section one, article one of this chapter.

(c) Except for the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer, each place of business of a new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, recreational vehicle dealer, motorcycle dealer, used parts dealer and wrecker or dismantler must be an established place of business as defined for such business in said section one.
(d) Any person who violates this section shall, in addition to any other penalty prescribed by law, be subject to a civil penalty levied by the commissioner in an amount not to exceed one thousand dollars for the first violation, two thousand dollars for the second violation and five thousand dollars for every subsequent violation.

(e) The commissioner shall promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, establishing procedures whereby persons against whom such civil penalties are to be assessed shall be afforded all due process required pursuant to the provisions of the West Virginia constitution.

§17A-6-18. Investigation; matters confidential; grounds for suspending or revoking license or imposing fine; suspension and revocation generally.

(a) The commissioner may conduct an investigation to determine whether any provisions of this chapter have been or are about to be violated by a licensee. Any investigation shall be kept in strictest confidence by the commissioner, the division, the licensee, any complainant and all other persons, unless and until the commissioner suspends or revokes the license certificate of the licensee involved or fines the licensee: Provided, That the commissioner may advise the motor vehicle dealers advisory board of pending actions and may disclose to the motor vehicle dealers advisory board any information that enables it to perform its advisory function in imposing penalties. The commissioner may suspend or revoke a license certificate, suspend a special dealer plate or plates, impose a fine or take any combination of these actions if the commissioner finds that the licensee:

(1) Has failed or refused to comply with the laws of this state relating to the registration and titling of vehicles and the giving of notices of transfers, the provisions and requirements
of this article, or any reasonable rules authorized in section nine, article two of this chapter and promulgated to implement the provisions of this article by the commissioner in accordance with the provisions of article three, chapter twenty-nine-a of this code:

(2) Has given any check in the payment of any fee required under the provisions of this chapter which is dishonored;

(3) In the case of a dealer, has knowingly made or permitted any unlawful use of any dealer special plate or plates issued to him or her;

(4) In the case of a dealer, has a dealer special plate or plates to which he or she is not lawfully entitled;

(5) Has knowingly made false statement of a material fact in his or her application for the license certificate then issued and outstanding;

(6) Has habitually defaulted on financial obligations;

(7) Does not have and maintain at each place of business (subject to the qualification contained in subdivision (17), subsection (a), section one of this article with respect to a new motor vehicle dealer) an established place of business as defined for the business in question in section one of this article;

(8) Has been guilty of any fraudulent act in connection with the business of new motor vehicle dealer, used motor vehicle dealer, house trailer dealer, trailer dealer, motorcycle dealer, used parts dealer or wrecker or dismantler;

(9) Has defrauded or is attempting to defraud any buyer or any other person, to the damage of the buyer or other person, in the conduct of the licensee's business;
(10) Has defrauded or is attempting to defraud the state or any political subdivision of the state of any taxes or fees in connection with the sale or transfer of any vehicle;

(11) Has committed fraud in the registration of a vehicle;

(12) Has knowingly purchased, sold or otherwise dealt in a stolen vehicle or vehicles;

(13) Has advertised by any means, with intent to defraud, any material representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the licensed business;

(14) Has willfully failed or refused to perform any legally binding written agreement with any buyer;

(15) Has made a fraudulent sale or purchase;

(16) Has failed or refused to assign, reassign or transfer a proper certificate of title;

(17) Has a license certificate to which he or she is not lawfully entitled;

(18) Has misrepresented a customer's credit or financial status to obtain financing; or

(19) Has failed to reimburse, when ordered, any claim against the dealer recovery fund as prescribed in section two-a of this article.

The commissioner shall also suspend or revoke the license certificate of a licensee if he or she finds the existence of any ground upon which the license certificate could have been refused or any ground which would be cause for refusing a license certificate to the licensee were he or she then applying for the license certificate.
(b) Whenever a licensee fails to keep the bond, unless exempt from the requirement pursuant to section two-a of this article or liability insurance required by section four of this article, in full force and effect, or fails to provide evidence of the bond or liability insurance, the commissioner shall automatically suspend the license certificate of the licensee unless and until a bond or certificate of insurance as required by section four of this article is furnished to the commissioner. When the licensee furnishes the bond or certificate of insurance to the commissioner and pays all reinstatement fees, the commissioner shall vacate the suspension.

(c) Suspensions under this section shall continue until the cause for the suspension has been eliminated or corrected. Revocation of a license certificate shall not preclude application for a new license certificate. The commissioner shall process the application for a new license certificate in the same manner and issue or refuse to issue the license certificate on the same grounds as any other application for a license certificate is processed, considered and passed upon, except that the commissioner may give any previous suspension and the revocation such weight in deciding whether to issue or refuse the license certificate as is correct and proper under all of the circumstances.

CHAPTER 178

(Com. Sub. for H. B. 4019 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §17A-2A-4, §17A-2A-7 and §17A-2A-11 of the code of West Virginia, 1931, as amended, all relating to limiting disclosure of personal information from motor vehicle records; prohibiting the division of motor vehicles' sale of personal information for bulk distribution of surveys, marketing and solicitations.

Be it enacted by the Legislature of West Virginia:

That §17A-2A-4, §17A-2A-7 and §17A-2A-11 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2A. UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT.

§17A-2A-4. Prohibition on disclosure and use of personal information from motor vehicles records.

Notwithstanding any other provision of law to the contrary, and except as provided in sections five through eight, both inclusive, of this article, the division, and any officer, employee, agent or contractor thereof may not disclose any personal information obtained by the division in connection with a motor vehicle record. Notwithstanding the provisions of this article or any other provision of law to the contrary, finger images obtained and stored by the division of motor vehicles as part of the driver's licensing process may not be disclosed to any person or used for any purpose other than the processing and issuance of driver's licenses and associated legal action unless the disclosure or other use is expressly authorized by this code. Notwithstanding the provisions of this article or any other
14 provision of law to the contrary, an individual’s photograph or
15 image, social security number, and medical or disability
16 information shall not be disclosed pursuant to West Virginia
17 Code §17A-2A-7(2),(3),(5),(7),(8),(10) and (11), without the
18 express written consent of the person to whom such information
19 applies.


1 The division or its designee shall disclose personal informa-
2 tion as defined in section three of this article to any person who
3 requests the information if the person: (a) Has proof of his or
4 her identity; and (b) verifies that the use of the personal
5 information will be strictly limited to one or more of the
6 following:

7 (1) For use by any governmental agency, including any
8 court or law-enforcement agency, in carrying out its functions,
9 or any private person or entity acting on behalf of a governmen-
10 tal agency in carrying out its functions;

11 (2) For use in connection with matters of motor vehicle or
12 driver safety and theft, motor vehicle product alterations, recalls
13 or advisories, performance monitoring of motor vehicles, motor
14 vehicle parts and dealers, motor vehicle market research
15 activities including survey research and removal of nonowner
16 records from the original owner records of motor vehicle
17 manufacturers;

18 (3) For use in the normal course of business by a legitimate
19 business or its agents, employees or contractors:

20 (A) For the purpose of verifying the accuracy of personal
21 information submitted by the individual to the business or its
22 agents, employees or contractors; and
(B) If the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against or recovering on a debt or security interest against the individual;

(4) For use in conjunction with any civil, criminal, administrative or arbitral proceeding in any court or governmental agency or before any self-regulatory body, including the service of process, the execution or enforcement of judgments and orders or pursuant to an order of any court;

(5) For use in research and producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals;

(6) For use by any insurer or insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, antifraud activities, rating or underwriting;

(7) For use in providing notice to the owners of towed or impounded vehicles;

(8) For use by any licensed private investigator agency or licensed security service for any purpose permitted under this section;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver’s license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 et seq.);

(10) For use in connection with the operation of private toll transportation facilities; and
51 (11) For any other use specifically authorized by law that
52 is related to the operation of a motor vehicle or public safety.


1 (a) An authorized recipient of personal information may
2 resell or redisclose the information for any use permitted under
3 section seven.

4 (b) Any authorized recipient who resells or rediscloses
5 personal information shall: (1) Maintain for a period of not less
6 than five years, records as to the person or entity receiving
7 information, and the permitted use for which it was obtained;
8 (2) make the records available for inspection by the division,
9 upon request; and (3) only be disseminated in accordance with
10 express consent obtained pursuant to section four of this article.

CHAPTER 179

(S. B. 638 — By Senator Ross)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-3-14 of the code of West
Virginia, 1931, as amended, relating to registration plates;
providing registration plates for promoting education; Fairmont
state college; West Virginia farmers; Native Americans; members
of the 82nd airborne association; Knights of Pythias or Pythian
Sisters; whitewater rafting; survivors of wounds received in the
line of duty as law-enforcement members; authorizing a special
license plate commemorating the centennial anniversary of the
creation of Davis and Elkins college; authorizing a special license
Be it enacted by the Legislature of West Virginia:

That §17A-3-14 of the code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

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

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

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

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

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

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

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

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

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

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

(A) Upon appropriate application, the division shall issue to the secretary of state, state superintendent of schools, auditor, treasurer, commissioner of agriculture and the attorney general, the members of both houses of the Legislature, including the elected officials of both houses of the Legislature, the justices of the Supreme Court of Appeals of West Virginia, the representatives and senators of the state in the Congress of the United States, the judges of the West Virginia circuit courts, active and retired on senior status, the judges of the United States district courts for the state of West Virginia and the judges of the United States court of appeals for the fourth circuit, if any of the judges are residents of West Virginia, a special registration plate for a Class A motor vehicle and a special registration plate for a Class G motorcycle owned by the official or his or her spouse: Provided, That the division may issue a Class A special registration plate for each vehicle titled to the official and a Class G special registration plate for each motorcycle titled to the official.
(B) Each plate issued pursuant to this subdivision shall bear any combination of letters and numbers not to exceed an amount determined by the commissioner and a designation of the office. Each plate shall supersede the regular numbered plate assigned to the official or his or her spouse during the official’s term of office and while the motor vehicle is owned by the official or his or her spouse.

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

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

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

(B) The division shall charge an initial application fee of ten dollars for each special registration plate issued pursuant to this subdivision, which is in addition to all other fees required by this chapter. All initial application fees collected by the
division shall be deposited into a special revolving fund to be
used in the administration of this section.

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

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

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

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

(C) An annual fee of fifteen dollars shall be charged for
each special registration plate issued pursuant to this subdivi-
sion, which is in addition to all other fees required by this
chapter.

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

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

(B) The division shall charge a special initial application
fee of ten dollars in addition to all other fees required by law.
This special fee is to compensate the division of motor vehicles
for additional costs and services required in the issuing of the
special registration and shall be collected by the division and
deposited in a special revolving fund to be used for the adminis-
tration of this section: Provided, That nothing in this section
may be construed to exempt any veteran from any other
provision of this chapter.

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

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

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

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

(C) A qualified disabled veteran may obtain a second
disabled veteran license plate as described in this section for
use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.

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

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

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

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

(D) A recipient of the purple heart medal may obtain a second purple heart medal license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.
(8) The division may issue survivors of the attack on Pearl Harbor special registration plates as follows:

(A) Upon appropriate application, the owner of a motor vehicle who was enlisted in any branch of the armed services that participated in and survived the attack on Pearl Harbor on the seventh day of December, one thousand nine hundred forty-one, the division shall issue a special registration plate for a vehicle titled in the name of the qualified applicant. The registration plate shall be designed by the commissioner of motor vehicles.

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

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

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

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

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

205 (B) The commissioner shall propose rules for legislative
206 approval in accordance with the provisions of article three,
207 chapter twenty-nine-a of this code regarding the procedures for
208 and approval of special registration plates issued pursuant to
209 this subdivision.

210 (C) The commissioner shall set an appropriate fee to defray
211 the administrative costs associated with designing and manufact-
212 turing special registration plates for a nonprofit charitable or
213 educational organization. The nonprofit charitable or educa-
214 tional organization shall collect this fee and forward it to the
215 division for deposit in a special revolving fund to pay the
216 administrative costs. The nonprofit charitable or educational
217 organization may also collect a fee for marketing the special
218 registration plates.

219 (D) The commissioner may not approve or authorize any
220 additional nonprofit charitable and educational organizations to
221 design or market special registration plates.

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

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

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

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into a special revolving fund to be used for the purpose of compensating the division of motor vehicles for additional costs and services required in the issuing of the special registration and for the administration of this section.

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

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

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

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. All special fees shall be collected by the division and deposited into a special revolving fund to be used for the purpose of compensating the division of motor vehicles for additional costs and services required in the issuing of the special registration and for the administration of this section.

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

(A) Upon appropriate application, the commissioner shall issue a special registration plate displaying a scenic design of West Virginia which displays the words "Wild Wonderful" as a slogan.
(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter.

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

(A) Upon appropriate application, the division shall issue to any honorably discharged marine corps league member a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles.

(B) The division may charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

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

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

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

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

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

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

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

(A) Upon appropriate application, the division shall issue a special registration plate displaying a species of West Virginia wildlife which shall display a species of wildlife native to West Virginia as prescribed and designated by the commissioner and the director of the division of natural resources.

(B) The division shall charge an annual fee of fifteen dollars for each special nongame wildlife registration plate and each special wildlife registration plate in addition to all other fees required by this chapter. All annual fees collected for
nongame wildlife registration plates and wildlife registration plates shall be deposited in a special revenue account designated the nongame wildlife fund and credited to the division of natural resources.

(C) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(16) The division may issue members of the silver haired legislature special registration plates as follows:

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

(B) A qualified member of the silver haired legislature may obtain one registration plate described in this subdivision for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge an annual fee of fifteen dollars, in addition to all other fees required by this chapter, for the plate. All annual fees collected by the division shall be deposited in a special revolving fund to be used in the administration of this chapter.

(17) Upon appropriate application, the commissioner shall issue to a classic motor vehicle or classic motorcycle as defined in section three-a, article ten of this chapter, a special registration plate designed by the commissioner. An annual fee of fifteen dollars, in addition to all other fees required by this chapter, shall be charged for each classic registration plate.
(18) Honorably discharged veterans may be issued special registration plates for motorcycles subject to Class G registration as follows:

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

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

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

(19) Racing theme special registration plates:

(A) The division may issue a series of special registration plates displaying national association for stock car auto racing themes.

(B) An annual fee of twenty-five dollars shall be charged for each special racing theme registration plate in addition to all other fees required by this chapter. All annual fees collected for each special racing theme registration plate shall be deposited
into a special revolving fund to be used in the administration of this chapter.

(C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

(20) The division may issue recipients of the navy cross, distinguished service cross, distinguished flying cross, air force cross, bronze star or silver star special registration plates as follows:

(A) Upon appropriate application, the division shall issue to any recipient of the navy cross, distinguished service cross, distinguished flying cross, air force cross, silver star or bronze star, a registration plate for any number of vehicles titled in the name of the qualified applicant bearing letters or numbers. A separate registration plate shall be designed by the commissioner of motor vehicles for each award that denotes that those individuals who are granted this special registration plate are recipients of the navy cross, distinguished service cross, distinguished flying cross, air force cross, silver star or bronze star, as applicable.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.
(C) A surviving spouse may continue to use his or her deceased spouse's navy cross, distinguished service cross, distinguished flying cross, air force cross, silver star or bronze star special registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

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

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

(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing contained in this section may be construed to exempt any veteran from any other provision of this chapter.

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

(22) The division may issue special volunteer firefighter registration plates as follows:
(A) Any owner of a motor vehicle who is a resident of West Virginia and who is a volunteer firefighter may apply for a special license plate for any Class A vehicle titled in the name of the qualified applicant which bears the insignia of the profession in white letters on a red background. The insignia shall be designed by the commissioner and shall contain a fireman’s helmet insignia on the left side of the license plate.

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

(C) Each application submitted pursuant to this subdivision shall be accompanied by payment of a special one-time initial application fee of ten dollars, which is in addition to any other registration or license fee required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

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

(A) Upon appropriate application, the division shall issue to an applicant a registration plate of the applicant’s choice, displaying a patriotic theme as provided in this subdivision, for a vehicle titled in the name of the applicant. A series of registration plates displaying patriotic themes shall be designed by the commissioner of motor vehicles for distribution to applicants.
(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

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

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

(C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

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

(A) Upon appropriate application, the division may issue a special registration plate depicting the symbol of the 4-H organization which represents the head, heart, hands and health as well as the symbol of the future farmers of America organization which represents a cross section of an ear of corn for any number of vehicles titled in the name of the qualified applicant.
(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

(C) The division shall charge an annual fee of fifteen dollars for each special 4-H future farmers of America registration plate in addition to all other fees required by this chapter.

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

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

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

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

(D) Notwithstanding the provisions of subsection (d) of this section, the time period for the Nemesis Shrine to comply with the minimum one hundred prepaid applications is hereby extended to the fifteenth day of January, two thousand five.

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

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.
(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

(29) The division shall issue special registration plates to individuals who have received either the combat infantry badge or the combat medic badge as follows:

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and
(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.

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

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

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section. The design of the plate shall indicate total years of service in the Legislature.

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

(32) Democratic state or county executive committee member special registration plates:
(A) The division shall design and issue special registration plates for use by democratic state or county executive committee members. The design of the plates shall include an insignia of a donkey and shall differentiate by wording on the plate between state and county executive committee members.

(B) An annual fee of twenty-five dollars shall be charged for each democratic state or county executive committee member registration plate in addition to all other fees required by this chapter. All annual fees collected for each special plate issued under this subdivision shall be deposited into a special revolving fund to be used in the administration of this chapter.

(C) A special application fee of ten dollars shall be charged at the time of initial application as well as upon application for any duplicate or replacement registration plate, in addition to all other fees required by this chapter. All application fees shall be deposited into a special revolving fund to be used in the administration of this chapter.

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

(E) Notwithstanding the provisions of subsection (d) of this section, the time period for the democratic executive committee to comply with the minimum one hundred prepaid applications is hereby extended to the fifteenth day of January, two thousand five.

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

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

(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any veteran from any other provision of this chapter.

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

(34) The division may issue special registration plates bearing the logo, symbol, insignia, letters or words demonstrating association with West Liberty state college to any resident owner of a motor vehicle. Resident owners may apply for the special license plate for any number of Class A vehicles titled in the name of the applicant. The special registration plates shall be designed by the commissioner. Each application submitted pursuant to this subdivision shall be accompanied by payment of a special initial application fee of fifteen dollars, which is in addition to any other registration or license fee required by this chapter. The division shall charge an annual fee of fifteen dollars for each special educator registration plate in addition to all other fees required by this chapter. All special fees shall be collected by the division and deposited into a special revolving fund to be used for the purpose of compensat-
The division may issue special registration plates to members of the Harley Owners Group as follows:

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

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

(A) Upon appropriate application, there shall be issued to any person who has retired after service in any branch of the armed services of the United States, a special registration plate for any number of vehicles titled in the name of the qualified applicant with an insignia designed by the commissioner of the division of motor vehicles to designate the recipient as retired from the armed services of the United States.
(B) A special initial application fee of ten dollars shall be charged in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of a special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section may be construed to exempt any registrants from any other provision of this chapter.

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

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

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

(38) The division may issue special registration plates honoring the farmers of West Virginia as follows:
(A) Any owner of a motor vehicle who is a resident of West Virginia may apply for a special license plate depicting a farming scene or other apt reference to farming, whether in pictures or words, at the discretion of the commissioner.

(B) The division shall charge a special initial application fee of ten dollars. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

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

(A) Upon appropriate application, the division shall issue a special registration plate displaying a children’s education-related theme as prescribed and designated by the commissioner and the state superintendent of schools.

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section: Provided, That nothing in this section exempts the applicant for a special registration plate under this subdivision from any other provision of this chapter.

(C) An annual fee of fifteen dollars shall be charged for each plate in addition to all other fees required by this chapter.
(40) The division may issue members of the 82nd airborne division association special registration plates as follows:

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

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

(C) The division shall charge a special one-time initial application fee of ten dollars for each special license plate in addition to all other fees required by this chapter. All initial application fees collected by the division shall be deposited into a special revolving fund to be used in the administration of this chapter: Provided, That nothing in this section may be construed to exempt the applicant from any other provision of this chapter.

(D) A surviving spouse may continue to use his or her deceased spouse’s special 82nd airborne division association registration plate until the surviving spouse dies, remarries or does not renew the special registration plate.

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

(A) Upon appropriate application, the division shall issue to any member of a municipal police department, sheriff’s department, the state police or the law-enforcement division of the department of natural resources who has been wounded in
the line of duty and awarded a purple heart in recognition thereof by the West Virginia chiefs of police association, the West Virginia sheriffs' association, the West Virginia troopers association or the division of natural resources a special registration plate for one vehicle titled in the name of the qualified applicant with an insignia appropriately designed by the commissioner.

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

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

(D) Survivors of wounds received in the line of duty as a member with a West Virginia law-enforcement agency may obtain a license plate as described in this section for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this section, in addition to all other fees required by this chapter, for the second plate.

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

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

(B) The division shall charge a special one-time initial application fee of ten dollars in addition to all other fees
required by law. This special fee is to compensate the division
of motor vehicles for additional costs and services required in
the issuing of the special registration and shall be collected by
the division and deposited in a special revolving fund to be used
for the administration of this section.

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

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

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

(B) The division shall charge a special initial application
fee of ten dollars. This special fee is to compensate the division
of motor vehicles for additional costs and services required in
the issuing of the special registration and shall be collected by
the division and deposited in a special revolving fund to be used
for the administration of this section.

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

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

(A) Upon appropriate application, the division may issue a
special registration plate designed by the commissioner to
recognize and honor breast cancer survivors, such plate to
incorporate somewhere in the design the “pink ribbon emblem”,
for any number of vehicles titled in the name of the applicant.
(B) The division shall charge a special initial application fee of ten dollars. This special fee is to compensate the division of motor vehicles for additional costs and services required in the division and deposited in a special revolving fund to be used for the administration of this section.

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

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

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

(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

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

(A) Upon appropriate application, the division may issue a special registration plate designed by the commissioner for any number of vehicles titled in the name of the qualified applicant.
(B) The division shall charge a special initial application fee of ten dollars in addition to all other fees required by law. This special fee is to compensate the division of motor vehicles for additional costs and services required in the issuing of the special registration and shall be collected by the division and deposited in a special revolving fund to be used for the administration of this section.

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

(d) The commissioner shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code regarding the proper forms to be used in making application for the special license plates authorized by this section. The commissioner may not begin the design or production of any license plates for which eligibility is based on membership or affiliation with a particular private organization until at least one hundred persons complete an application and deposit a check to cover the first year’s basic registration, one-time design and manufacturing costs and to cover the first year additional annual fee. If the organization fails to submit the required number of applications with attached checks within six months of the effective date of the authorizing legislation, the plate will not be produced and will require legislative reauthorization: Provided, That the six-month requirement in this subsection does not apply to subdivisions (1) through (26), inclusive, subsection (c) of this section.

(e)(1) Nothing in this section requires a charge for a free prisoner of war license plate or a free recipient of the Congressional Medal of Honor license plate for a vehicle titled in the name of the qualified applicant as authorized by other provisions of this code.
(2) A surviving spouse may continue to use his or her deceased spouse’s prisoner of war or Congressional Medal of Honor license plate until the surviving spouse dies, remarries or does not renew the license plate.

(3) Qualified former prisoners of war and recipients of the Congressional Medal of Honor may obtain a second special registration plate for use on a passenger vehicle titled in the name of the qualified applicant. The division shall charge a one-time fee of ten dollars to be deposited into a special revolving fund to be used in the administration of this chapter, in addition to all other fees required by this chapter, for the second special plate.

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

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

(2) An initial nonrefundable fee shall be charged for each special registration plate issued pursuant to this subsection, which is the total amount of fees required by section fifteen, article ten of this chapter, section three, article three of this chapter or section three-a, article ten of this chapter for the period requested.
(g) The provisions of this section may not be construed to exempt any registrant from maintaining motor vehicle liability insurance as required by section three, article two-a, chapter seventeen-d of this code or from paying personal property taxes on any motor vehicle as required by section three-a of this article.

(h) The commissioner may, in his or her discretion, issue a registration plate of reflectorized material suitable for permanent use on motor vehicles, trailers and semitrailers, together with appropriate devices to be attached to the registration to indicate the year for which the vehicles have been properly registered or the date of expiration of the registration. The design and expiration of the plates shall be determined by the commissioner.

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

CHAPTER 180

(Com. Sub. for S. B. 52 — By Senators Kessler, Hunter, Ross, Chafin, Minard and Caldwell)

[Passed March 3, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-3-15 of the code of West Virginia, 1931, as amended, relating to registration plates for
motorcycles; allowing for plates to be fastened in vertical position; and requiring the commissioner of the division of motor vehicles to offer owners of motorcycles the choice of registration plates for vertical or horizontal positioning.

Be it enacted by the Legislature of West Virginia:

That §17A-3-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

§17A-3-15. Display of registration plates.

(a) Registration plates issued for vehicles required to be registered under this article shall be attached to the rear of the vehicles except that on truck tractors and road tractors designed and constructed to pull trailers or semitrailers, the registration plate shall be mounted to the front.

(b) Every registration plate shall at all times be securely fastened in a horizontal position to the vehicle for which it is issued so as to prevent the plate from swinging and at a height of not less than twelve inches from the ground, measuring from the bottom of the plate, in a place and position to be clearly visible and shall be maintained free from foreign materials and in a condition to be clearly legible.

(c) Notwithstanding the provisions of subsection (b) of this section, an owner of a motor vehicle with a Class G registration as defined in section one, article ten of this chapter may choose to:

(1) Display a standard, Class G registration plate in a horizontal position; or
19. (2) Display a specially designed Class G registration plate in a vertical position issued by the division of motor vehicles if the owner:

22. (A) Pays a one-time fee of twenty-five dollars to cover the additional cost and services necessary to issue the special registration plate to be deposited into a special revolving fund to be used for the administration of this chapter; and

26. (B) Pays all other required fees and complies with all other applicable provisions of this code regarding the titling, registration and operation of the vehicle.

CHAPTER 181

(Com. Sub. for H. B. 4373 — By Mr. Speaker, Mr. Kiss, and Delegates Laquinta, Browning, Foster, Beane, Crosier and Varner)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-3-10, relating to making it a crime to possess or use a traffic-control device with an infrared or electronic device designed to change traffic light indication; exceptions; and providing for 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 §17C-3-10, to read as follows:
§17C-3-10. Interference with official traffic-control devices by infrared or electronic devices.

(a) The possession or use of a mobile infrared transmitter (MIRT), or any type of infrared or electronic device capable of changing a traffic control signal, by anyone other than the operator of an authorized emergency vehicle, is prohibited.

(b) Any person violating the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or confined in the county or regional jail not more than three days, or both; and upon a second conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail not more than six days, or both; and upon a third or subsequent conviction thereof, shall be fined not less than five hundred dollars nor more than two thousand five hundred dollars or confined in a county or regional jail one year, or both.

(c) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a violation of subsection (a) of this section which results in physical injury to another shall be guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than three years or fined not more than five thousand dollars, or both.

(d) The provisions of this section shall not apply to any device which simply makes a vehicle visible or its presence known to a sensor which triggers the changing of a traffic light after the vehicle operator has complied with the traffic signal indication.
AN ACT to amend and reenact §17C-15-36a of the code of West Virginia, 1931, as amended, relating to motor vehicle equipment; and authorizing sun screening devices that exceed statutory limits to be used in law-enforcement K-9 and other emergency vehicles that haul animals.

Be it enacted by the Legislature of West Virginia:

That §17C-15-36a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-36a. Sun screening devices; penalty.

(a) No person may operate a motor vehicle that is registered or required to be registered in the state on any public highway, road or street that has a sun screening device on the windshield, the front side wings and side windows adjacent to the right and left of the driver and windows adjacent to the rear of the driver that do not meet the requirements of this section: Provided, That law-enforcement K-9 and other emergency vehicles that are designed to haul animals are exempt from this requirement.

(b) A sun screening device when used in conjunction with the windshield must be nonreflective and may not be red,
yellow or amber in color. A sun screening device may be used only along the top of the windshield and may not extend downward beyond the ASI line or more than five inches from the top of the windshield whichever is closer to the top of the windshield.

(c) A sun screening device when used in conjunction with the automotive safety glazing materials of the side wings or side windows located at the immediate right and left of the driver shall be a nonreflective type with reflectivity of not more than twenty percent and have a light transmission of not less than thirty-five percent. The side windows behind the driver and the rear most windows may have a sun screening device that is designed to be used on automotive safety glazing materials that has a light transmission of not less than thirty-five percent and a reflectivity of not more than twenty percent. If a sun screening device is used on glazing behind the driver, one right and one left outside rear view mirror is required.

(d) Each manufacturer shall:

(1) Certify to the West Virginia state police and division of motor vehicles that a sun screening device used by it is in compliance with the reflectivity and transmittance requirements of this section;

(2) Provide a label not to exceed one and one-half square inches in size, with a means for the permanent and legible installations between the sun screening material and each glazing surface to which it is applied that contains the manufacturer's name and its percentage of light transmission; and

(3) Include instructions with the product or material for proper installation, including the affixing of the label specified in this section. The labeling or marking must be placed in the
left lower corner of each glazing surface when facing the vehicle from the outside.

(e) No person may:

(1) Offer for sale or for use any sun screening product or material for motor vehicle use not in compliance with this section; or

(2) Install any sun screening product or material on vehicles intended for use on public roads without permanently affixing the label specified in this section.

(f) The provisions of this section do not apply to a motor vehicle registered in this state in the name of a person, or the person's legal guardian, who has an affidavit signed by a physician or an optometrist licensed to practice in this state that states that the person has a physical condition that makes it necessary to equip the motor vehicle with sun screening material which would be of a light transmittance or luminous reflectance in violation of this section. The affidavit must be in the possession of the person so afflicted, or the person’s legal guardian, at all times while being transported in the motor vehicle.

(g) The light transmittance requirement of this section does not apply to windows behind the driver on trucks, buses, trailers, mobile homes and multipurpose passenger vehicles.

(h) As used in this section:

(1) “Bus” means a motor vehicle with motive power, except a trailer, designed for carrying more than ten persons.

(2) “Light transmission” means the ratio of the amount of total light to pass through a product or material to the amount of the total light falling on the product or material.
(3) “Luminous reflectants” means the ratio of the amount of total light that is reflected outward by the product or material to the amount of the total light falling on the product or materials.

(4) “Manufacturer” means any person engaged in the manufacturing or assembling of sun screening products or materials designed to be used in conjunction with vehicle glazing materials for the purpose of reducing the effects of the sun.

(5) “Motor homes” means vehicular units designed to provide temporary living quarters built into and an integral part of or permanently attached to a self-propelled motor vehicle chassis.

(6) “Multipurpose passenger vehicle” means a motor vehicle with motive power, except a trailer, designed to carry ten persons or less which is constructed either on a truck chassis or with special features for occasional off-road operation.

(7) “Nonreflective” means a product or material designed to absorb light rather than to reflect it.

(8) “Passenger car” means a motor vehicle with motive power, except a multipurpose passenger vehicle, motorcycle or trailer, designed for carrying ten persons or less.

(9) “Sun screening device” means film material or device that is designed to be used in conjunction with motor vehicle safety glazing materials for reducing the effects of the sun.

(10) “Truck” means a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.
Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars.

CHAPTER 183

(Com. Sub. for S. B. 701 — By Senators Plymale and Jenkins)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §8-13C-1, §8-13C-2, §8-13C-3, §8-13C-4, §8-13C-5, §8-13C-5a, §8-13C-6, §8-13C-7, §8-13C-8, §8-13C-9, §8-13C-10, §8-13C-11, §8-13C-12 and §8-13C-13; to amend and reenact §11-9-2, §11-9-3, §11-9-4, §11-9-5, §11-9-6, §11-9-8 and §11-9-10 of said code; and to amend and reenact §11-10-3 of said code, all relating to authorizing a qualifying municipality to impose municipal occupational tax, an alternative municipal sales and service tax and use tax and a pension relief municipal sales and service tax and use tax; establishing responsibilities of tax commissioner relating to the tax; clarifying application of other state tax laws; creating qualifying municipal sales and service tax and use tax fund; providing that tax rate applies to purchases from printed catalogs; limiting use of certain proceeds of the taxes to application toward the unfunded liability of certain pensions; citing instances where qualifying municipalities lose certain taxing authority; limiting increase in pension benefits pending imposition of certain taxes; addressing conflicts and unconstitutionality; establishing prerequisites to imposition of certain taxes; requiring a study by the chief technology officer on the cost of implementing municipal taxes; imposing criminal penalties for certain violations relating
to municipal tax; and applying tax procedure and administration act to municipal taxes.

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 §8-13C-1, §8-13C-2, §8-13C-3, §8-13C-4, §8-13C-5, §8-13C-5a, §8-13C-6, §8-13C-7, §8-13C-8, §8-13C-9, §8-13C-10, §8-13C-11, §8-13C-12 and §8-13C-13; that §11-9-2, §11-9-3, §11-9-4, §11-9-5, §11-9-6, §11-9-8 and §11-9-10 of said code be amended and reenacted; and that §11-10-3 of said code be amended and reenacted, all to read as follows:

Chapter


11. Taxation.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATIONAL TAX; AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS.

§8-13C-1. Findings.

§8-13C-2. Definitions.

§8-13C-3. Pension relief municipal occupational tax.

§8-13C-4. Municipal sales and service taxes.

§8-13C-5. Municipal use tax.

§8-13C-5a. Credit for sales tax paid to another municipality.

§8-13C-6. Notification to tax commissioner; responsibilities of tax commissioner; application of state tax law.

§8-13C-7. Municipal sales and service tax and use tax fund; deposit and remittance of collections.

§8-13C-8. Printed catalogs.

§8-13C-9. Restriction on use of certain revenues.

§8-13C-10. Conflict; partial unconstitutionality.

§8-13C-11. Additional requirements for authority to impose certain taxes.

§8-13C-12. Limited authority to impose tax.


§8-13C-1. Findings.
The Legislature finds that:

(a) Imposing additional taxes creates an extra burden on the citizens of the state;

(b) Imposing additional taxes can be detrimental to the economy of the state;

(c) Imposing additional taxes is only proper under certain circumstances;

(d) For many municipalities with severe unfunded liabilities of the police and fire pension funds, all available sources of local revenue have been exhausted. Property taxes are at the maximum allowed by the state constitution and local business and occupation taxes and utility taxes are at the maximum rates allowed by state law. Other fees have reached the economic maximum and are causing relocation of business outside the municipal boundaries;

(e) For many municipalities with severe unfunded police and fire pension fund liabilities, revenue from existing sources has become stagnant over the past few years with no expectation of significant future growth;

(f) For many municipalities with severe unfunded police and fire pension fund liabilities, payments required under state law to fund fire and police pension funds are now close to equaling the city payrolls for police and fire protection and will rise to exceed those payrolls within a ten-year period;

(g) For many municipalities with severe unfunded police and fire pension fund liabilities, payments required under state law to fund fire and police pension funds now constitute a large percentage of those municipalities’ total budget and will rise to an even larger percentage of the available revenues in the next
ten years. Payment and benefit levels are dictated to the municipalities by state law;

(h) As the required pension payments rise, many of the municipalities with severe unfunded police and fire pension fund liabilities will find it impossible to maintain at minimum levels necessary and proper city services including, but not limited to, police and fire protection, street maintenance and repair and sanitary services;

(i) For some of the municipalities with severe unfunded liabilities of the police and fire pension funds, the combination of the steeply rising pension obligations and the stagnant revenue sources raise the real possibility of municipal bankruptcy in the near and predictable future. If this happens, pensioners would either not receive the full benefits which they have been promised or pressure would be placed on the state to fund these programs;

(j) For a municipality that has the most severe unfunded liability in its pension funds, paying off the unfunded liability in a timely manner would cause tremendous financial hardship and the loss of many services that would otherwise be provided to the municipality's citizens;

(k) Only for a municipality that has the most severe unfunded liability in its pension funds would the imposition of the pension relief municipal occupational tax, the pension relief municipal sales and service tax, the pension relief municipal use tax or any combination of those taxes be an appropriate method of addressing the unfunded liability; and

(l) Only for a municipality that does not impose or ceases to impose a business and occupation or privilege tax would the imposition of an alternative municipal sales and service tax and an alternative municipal use tax be appropriate.
§8-13C-2. Definitions.

For the purposes of this article:

(a) "Alternative municipal sales and service tax" means the tax authorized to be imposed by subsection (b), section four of this article only if a municipality does not impose or ceases to impose the business and occupation or privilege tax authorized in section five, article thirteen of this chapter;

(b) "Alternative municipal use tax" means the tax authorized to be imposed by subsection (b), section five of this article only if a municipality does not impose or ceases to impose the business and occupation or privilege tax authorized in section five, article thirteen of this chapter;

(c) "Qualifying municipality" means any municipality, as defined in section two, article one of this chapter:

(1) In which the weighted average of the percentages to which its policemen’s and firemen’s pension and relief funds are fully funded is three percent or less on the date of adoption of the ordinance imposing the tax; and

(2) That has satisfied the requirements set forth in section eleven of this article;

(d) "Pension relief municipal occupational tax" means the tax authorized to be imposed by section three of this article and for which the use of the proceeds of the tax are restricted by section nine of this article;

(e) "Pension relief municipal sales and service tax" means the tax authorized to be imposed by subsection (a), section four of this article and for which the use of the proceeds of the tax are restricted by section nine of this article;
(f) "Pension relief municipal use tax" means the tax authorized to be imposed by subsection (a), section five of this article and for which the use of the proceeds of the tax are restricted by section nine of this article; and

(g) "Taxable employee" means any individual:

(1) Who holds employment with an employer with a place of business located within the qualifying municipality electing to impose the municipal payroll tax pursuant to this article; and

(2) Whose salaries, wages, commissions and other earned income that would be included in federal adjusted gross income for the year is more than ten thousand dollars per year.

§8-13C-3. Pension relief municipal occupational tax.

(a) Effective on and after the first day of July, two thousand five, each qualifying municipality, as defined in section two of this article, has the plenary power and authority to impose, by ordinance, a pension relief municipal occupational tax on taxable employees. Any pension relief municipal occupational tax imposed pursuant to this section shall meet the following requirements:

(1) The tax shall be imposed at a rate of one percent or less;

(2) The tax shall be imposed at a uniform rate; and

(3) The tax rate shall be applied only to salaries, wages, commissions and other earned income of taxable employees that would be included in federal adjusted gross income for the year. The tax rate may not be applied to other forms of income including, but not limited to, intangible income and net profit from a business.
(b) Each employer with a taxable employee, during each pay period, shall withhold from the taxable employee’s salary the amount of the tax as computed by applying the appropriate tax rate to the taxable employee’s salary during that pay period and remit the withholdings to the appropriate municipal taxing authority.

§8-13C-4. Municipal sales and service taxes.

(a) Effective on and after the first day of July, two thousand five, each qualifying municipality, as defined in section two of this article, has the plenary power and authority to impose, by ordinance, a pension relief municipal sales and service tax at a rate not to exceed one percent, subject to the provisions of this article.

(b) Effective on and after the first day of July, two thousand five, notwithstanding subsection (a) of this section, and in addition thereto in the case of a qualifying municipality, any municipality that does not impose, or ceases to impose, the business and occupation or privilege tax authorized by section five, article thirteen of this chapter has the plenary power and authority to impose, by ordinance, an alternative municipal sales and service tax at a rate not to exceed one percent, subject to the provisions of this article.

(c) Any municipal sales and service tax imposed under the authority granted by this section is subject to the following:

(i) The base of a municipal sales and service 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 municipality, subject to the following:
(A) Except for the exemption provided in section nine-f, article fifteen, chapter eleven of this code, all exemptions and exceptions from consumers sales and service tax apply to a municipal sales and service tax imposed pursuant to this section; and

(B) Sales of gasoline and special fuel are not subject to a municipal sales and service tax imposed pursuant to this section;

(2) Any municipal sales and service tax imposed pursuant to this section applies solely to tangible personal property, custom software and services that are sourced to the municipality. The sourcing rules set forth in article fifteen-b, chapter eleven of this code, including any amendments thereto, apply to municipal sales and use taxes levied pursuant to this article;

(3) Any municipality that imposes a municipal sales and service tax pursuant to this section or changes the rate of a municipal sales and service tax imposed pursuant to this section shall notify the tax commissioner pursuant to section six of this article;

(4) Any municipality that imposes a municipal sales and service tax pursuant to this section may not administer or collect the tax, but shall use the services of the tax commissioner to administer, enforce and collect the tax;

(5) Any municipal sales and service tax imposed pursuant to this section shall be imposed in addition to 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 municipality and, except as exempted or excepted, all sales made and services rendered within the boundaries of the municipality shall remain subject to the tax levied by that article; and
(6) Any municipal sales and service tax imposed pursuant to this section shall be imposed in addition to any tax imposed pursuant to section one, article eighteen, chapter seven of this code, sections six and seven, article thirteen of this chapter and section twelve, article thirty-eight of this chapter.

§8-13C-5. Municipal use tax.

(a) Effective on and after the first day of July, two thousand five, each qualifying municipality, as defined in section two of this article, that imposes a pension relief municipal sales and service tax pursuant to this article shall impose, by ordinance, a pension relief municipal use tax at the same rate that is set for the pension relief municipal sales and service tax.

(b) Effective on and after the first day of July, two thousand five, each municipality that imposes an alternative municipal sales and service tax pursuant to this article shall impose, by ordinance, an alternative municipal use tax at the same rate that is set for the alternative municipal sales and service tax.

(c) The base of a municipal use tax imposed pursuant to this section shall be identical to the base of the use tax imposed pursuant to article fifteen-a, chapter eleven of this code on the use of tangible personal property, custom software and taxable services within the boundaries of the municipality, subject to the following:

(1) Except for the exemption provided in section nine-f, article fifteen, chapter eleven of this code, all exemptions and exceptions from the use tax apply to a municipal use tax imposed pursuant to this section; and

(2) Uses of gasoline and special fuel are not subject to a municipal use tax imposed pursuant to this section when the use is subject to the tax imposed by article fourteen-c, chapter eleven of this code.
(d) Any municipality that imposes a municipal use tax pursuant to this section or changes the rate of a municipal use tax imposed pursuant to this section shall notify the tax commissioner pursuant to section six of this article.

(e) Any municipality that imposes a municipal use tax pursuant to this section may not administer or collect the tax, but shall use the services of the tax commissioner to administer, enforce and collect the taxes.

(f) Any municipal use tax imposed pursuant to this section shall be imposed in addition to the use tax imposed pursuant to article fifteen-a, chapter eleven of this code on the use of tangible personal property, custom software or taxable services within the boundaries of the municipality and, except as exempted or excepted, all use of tangible personal property, custom software or taxable services within the boundaries of the municipality shall remain subject to the tax levied by said article.

(g) Any municipal use tax imposed pursuant to this section shall be imposed in addition to any tax imposed pursuant to section one, article eighteen, chapter seven of this code, sections six and seven, article thirteen of this chapter and section twelve, article thirty-eight of this chapter.

§8-13C-5a. Credit for sales tax paid to another municipality.

(a) Credit against municipal use tax. -- A person is entitled to a credit against a use tax imposed by a municipality pursuant to section five of this article on the use of a particular item of tangible personal property, custom software or service equal to the amount, if any, of sales tax lawfully paid to another municipality for the acquisition of that property or service: Provided, That the amount of credit allowed may not exceed the amount of use tax imposed on the use of the property or service in the municipality of use.
(b) Definitions. -- For purposes of this section:

(1) "Municipality" means a municipality, as defined in section two, article one of this chapter, or a comparable unit of local government in another state;

(2) "Sales tax" includes a sales tax or compensating use tax lawfully imposed on the use of tangible personal property, custom software or a service by the municipality or county, as appropriate, in which the sale or use occurred; and

(3) "State" includes the fifty states of the United States and the District of Columbia but does not include any of the several territories organized by Congress.

c) No credit is allowed under this section for payment of any sales or use taxes imposed by this state or any other state.

§8-13C-6. Notification to tax commissioner; responsibilities of tax commissioner; application of state tax law.

(a) Any municipality that imposes a municipal sales and service tax and a municipal use tax pursuant to this article or changes the rate of the taxes shall notify the tax commissioner of the imposition of the taxes or the change in the rate of the taxes within thirty days of enacting the ordinance imposing the taxes or changing the rate of the taxes. A municipal sales and service tax and a municipal use tax imposed pursuant to this article or a change in the rate of the taxes is not effective until at least ninety days after the ordinance imposing the taxes is enacted.

(b) The tax commissioner is responsible for collecting, enforcing and administering any municipal sales and service tax and any municipal use tax imposed pursuant to this article in the same manner as the state sales and service tax imposed
pursuant to article fifteen, chapter eleven of this code and the
state use tax imposed pursuant to article fifteen-a of said
chapter. Additionally, the tax commissioner may charge a fee
not to exceed the lesser of the cost of the service provided or
one percent of the proceeds from the municipal sales and
service tax.

(c) The state consumers sales and service tax law, set forth
in article fifteen, chapter eleven of this code, and the amend-
ments to that article and the rules of the tax commissioner
relating to the laws shall apply to a municipal sales and service
tax imposed pursuant to this article to the extent the rules and
laws are applicable.

(d) The state use tax law, set forth in article fifteen-a,
chapter eleven of this code, and the amendments to that article
and the rules of the tax commissioner relating to the laws shall
apply to a municipal use tax imposed pursuant to this article to
the extent the rules and laws are applicable.

(e) Any term used in this article or in an ordinance adopted
pursuant to this article that is defined in articles fifteen,
fifteen-a and fifteen-b, chapter eleven of this code, as amended,
shall have the same meaning when used in this article or in an
ordinance adopted pursuant to this article, unless the context in
which the term is used clearly requires a different result.

(f) Any amendments to articles nine, ten, fifteen, fifteen-a
and fifteen-b, chapter eleven of this code shall automatically
apply to a sales or use tax imposed pursuant to this article, to
the extent applicable.

(g) Each and every provision of the “West Virginia Tax
Procedure and Administration Act” set forth in article ten,
chapter eleven of this code applies to the taxes imposed
pursuant to this article, except as otherwise expressly provided
in this article, with like effect as if that act were applicable only
to the taxes imposed by this article and were set forth in extenso
in this article.

(h) Each and every provision of the "West Virginia Tax
Crimes and Penalties Act" set forth in article nine, chapter
eleven of this code applies to the taxes imposed pursuant to this
article with like effect as if that act were applicable only to the
taxes imposed pursuant to this article and were set forth in
extenso in this article.

§8-13C-7. Municipal sales and service tax and use tax fund;
deposit and remittance of collections.

(a) There is created a special revenue account in the state
treasury designated the "municipal sales and service tax and use
tax fund" which is an interest-bearing account and shall be
invested in the manner described in section nine-c, article six,
chapter twelve of this code with the interest and other return
earned a proper credit to the fund. A separate subaccount
within the fund shall be established for each municipality that
imposes a municipal sales and service tax and use tax pursuant
to this article.

(b) The tax commissioner shall deposit all the proceeds
from a municipal sales and service tax and a municipal use tax
collected for each municipality minus any fee for collecting,
enforcing and administering taxes in the appropriate
subaccount. All moneys collected and deposited in the fund
shall be remitted at least quarterly by the state treasurer to the
treasurer of the appropriate municipality.

§8-13C-8. Printed catalogs.

Local tax rate changes made pursuant to sections four and
two of this article apply to purchases from printed catalogs
where the purchaser computed the tax based upon the local tax
rate published in the catalog only on and after the first day of a
calendar quarter after a minimum of one hundred twenty days'
notice to the seller.

§8-13C-9. Restriction on use of certain revenues.

(a) All proceeds from a pension relief municipal occupa-
tional tax, a pension relief municipal sales and service tax and
a pension relief municipal use tax imposed pursuant to this
article shall be used solely for the purpose of reducing the
unfunded actuarial accrued liability of policemen’s and
firemen’s pension and relief funds of the qualifying municipal-
ity imposing the tax. The proceeds used for this purpose shall
be in addition to the minimum annual contribution required by
section twenty, article twenty-two of this chapter.

(b) A qualifying municipality loses its authority to impose
a pension relief municipal occupational tax, a pension relief
municipal sales and service tax and a pension relief municipal
use tax pursuant to this article after:

(1) The unfunded actuarial accrued liability of the qualify-
ing municipality’s policemen’s and firemen’s pension and relief
funds is eliminated; or

(2) Sufficient moneys accrue from the proceeds of the
pension relief municipal occupational tax, the pension relief
municipal sales and service tax, the pension relief municipal
use tax or any combination of these taxes to eliminate the
unfunded actuarial accrued liability of the qualifying municipal-
ity’s policemen’s and firemen’s pension and relief funds.

§8-13C-10. Conflict; partial unconstitutionality.

(a) If a court of competent jurisdiction finds that the
provisions of this article and the provisions of articles fifteen,
fifteen-a and fifteen-b, chapter eleven of this code, conflict and
cannot be harmonized, then the provisions of said articles shall control.

(b) If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this article is for any reason held to be invalid, unlawful or unconstitutional, that decision does not affect the validity of the remaining portions of this article or any part thereof: Provided, That if this article is held to be unconstitutional under section thirty-nine, article VI of the Constitution of West Virginia this severability clause shall not apply.

§8-13C-11. Additional requirements for authority to impose certain taxes.

(a) The authority to impose the pension relief municipal occupational tax, the pension relief municipal sales and service tax and the pension relief municipal use tax, all provided in this article, is not effective until a municipality wishing to impose the taxes presents to the joint committee on government and finance a plan to remove the unfunded liabilities of its policemen’s and firemen’s pension funds and the necessary changes in West Virginia law have been enacted to allow for implementation of the municipal plan.

(b) Notwithstanding any other provision of this code to the contrary, no cost-of-living increases or other benefit increases, and no new benefits, may be granted to or received by any member or beneficiary of a policemen’s and firemen’s pension and relief funds of a municipality during any period that the municipality imposes a pension relief municipal occupational tax, a pension relief municipal sales and service tax, the pension relief municipal use tax or any combination thereof authorized under this chapter.

§8-13C-12. Limited authority to impose tax.
(a) Notwithstanding any other provision of this code to the contrary, no county, board, political subdivision or any other agency or entity other than a municipality may impose an alternative municipal sales and service tax, an alternative municipal use tax, a pension relief municipal occupational tax, a pension relief municipal sales and service tax, a pension relief municipal use tax or any combination of these taxes.

(b) No subsequent amendment to this code shall supersede the provisions of subsection (a) of this section unless the amendment specifically states that the provisions of said subsection are superseded.


The chief technology officer, appointed pursuant to article one-b, chapter five of this code, shall conduct a study on the cost for the tax commissioner to implement the taxes that may be imposed pursuant to this article. The chief technology officer shall report the findings and recommendations to the joint committee on government and finance before the first day of December, two thousand four.

CHAPTER 11. TAXATION.

Article
10. Procedure and Administration.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.
§11-9-4. Failure to pay tax or file return or report.
§11-9-5. Failure to account for and pay over another’s tax.
§11-9-6. Failure to collect or withhold tax.
§11-9-8. Willful failure to maintain records or supply information; misuse of exemption certificate.
§11-9-10. Attempt to evade tax.
§11-9-2. Application of this article.

(a) The provisions of this article apply to the following taxes imposed by this chapter: (1) Inheritance and transfer taxes and estate taxes imposed by article eleven of this chapter; (2) business registration tax imposed by article twelve of this chapter; (3) minimum severance tax on coal imposed by article twelve-b of this chapter; (4) corporate license tax imposed by article twelve-c of this chapter; (5) business and occupation tax imposed by article thirteen of this chapter; (6) severance tax imposed by article thirteen-a of this chapter; (7) telecommunications tax imposed by article thirteen-b of this chapter; (8) gasoline and special fuels excise tax imposed by article fourteen of this chapter; (9) motor fuels excise tax imposed by article fourteen-c of this chapter; (10) motor carrier road tax imposed by article fourteen-a of this chapter; (11) interstate fuel tax agreement authorized by article fourteen-b of this chapter; (12) consumers sales and service tax imposed by article fifteen of this chapter; (13) use tax imposed by article fifteen-a of this chapter; (14) tobacco products excise tax imposed by article seventeen of this chapter; (15) soft drinks tax imposed by article nineteen of this chapter; (16) personal income tax imposed by article twenty-one of this chapter; (17) business franchise tax imposed by article twenty-three of this chapter; (18) corporation net income tax imposed by article twenty-four of this chapter; and (19) health care provider tax imposed by article twenty-seven of this chapter.

(b) The provisions of this article also apply to the West Virginia tax procedure and administration act in article ten of this chapter and to any other articles of this chapter when application is expressly provided for by the Legislature.

(c) The provisions of this article also apply to municipal sales and use taxes imposed pursuant to article thirteen-c, chapter eight of this code; the charitable bingo fee imposed by
sections six and six-a, article twenty, chapter forty-seven of this
code; the charitable raffle fee imposed by section seven, article
twenty-one of said chapter; and the charitable raffle boards and
games fees imposed by section three, article twenty-three of
said chapter.

(d) Each and every provision of this article applies to the
articles of this chapter listed in subsections (a), (b) and (c) of
this section, with like effect, as if the provisions of this article
were applicable only to the tax and were set forth in extenso in
this article.


For the purposes of this article, the term:

(1) "Person" means any individual, firm, partnership,
limited partnership, copartnership, joint venture, association,
corporation, municipal corporation, organization, receiver,
estate, trust, guardian, executor, administrator and any officer,
employee or member of any of the foregoing who, as an officer,
employee or member, is under a duty to perform or is responsi-
ble for the performance or nonperformance of the act in respect
of which a violation occurs under this article.

(2) "Return" or "report" means any return or report required
to be filed by any article of this chapter imposing any tax to
which this article applies as specified in section two of this
article or by any other article of this code pursuant to which a
tax or fee is imposed that is collected by the tax commissioner
as specified in section two of this article.

(3) "Tax" or "taxes" means any tax to which this article
applies, as specified in section two of this article, and includes
additions to tax, penalties and interest unless the intention to
give it a more limited meaning is disclosed by the context in
which the term "tax" or "taxes" is used.
(4) “Tax commissioner” or “commissioner” means the tax commissioner of the state of West Virginia or his or her delegate.

(5) “This chapter” means chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and shall include only those articles of chapter eleven of this code listed in section two of this article.

(6) “Willfully” means the intentional violation of a known legal duty to perform any act, required to be performed by any provision of this chapter or article thirteen-c, chapter eight of this code, in respect of which the violation occurs: Provided, that the mere failure to perform any act shall not be a willful violation under this article. A willful violation of this article requires that the defendant had knowledge of or notice of a duty to perform an act and that the defendant, with knowledge of or notice of that duty, intentionally failed to perform the act.

(7) “Evade” means to willfully and fraudulently commit any act with the intent of depriving the state of payment of any tax which there is a known legal duty to pay under this chapter.

(8) “Fraud” means any false representation or concealment as to any material fact made by any person with the knowledge that it is not true and correct, with the intent that the representation or concealment be relied upon by the state.

§11-9-4. Failure to pay tax or file return or report.

Any person required by any provision of this chapter or article thirteen-c, chapter eight of this code to pay any tax, or to file any return or report, who willfully fails to pay the tax, or willfully fails to file the return or report, more than thirty days after the date the tax is required to be paid by law, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than two thousand five
hundred dollars. Each failure to pay tax, or file a return or report, more than thirty days after its due date for any tax period is a separate offense under this section and punishable accordingly: Provided, That thirty days prior to instituting criminal proceedings under this section, the tax commissioner shall give the person written notice of any failure to pay a tax or to file a return or report. Notice shall be served on the person by certified mail or by personal service. The provisions of this section shall not apply to the business franchise registration tax imposed by article twelve of this chapter.

§11-9-5. Failure to account for and pay over another’s tax.

Any person required by any provision of this chapter or article thirteen-c, chapter eight of this code to collect, or withhold, account for and pay over any tax, who willfully fails to truthfully account for and pay over the tax in the manner required by law, more than thirty days after the date the tax is required to be accounted for and paid over by law, is guilty of a felony if the amount of tax not paid over is one thousand dollars or more and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than twenty-five thousand dollars or imprisoned in a correctional facility not less than one nor more than three years, or, in the discretion of the court, be confined in jail not more than one year, or both fined and imprisoned; or is guilty of a misdemeanor, if the amount of tax not paid over is less than one thousand dollars, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars or imprisoned in jail not more than six months, or both fined and imprisoned. Each failure to account for and pay over tax for any tax period under this section is a separate offense and punishable accordingly: Provided, That thirty days prior to instituting a criminal proceeding under this section, the tax commissioner shall give the person written notice of the failure to truthfully account for
23 and pay over tax. Notice shall be served on the person by
24 certified mail or personal service.

§11-9-6. Failure to collect or withhold tax.

1 Any person required by any provision of this chapter or
2 article thirteen-c, chapter eight of this code to collect or
3 withhold any tax, who willfully fails to collect or withhold the
4 tax in the manner required by law, is guilty of a misdemeanor
5 and, upon conviction thereof, shall be fined not less than one
6 hundred dollars nor more than five hundred dollars or impris-
7oned in jail not more than six months, or both fined and
8 imprisoned. Each month or fraction thereof during which the
9 failure continues is a separate offense under this section and
10 punishable accordingly.

§11-9-8. Willful failure to maintain records or supply informa-
1 tion; misuse of exemption certificate.

1 If any person: (1) Willfully fails to maintain any records, or
2 supply any information, in the manner required by this chapter
3 or article thirteen-c, chapter eight of this code or regulations
4 therefor promulgated in accordance with law, to compute,
5 assess, withhold or collect any tax imposed by this chapter; or
6 (2) presents to any vendor a certificate for the purpose of
7 obtaining an exemption from the tax imposed by article fifteen
8 or fifteen-a of this chapter or article thirteen-c, chapter eight of
9 this code and then knowingly uses the item or service purchased
10 in a manner that is not exempt from the tax without remitting
11 the tax in the manner required by law, that person is guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined not
13 less than one hundred dollars nor more than one thousand
14 dollars or imprisoned in jail not more than six months, or both
15 fined and imprisoned.

§11-9-10. Attempt to evade tax.
If any person: (1) Knowingly files a false or fraudulent return, report or other document under any provision of this chapter or article thirteen-c, chapter eight of this code; or (2) willfully delivers or discloses to the tax commissioner any list, return, account, statement, record or other document known by him or her to be fraudulent or false as to any material matter with the intent of obtaining or assisting another person in obtaining any credit, refund, deduction, exemption or reduction in tax not otherwise permitted by this chapter or article thirteen-c, chapter eight of this code; or (3) willfully attempts in any other manner to evade any tax imposed by this chapter or article thirteen-c, chapter eight of this code or the payment thereof, is guilty of a felony and, notwithstanding any other provision of the code, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars or imprisoned in a correctional facility not less than one nor more than three years or, in the discretion of the court, be confined in jail not more than one year, or both fined and imprisoned.

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-3. Application of this article.

(a) The provisions of this article apply to inheritance and transfer taxes, estate tax and interstate compromise and arbitration of inheritance and death taxes, business registration tax, annual tax on incomes of certain carriers, minimum severance tax on coal, corporate license tax, business and occupation tax, severance tax, telecommunications tax, inter-state fuel tax, consumers sales and service tax, use tax, tobacco products excise tax, soft drinks tax, personal income tax, business franchise tax, corporation net income tax, gasoline and special fuels excise tax, motor fuels excise tax, motor carrier road tax, health care provider tax and tax relief for elderly homeowners and renters administered by the state tax commis-
This article shall not apply to ad valorem taxes on real and personal property or any other tax not listed in this section, except that in the case of ad valorem taxes on real and personal property, when any return, claim, statement or other document is required to be filed, or any payment is required to be made within a prescribed period or before a prescribed date, and the applicable law requires delivery to the office of the sheriff of a county of this state, the methods prescribed in section five-f of this article for timely filing and payment to the tax commissioner or state tax department are the same methods utilized for timely filing and payment with the sheriff.

(b) The provisions of this article apply to beer barrel tax levied by article sixteen of this chapter and to wine liter tax levied by section four, article eight, chapter sixty of this code.

(c) The provisions of this article apply to any other article of this chapter when the application is expressly provided for by the Legislature.

(d) The provisions of this article apply to municipal sales and use taxes imposed under article thirteen-c, chapter eight of this code and collected by the tax commissioner.

CHAPTER 184

(Com. Sub. for S. B. 518 — By Senators McCabe, White, Bowman, Unger and Dempsey)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §8-14-2a of the code of West Virginia, 1931, as amended; and to amend and reenact §8-15-10a of said
Be it enacted by the Legislature of West Virginia:

That §8-14-2a of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §8-15-10a of said code be amended and reenacted, all to read as follows:

§8-14-2a. Policemen who are required to work during holidays; how compensated.

From the effective date of this section, if any municipal police officer is required to work during a legal holiday as is specified in subsection (a), section one, article two, chapter two of this code, or if a legal holiday falls on the police officer's regular scheduled day off, he or she is allowed equal time off at a time as may be approved by the chief of police under whom he or she serves or, in the alternative, shall be paid at a rate not less than one and one-half times his or her regular rate of pay: Provided, That if a special election of a political subdivision other than a municipality falls on a Saturday or Sunday, the municipality may choose not to recognize the day of the election as a holiday if a majority of the municipality’s city council votes not to recognize the day of the election as a holiday.
ARTICLE 15. FIREFIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-10a. Firemen who are required to work during holidays; how compensated.

From the effective date of this section, if any member of a paid fire department is required to work during a legal holiday as is specified in subsection (a), section one, article two, chapter two of this code, or if a legal holiday falls on the member’s regular scheduled day off, he or she shall be allowed equal time off at such time as may be approved by the chief executive officer of the department under whom he or she serves or, in the alternative, shall be paid at a rate not less than one and one-half times his or her regular rate of pay: Provided, That if a special election of a political subdivision other than a municipality falls on a Saturday or Sunday, the municipality may choose not to recognize the day of the election as a holiday if a majority of the municipality’s city council votes not to recognize the day of the election as a holiday.

CHAPTER 185

(Com. Sub. for S. B. 672 — By Senator Tomblin, Mr. President, By Request)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]
liens; discontinuance of service for delinquency; tenants; providing refund of deposit with interest; and requiring owners of property abutting municipal sewer to pay municipal sewer fees regardless of connection.

Be it enacted by the Legislature of West Virginia:

That §8-18-22 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §8-19-12a of said code be amended and reenacted; that §8-20-10 of said code be amended and reenacted; and that §16-13-16 of said code be amended and reenacted, all to read as follows:

Chapter

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article
  18. Assessments to Improve Streets, Sidewalks, and Sewers; Sewer Connections and Board of Health; Enforcement of Duty to Pay for Service.

ARTICLE 18. ASSESSMENTS TO IMPROVE STREETS, SIDEWALKS, AND SEWERS; SEWER CONNECTIONS AND BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

PART XII - CONNECTION TO SEWERS; BOARD OF HEALTH; ENFORCEMENT OF DUTY TO PAY FOR SERVICE.

§8-18-22. Connection to sewers; board of health; penalty.

Regardless of whether a lot or parcel is within any municipality’s geographical limits, the owner or owners of any lot or parcel of land abutting on any street, alley, public way or easement on which a municipal sewer is now located or may hereafter be constructed and laid (whether constructed and laid under the provisions of this article or any other provisions of
law) upon which lot or parcel of land any business or residence
building is now located or may hereafter be erected, not
connected with a public sewer, may be required and compelled
by the municipality or by the board of health to connect any
such building with such sewer. Notice so to connect shall be
given by the municipality or by the board of health to the owner
and to the lessee or occupant of such building. The owner or
owners shall connect to the municipal sewer within thirty days
after notice to connect has been sent by the municipality.
Regardless of whether the owner or owners connect to such
sewer, the municipality may bill the owner or owners of the lot
or parcel and the owner or owners shall pay the municipality’s
charge based on the actual water consumption on the lot or
parcel. If the lot or parcel is not metered, the municipality’s
charge shall be based on the municipality’s good faith estimate
of the consumption on the lot or parcel.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRICAL POWER SYSTEMS.

PART IV - REVENUE BOND FINANCING.

§8-19-12a. Deposit required for new customers; lien for delinquent service rates and charges; failure to cure delinquency; payment from deposit; reconnecting deposit; return of deposit; liens; civil actions; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) (1) Whenever any rates and charges for water services
or facilities furnished remain unpaid for a period of twenty days
after the same become due and payable, the property and the
owner thereof, as well as the user of the services and facilities
provided, shall be delinquent and the owner, user and property
shall be held liable at law until such time as all such rates and
charges are fully paid. When a payment has become delin-
quent, the municipality may utilize any funds held as a security
deposit to satisfy the delinquent payment. All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(2) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant’s specific customer class, whichever is greater, to secure the payment of water service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user’s service is disconnected or terminated, no reconnection or reinstatement of service may be made by the municipality or governing body until another deposit equal to fifty dollars or a sum equal to two twelfths of the average usage for the applicant’s specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer’s account with interest at a rate as the public service commission may prescribe: Provided, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may, under reasonable rules promulgated by the public service commission, shut off and discontinue water services to a delinquent user of water facilities ten days after the water services become delinquent regardless of whether the munici-
pality or governing body utilizes the security deposit to satisfy any delinquent payments.

(b) All rates or charges for water service whenever delinquent shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for such services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of such real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(c) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(d) No municipality may foreclose upon the premises served by it for delinquent rates or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of such
action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought.

ARTICLE 20. COMBINED WATERWORKS AND SEWERAGE SYSTEMS.

PART III - REVENUE BOND FINANCING.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees or charges; deposit required for new customers; change in rates, fees or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

(a) (1) The governing body of any municipality availing itself of the provisions of this article shall have plenary power and authority to make, enact and enforce all needful rules for the repair, maintenance and operation and management of the combined system of such municipality and for the use thereof, and shall also have plenary power and authority to make, enact and enforce all needful rules and ordinances for the care and protection of any such system, which may be conducive to the preservation of the public health, comfort and convenience and to rendering the water supply of such municipality pure, the sewerage harmless insofar as it is reasonably possible so to do, and if applicable properly collecting and controlling the stormwater as is reasonably possible so to do: Provided, That no municipality may make, enact or enforce any rule, regulation or ordinance regulating any highways, road or drainage easements or storm water facilities constructed, owned or
operated by the West Virginia division of highways except in accordance with chapter twenty-nine-a of this code.

(2) Any municipality shall have plenary power and authority to charge the users for the use and service of combined system and to establish required deposits, rates, fees or charges for such purpose. Separate deposits, rates, fees or charges may be fixed for the water and sewer services respectively, and, if applicable, the stormwater services, or combined rates, fees or for the combined water and sewer services, and, if applicable, the stormwater services. Such deposits, rates, fees or charges, whether separate or combined, shall be sufficient at all times to pay the cost of repair, maintenance and operation of the combined system, provide an adequate reserve fund and adequate depreciation fund and pay the principal of and interest upon all revenue bonds issued under this article. Deposits, rates, fees or charges shall be established, revised and maintained by ordinance and become payable as the governing body may determine by ordinance, and such rates, fees or charges shall be changed from time to time as needful, consistent with the provisions of this article.

(3) All new applicants for service shall indicate to the municipality or governing body whether they are an owner or tenant with respect to the service location.

(4) The municipality or governing body, but only one of them, may collect from all new applicants for service a deposit of one hundred dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of water and sewage service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent and the user's service is disconnected or terminated, no reconnecting or reinstatement of service may be made by the
municipality or governing body until another deposit equal to one hundred dollars or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the municipality or governing body. After twelve months of prompt payment history, the municipality or governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the public service commission may prescribe: Provided, That where the customer is a tenant, the municipality or governing body is not required to return the deposit until the time the tenant discontinues service with the municipality or governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The municipality or governing body may, under reasonable rules promulgated by the public service commission, shut off and discontinue water services to a delinquent user of either water or sewage facilities, or both, ten days after the water or sewage services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

(b) Whenever any rates, fees or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided shall be delinquent and the municipality or governing body may apply any deposit against any delinquent fee and the user shall be held liable at law until such time as all rates, fees and charges are fully paid.

(c) All rates, fees or charges for water service, sewer service, and, if applicable, stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be liens of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes for the
amount thereof upon the real property served, and the municipality shall have plenary power and authority from time to time to enforce such lien in a civil action to recover the money due for services rendered plus court fees and costs and a reasonable attorney's fee: Provided, That an owner of real property may not be held liable for the delinquent rates, fees or charges for services or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates, fees or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the municipality to purchase such services or facilities.

(d) Municipalities are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of the delinquent rates and charges. If the municipality collects the delinquent account, plus fees and costs, from its customer or other responsible party, the municipality shall pay to the magistrate court the filing fees or other fees and costs which were previously deferred.

(e) No municipality may foreclose upon the premises served by it for delinquent rates, fees or charges for which a lien is authorized by this section except through the bringing and maintenance of a civil action for the purpose brought in the circuit court of the county wherein the municipality lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the municipality had exhausted all other remedies for the collection of debts with respect to such delinquencies prior to the bringing of the action. In no event shall foreclosure procedures be instituted by any municipality or on its behalf unless the delinquency had been in existence or continued for a period of two years from the date of the first delinquency for which foreclosure is being sought.
CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS OF MUNICIPAL CORPORATIONS AND SANITARY DISTRICTS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant’s deposit; change or readjustment; hearing; lien and recovery; discontinuance of services.

The governing body shall have power, and it shall be its duty, by ordinance, to establish and maintain just and equitable rates, fees or charges for the use of and the service rendered by:

(a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate or building that is connected with and uses such works by or through any part of the sewerage system of the municipality, or that in any way uses or is served by such works; and

(b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate, or building that in any way uses or is served by such stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(c) The governing body may change and readjust such rates, fees or charges from time to time. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements and/or stormwater facilities constructed, owned and/or operated by the West Virginia division of highways.

(d) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location.
(e) The governing body may collect from all new applicants for service a deposit of fifty dollars or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnecting or reinstatement of service may be made by the governing body until another deposit equal to fifty dollars or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After twelve months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the public service commission may prescribe: Provided, That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The governing body may, under reasonable rules promulgated by the public service commission, shut off and discontinue water services to a delinquent user of sewer facilities ten days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments.

(f) Such rates, fees or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.
(g) No such rates, fees or charges shall be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees or charges.

(h) After introduction of the ordinance fixing such rates, fees or charges, and before the same is finally enacted, notice of such hearing, setting forth the proposed schedule of such rates, fees or charges, shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the municipality. The first publication shall be made at least ten days before the date fixed in such notice for the hearing.

(i) After such hearing, which may be adjourned from time to time, the ordinance establishing rates, fees or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of such rates, fees and charges so established shall be kept on file in the office of the board having charge of the operation of such works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees or charges so established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(j) Any change or readjustment of such rates, fees or charges may be made in the same manner as such rates, fees or charges were originally established as hereinbefore provided: Provided, That if such change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required. The aggregate of the rates, fees or charges shall always be sufficient for such expense of opera-
tion, repair and maintenance and for such sinking fund pay-
ments.

(k) All rates, fees or charges, if not paid when due, shall
constitute a lien upon the premises served by such works. If
any service rate, fees or charge so established is not paid within
twenty days after the same is due, the amount thereof, together
with a penalty of ten percent, and a reasonable attorney's fee,
may be recovered by the board in a civil action in the name of
the municipality, and in connection with such action said lien
may be foreclosed against such lot, parcel of land or building,
in accordance with the laws relating thereto: Provided, That
where both water and sewer services are furnished by any
municipality to any premises the schedule of charges may be
billed as a single amount or individually itemized and billed for
the aggregate thereof.

(l) Whenever any rates, rentals, fees or charges for services
or facilities furnished shall remain unpaid for a period of twenty
days after the same shall become due and payable, the property
and the owner thereof, as well as the user of the services and
facilities shall be delinquent until such time as all rates, fees
and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body
may use the security deposit to satisfy the delinquent payment.

(m) The board collecting such rates, fees or charges shall be
obligated under reasonable rules to shut off and discontinue
both water and sewer services to all delinquent users of either
water facilities, or sewer facilities or both, and shall not restore
either water facilities or sewer facilities, to any delinquent user
of either until all delinquent rates, fees or charges for both
water facilities, and sewer facilities, including reasonable
interest and penalty charges, have been paid in full.
AN ACT to amend and reenact §20-2-32, §20-2-33 and §20-2-34 of the code of West Virginia, 1931, as amended, all relating generally to the issuance of hunting and fishing licenses; disposition of duplicate license fees; increasing fees; promulgation of legislative rules; and disposition of fees.

Be it enacted by the Legislature of West Virginia:

That §20-2-32, §20-2-33 and §20-2-34 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-32. Issuance of licenses; duplicate licenses.
§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.
§20-2-34. Disposition of license fees and donations; reports of agents; special funds and uses.

§20-2-32. Issuance of licenses; duplicate licenses.

1 The clerk of the county commission in each county and
2 other persons designated by the director shall be license-issuing
3 authorities. Each license-issuing authority shall issue a license
4 to a license applicant if, in the opinion of the authority, the
5 license applicant is legally entitled to obtain the license applied
6 for and pays the proper fee.
All materials and supplies necessary for the issuance of licenses shall be furnished by the director to each person authorized to issue licenses.

Each license shall bear a serial number and shall be signed by the licensee. The issuing authority shall keep an accurate record, in the form and manner prescribed by the director, of all licenses issued and of all money collected as license fees.

Any license-issuing authority may issue a duplicate license, to replace a lost, destroyed or damaged license, upon receipt of a verified application duly executed by the original license holder and the payment to the issuing authority of a duplicate license fee of one dollar.

§20-2-33. Authority of director to designate agents to issue licenses; bonds; fees.

(a) The director may appoint, in addition to the clerk of the county commission, agents to issue licenses under the provisions of this article to serve the convenience of the public. Each person appointed shall, before issuing any license, file with the director a bond payable to the state of West Virginia, in the amount to be fixed by the director, conditioned upon the faithful performance of his or her obligation to issue licenses only in conformity with the provisions of this article and to account for all license fees received by him or her. The form of the bond shall be prescribed by the attorney general. No person, other than those designated as issuing agents by the director, may sell licenses or buy licenses for the purpose of resale.

(b) Except when a license is purchased from a state official, every person making application for a license shall pay, in addition to the license fee prescribed in this article, an additional fee of three dollars to any county official issuing the
license and all fees collected by county officials must be paid
by them into the general fund of the county treasury or, in the
case of an agent issuing the license, an additional fee of three
dollars as compensation: Provided, That only one issuing fee of
three dollars may be collected by county officials or authorized
agents, respectively, for issuing two or more licenses at the
same time for use by the same person or for issuing combina-
tion resident statewide hunting, trapping and fishing licenses:
Provided, however, That a person with a lifetime license or a
person who has paid the original additional fee of three dollars
to a county official or issuing agent for a license shall only be
charged an additional fee of one dollar as additional compensa-
tion when subsequently purchasing an additional license from
a county official or issuing agent: Provided further, That
licenses may be issued electronically in a manner prescribed by
the director and persons purchasing electronically issued
licenses may be assessed, in addition to the license fee pre-
scribed in this article, an electronic issuance fee to be pre-
scribed by the director.

(c) In lieu of the license issuance fee prescribed in subsec-
tion (b) of this section, the director shall propose rules for
legislative approval in accordance with the provisions of article
three, chapter twenty-nine-a of this code governing the applica-
tion for and issuance of licenses by telephone and other
electronic methods.

(d) The director may propose rules for legislative approval
in accordance with the provisions of article three, chapter
twenty-nine-a of this code governing the management of
issuing agents.

§20-2-34. Disposition of license fees and donations; reports of
agents; special funds and uses.
(a) All persons in this state who receive money for licenses and permits required by this chapter, or as donations for the hunters helping the hungry program, shall deposit the moneys into an account at a financial institution at intervals designated by the director with the approval of the state treasurer. The payment shall be accompanied by a sales report. The form and content of the sales report shall be prescribed by the director.

(b) Except where other provisions of this chapter specifically require direct payment of moneys into designated funds for specific uses and purposes, all license fees received by the director shall be promptly paid into the state treasury and credited to the division of natural resources "license fund--wildlife resources" which shall be used and paid out, upon order of the director, solely for law enforcement and for other purposes directly relating to the conservation, protection, propagation and distribution of wildlife in this state pursuant to the provisions of this chapter.

No funds from the "license fund--wildlife resources" may be expended for recreational facilities or activities that are used by or for the benefit of the general public, rather than purchasers of hunting and fishing licenses.

The director shall retain ten percent of the "license fund--wildlife resources" for capital improvements and land purchases benefitting state wildlife, forty percent shall be budgeted to the wildlife resources division, forty percent to law enforcement and ten percent apportioned by the director within provisions of this section. Any unexpended moneys for capital improvements and land purchases shall be carried forward.

All interest generated from game and fish license fees shall be used by the director for the division of natural resources in the same manner as is provided for the use of license fees.
AN ACT to amend and reenact §20-2-46e of the code of West Virginia, 1931, as amended, relating to special hunting permit for disabled persons.

Be it enacted by the Legislature of West Virginia:

That §20-2-46e of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-46e. Class Q special hunting permit for disabled persons.

(a) A Class Q permit is a special statewide hunting permit entitling the permittee to hunt all legal species of game during the designated hunting seasons from a motor vehicle in accordance with the provisions of this section.

(b) A permit form shall be furnished by the director to an applicant who meets the following requirements:

(1) He or she is permanently disabled in the lower extremities; and
(2) He or she holds a valid resident or nonresident statewide hunting license, a senior citizens license or is otherwise exempt from the license requirement.

(c) A licensed physician must certify the applicant’s permanent disability by completing the permit form. When completed, the permit form constitutes a Class Q permit. The Class Q permit and a completed license application shall be submitted to the division, which will issue a wallet sized card to the permittee. The card and all other documents and identification required to be carried by this article shall be in the permittee’s possession when hunting.

(d) A Class Q permit entitles the holder to hunt from a motor vehicle and, notwithstanding the provisions of subdivision (9), section five of this article, to possess a loaded firearm in a motor vehicle, but only under the following circumstances:

(1) The motor vehicle is stationary;

(2) The engine of the motor vehicle is not operating;

(3) The permittee is the only occupant of the vehicle;

(4) The vehicle is not parked on the right-of-way of any public road or highway; and

(5) The permittee observes all other pertinent laws and regulations.

(e) The director may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code setting forth the qualifications of applicants and the permitting process.
AN ACT to amend and reenact § 20-5-2 of the code of West Virginia, 1931, as amended, relating to permitting the sale of timber severed in a state park incidental to construction activities; use of gross proceeds derived from timber sales; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That § 20-5-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. PARKS AND RECREATION.

§ 20-5-2. Powers of the director with respect to the section of parks and recreation.

(a) The director of the division of natural resources is responsible for the execution and administration of the provisions in this article as an integral part of the parks and recreation program of the state and shall organize and staff the section of parks and recreation for the orderly, efficient and economical accomplishment of these ends. The authority granted in the year one thousand nine hundred ninety-four to the director of the division of natural resources to employ up to six additional unclassified personnel to carry out the parks functions of the division of natural resources is continued.
(b) The director of the division of natural resources shall:

(1) Establish, manage and maintain the state’s parks and recreation system for the benefit of the people of this state and do all things necessary and incidental to the development and administration of the state’s parks and recreation system;

(2) Acquire property for the state in the name of the division of natural resources by purchase, lease or agreement; retain, employ and contract with legal advisors and consultants; or accept or reject for the state, in the name of the division, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in the property, including lands and waters, for state park or recreational areas for the purpose of providing public recreation: Provided, That the provisions of section twenty, article one of this chapter are specifically made applicable to any acquisitions of land: Provided, however, That any sale, exchange or transfer of property for the purposes of completing land acquisitions or providing improved recreational opportunities to the citizens of the state is subject to the procedures of article one-a of this chapter: Provided further, That no sale of any park or recreational area property, including lands and waters, used for purposes of providing public recreation on the effective date of this article and no privatization of any park may occur without statutory authority;

(3) Approve and direct the use of all revenue derived from the operation of the state parks and public recreation system for the operation, maintenance and improvement of the system, individual projects of the system or for the retirement of park development revenue bonds;

(4) Effectively promote and market the state’s parks, state forests, state recreation areas and wildlife recreational resources by approving the use of no less than twenty percent of the:
(A) Funds appropriated for purposes of advertising and marketing expenses related to the promotion and development of tourism, pursuant to subsection (j), section eighteen, article twenty-two, chapter twenty-nine of this code; and

(B) Funds authorized for expenditure from the tourism promotion fund for purposes of direct advertising, pursuant to section twelve, article two, chapter five-b of this code and section ten, article twenty-two-a, chapter twenty-nine of this code;

(5) Issue park development revenue bonds as provided in this article;

(6) Provide for the construction and operation of cabins, lodges, resorts, restaurants and other developed recreational service facilities, subject to the provisions of section fifteen of this article and section twenty, article one of this chapter;

(7) The director may sell timber that has been severed in a state park incidental to the construction of park facilities or related infrastructure where the construction is authorized by the Legislature in accordance with section twenty, article one of this chapter, and the sale of the timber is otherwise in the best interest of park development, without regard to proceeds derived from the sale of timber. The gross proceeds derived from the sale of timber shall be deposited into the operating budget of the park from which the timber was harvested;

(8) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to control the uses of parks: Provided, That the director may not permit public hunting, the exploitation of minerals or the harvesting of timber for commercial purposes in any state park;
(9) Exempt designated state parks from the requirement that all payments must be deposited in a bank within twenty-four hours for amounts less than two hundred fifty dollars notwithstanding any other provision of this code to the contrary;

(10) Waive the use fee normally charged to an individual or group for one day’s use of a picnic shelter or one week’s use of a cabin in a state recreation area when the individual or group donates the materials and labor for the construction of the picnic shelter or cabin: Provided, That the individual or group was authorized by the director to construct the picnic shelter or cabin and that it was constructed in accordance with the authorization granted and the standards and requirements of the division pertaining to the construction. The individual or group to whom the waiver is granted may use the picnic shelter for one reserved day or the cabin for one reserved week during each calendar year until the amount of the donation equals the amount of the loss of revenue from the waiver or until the individual dies or the group ceases to exist, whichever first occurs. The waiver is not transferable. The director shall permit free use of picnic shelters or cabins to individuals or groups who have contributed materials and labor for construction of picnic shelters or cabins prior to the effective date of this section. The director shall propose a legislative rule for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the free use of picnic shelters or cabins provided for in this section, the eligibility for free use, the determination of the value of the donations of labor and materials, the appropriate definitions of a group and the maximum time limit for the use;

(11) Provide within the parks a market for West Virginia arts, crafts and products, which shall permit gift shops within the parks to offer for sale items purchased on the open market from local artists, artisans, craftsmen and suppliers and local or regional crafts cooperatives;
(12) Provide that reservations for reservable campsites may be made, upon two days advance notice, for any date for which space is available within a state park or recreational area managed by the parks and recreation section;

(13) Provide that reservations for all state parks and recreational areas managed by the parks and recreation section of the division may be made by use of a valid credit card; and

(14) Develop a plan to establish a centralized computer reservation system for all state parks and recreational areas managed by the parks and recreation section and to implement the plan as funds become available.

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CHAPTER 189

(Com. Sub. for S. B. 251 — By Senators Snyder, Fanning, Hunter, Jenkins, Oliverio, Rowe, Kessler, Weeks and White)

[Passed February 17, 2004; in effect ninety days from passage. Approved by the Governor.]
additional purposes for expenditures from health care cost review fund; and providing that new article does not amend other law.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-5F-1, §21-5F-2, §21-5F-3, §21-5F-4 and §21-5F-5, all to read as follows:

ARTICLE 5F. NURSE OVERTIME AND PATIENT SAFETY ACT.

§21-5F-1. Legislative findings and purpose.
§21-5F-2. Definitions.
§21-5F-3. Hospital nursing overtime limitations and requirements.
§21-5F-4. Enforcement; offenses and penalties.
§21-5F-5. Relation to other laws.

§21-5F-1. Legislative findings and purpose.

1 The Legislature finds and declares that:
2 (1) It is essential that qualified registered nurses and other
3 licensed health care workers providing direct patient care be
4 available to meet the needs of patients;
5 (2) Quality patient care is jeopardized by nurses that work
6 unnecessarily long hours in hospitals;
7 (3) Health care workers, especially nurses, are leaving their
8 profession because of workplace stresses, long work hours and
9 depreciation of their essential role in the delivery of quality,
10 direct patient care;
11 (4) It is necessary to safeguard the efficiency, health and
12 general well-being of health care workers in hospitals, as well
13 as the health and general well-being of the persons who use
14 their services;
(5) It is further necessary that health care workers be aware of their rights, duties and remedies with regard to hours worked and patient safety; and

(6) Hospitals should provide adequate safe nursing staffing without the use of mandatory overtime.

§21-5F-2. Definitions.

For the purposes of this article:

(1) "Hospital" means a facility licensed under the provisions of article five-b, chapter sixteen of this code, but does not include hospitals operated by state or federal agencies.

(2) "Nurse" means a certified or licensed practical nurse or a registered nurse who is providing nursing services and is involved in direct patient care activities or clinical services, but does not include certified nurse anesthetists. Nurse managers are included with respect to their delivery of in-hospital patient care, but this is in no way intended to impact on their 24-hour management responsibility for a unit, area or service.

(3) "Overtime" means the hours worked in excess of an agreed upon, predetermined, regularly scheduled shift.

(4) "Taking action against" means discharging; disciplining; threatening; reporting to the board of nursing; discriminating against; or penalizing regarding compensation, terms, conditions, location or privileges of employment.

(5) "Unforeseen emergent situation" means an unusual, unpredictable or unforeseen circumstance such as, but not limited to, an act of terrorism, a disease outbreak, adverse weather conditions or natural disasters. An unforeseen emergent situation does not include situations in which the hospital has reasonable knowledge of increased patient volume or
§21-5F-3. Hospital nursing overtime limitations and requirements.

(a) Except as provided in subsections (b), (c), (d), (e) and (f) of this section, a hospital is prohibited from mandating a nurse, directly or though coercion, to accept an assignment of overtime and is prohibited from taking action against a nurse solely on the grounds that the nurse refuses to accept an assignment of overtime at the facility if the nurse declines to work additional hours because doing so may, in the nurse’s judgment, jeopardize patient or employee safety.

(b) Notwithstanding subsections (a) and (g) of this section, a nurse may be scheduled for duty or mandated to continue on duty in overtime status in an unforeseen emergent situation that jeopardizes patient safety.

(c) Subsections (a) and (g) of this section do not apply when a nurse may be required to fulfill prescheduled on-call time, but nothing in this article shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

(d) Notwithstanding subsections (a) and (g) of this section, a nurse may be required to work overtime to complete a single patient care procedure already in progress, but nothing in this article shall be construed to permit an employer to use a staffing pattern as a means to require a nurse to complete a procedure as a substitute for mandatory overtime.

(e) Subsection (a) of this section does not apply when a collective bargaining agreement is in place between nurses and the hospital which is intended to substitute for the provisions of decreased staffing, including, but not limited to, scheduled vacations and scheduled health care worker medical leave.
this article by incorporating a procedure for the hospital to require overtime.

(f) Subsection (a) of this section does not apply to voluntary overtime.

(g) In the interest of patient safety, any nurse who works twelve or more consecutive hours, as permitted by this section, shall be allowed at least eight consecutive hours of off-duty time immediately following the completion of the shift. Except as provided in subsections (b), (c) and (d) of this section, no nurse shall work more than sixteen hours in a 24-hour period. The nurse is responsible for informing the employer hospital of other employment experience during the 24-hour period in question if this provision is to be invoked. To the extent that an on-call nurse has actually worked sixteen hours in a hospital, efforts shall be made by the hospital to find a replacement nurse to work.

Each hospital shall designate an anonymous process for patients and nurses to make staffing complaints related to patient safety.

§21-5F-4. Enforcement; offenses and penalties.

(a) Pursuant to the powers set forth in article one of this chapter, the commissioner of labor is charged with the enforcement of this article. The commissioner shall propose legislative and procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for enforcement of this article. These rules shall include, but are not limited to, provisions to protect due process requirements, a hearings procedure and an appeals procedure.

(b) Any complaint must be filed with the commissioner of labor regarding an alleged violation of the provisions of this article must be made within thirty days following the occur-
12 rence of the incident giving rise to the alleged violation.
13 Notification of the alleged violation must be forwarded to the
14 hospital in question within three business days of filing.

15 (c) The administrative penalty for the first violation of this
16 article shall be a reprimand.

17 (d) The administrative penalty for the second offense of this
18 article shall be a reprimand and a fine not to exceed five
19 hundred dollars.

20 (e) The administrative penalty for the third and subsequent
21 offenses shall have a fine of not less than two thousand five
22 hundred dollars and not more than five thousand dollars for
23 each violation.

24 (f) To be eligible to be charged of a second offense or third
25 offense under this section, the subsequent offense must occur
26 within twelve months of the prior offense.

27 (g)(1) All moneys paid as administrative penalties pursuant
28 to this section shall be deposited into the health care cost review
29 fund provided by section eight, article twenty-nine-b, chapter
30 sixteen of this code.

31 (2) In addition to other purposes for which funds may be
32 expended from the health care cost review fund, the West
33 Virginia health care authority shall expend moneys from the
34 fund, in amounts up to but not exceeding amounts received
35 pursuant to subdivision (1) of this subsection, for the following
36 activities in the state of West Virginia:

37 (A) Establishment of scholarships in medical schools;

38 (B) Establishment of scholarships for nurses training;

39 (C) Establishment of scholarships in the public health field;
(D) Grants to finance research in the field of drug addiction and development of cures therefor;

(E) Grants to public institutions devoted to the care and treatment of narcotic addicts; and

(F) Grants for public health research, education and care.

§21-5F-5. Relation to other laws.

Any law of this state currently enacted shall not be deemed to be amended, rescinded or otherwise affected by any provision of this article, but shall continue in full force and effect.

CHAPTER 190

(Com. Sub. for H. B. 4143 — By Delegates Hatfield, Brown, Foster and Perdue)

[Passed March 11, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-7-8a; to amend said code by adding thereto a new section, designated §30-7A-7a; and to amend said code by adding thereto a new article, designated §30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6, §30-7B-7, §30-7B-8, §30-7B-9 and §30-7B-10, all relating to creating the West Virginia center for nursing; legislative findings; center assuming the duties of the nursing shortage study commission; authorizing supplemental nursing licensure fees; emergency rules; establishing a board of directors for the center; setting forth powers and duties; permitting expense reimbursement; establishing special revenue account; reporting requirement; and continuation.
Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-7-8a; that said code be amended by adding thereto a new section, designated §30-7A-7a; and that said code be amended by adding thereto a new article, designated §30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6, §30-7B-7, §30-7B-8, §30-7B-9 and §30-7B-10, all to read as follows:

Article
  7. Registered Professional Nurses.
  7A. Practical Nurses.
  7B. Center for Nursing.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-8a. Supplemental fees to fund center for nursing; emergency rules.

(a) The board is authorized to assess a supplemental licensure fee not to exceed ten dollars per license per year. The supplemental licensure fee is to be used to fund the center for nursing and to carry out its purposes as set forth in article seven-b of this chapter.

(b) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the supplemental licensure fee.

(c) The board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the initial fee assessment.

ARTICLE 7A. PRACTICAL NURSES.

§30-7A-7a. Supplemental fees to fund center for nursing; emergency rules.
The board is authorized to assess a supplemental licensure fee not to exceed ten dollars per license per year. The supplemental licensure fee is to be used to fund the center for nursing and to carry out its purposes as set forth in article seven-b of this chapter.

(b) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish the supplemental licensure fee.

c) The board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the initial fee assessment.

ARTICLE 7B. CENTER FOR NURSING.

§30-7B-1. Legislative findings.
§30-7B-2. Definitions.
§30-7B-3. West Virginia center for nursing.
§30-7B-4. Center’s powers and duties.
§30-7B-5. Board of directors.
§30-7B-6. Board’s powers and duties.
§30-7B-7. Reimbursement for expenses.
§30-7B-8. Special revenue account.
§30-7B-9. Reports.
§30-7B-10. Continuation.

§30-7B-1. Legislative findings.

The Legislature finds that through the study of the nursing shortage study commission, it is essential that there be qualified registered professional nurses and other licensed nurses to meet the needs of patients. Without qualified nurses, quality patient care is jeopardized. The nursing population is aging and fewer students are entering nursing programs.

Therefore, the Legislature declares to ensure quality health care, recruitment and retention of nurses is important and a center is needed to address the nursing shortage crisis in West Virginia.
§30-7B-2. Definitions.

1. (a) “Board” means the board of directors for the West Virginia center for nursing.

2. (b) “Center” means the West Virginia center for nursing.

3. (c) “Direct patient care”, as used in this article, means health care that provides for the physical, emotional, diagnostic or rehabilitative needs of a patient, or health care that involves examination, treatment or preparation for diagnostic tests or procedures.

§30-7B-3. West Virginia center for nursing.

1. (a) Effective the first day of July, two thousand four, the nursing shortage study commission, established pursuant to the provisions of section eighteen, article seven, chapter thirty of this code, is hereby terminated and the powers and duties of the commission are transferred to the West Virginia center for nursing.

2. (b) Effective the first day of July, two thousand four, the West Virginia center for nursing is hereby created to address the issues of recruitment and retention of nurses in West Virginia.

3. (c) The higher education policy commission shall provide suitable office space for the center. The commission shall share statistics and other pertinent information with the center and shall work cooperatively to assist the center to achieve its objectives.

§30-7B-4. Center’s powers and duties.

1. The West Virginia center for nursing shall have the following powers and duties:
(1) Establish a statewide strategic plan to address the nursing shortage in West Virginia;

(2) Establish and maintain a database of statistical information regarding nursing supply, demand and turnover rates in West Virginia and future projections;

(3) Coordinate communication between the organizations that represent nurses, health care providers, businesses, consumers, legislators and educators;

(4) Enhance and promote recruitment and retention of nurses by creating reward, recognition and renewal programs;

(5) Promote media and positive image building efforts for nursing, including establishing a statewide media campaign to recruit students of all ages and backgrounds to the various nursing programs throughout West Virginia;

(6) Promote nursing careers through educational and scholarship programs, programs directed at nontraditional students and other workforce initiatives;

(7) Explore solutions to improve working environments for nurses to foster recruitment and retention;

(8) Explore and establish loan repayment and scholarship programs designed to benefit nurses who remain in West Virginia after graduation and work in hospitals and other health care institutions;

(9) Establish grants and other programs to provide financial incentives for employers to encourage and assist with nursing education, internships and residency programs;

(10) Develop incentive and training programs for long-term care facilities and other health care institutions to use self-
assessment tools documented to correlate with nurse retention, such as the magnet hospital program;

(11) Explore and evaluate the use of year-round day, evening and weekend nursing training and education programs;

(12) Establish a statewide hotline and website for information about the center and its mission and nursing careers and educational opportunities in West Virginia;

(13) Evaluate capacity for expansion of nursing programs, including the availability of faculty, clinical laboratories, computers and software, library holdings and supplies;

(14) Oversee development and implementation of education and matriculation programs for health care providers covering certified nursing assistants, licensed practical nurses, registered professional nurses, advanced nurse practitioners and other advanced degrees;

(15) Seek to improve the compensation of all nurses, including nursing educators; and

(16) Perform such other activities as needed to alleviate the nursing shortage in West Virginia.

§30-7B-5. Board of directors.

(a) The West Virginia center for nursing shall be governed by a board of directors consisting of the following thirteen members:

(1) One citizen member;

(2) Two representatives from the West Virginia board of examiners for registered professional nurses, as follows:
(A) One representing a bachelor and higher degree program; and

(B) One representing an associate degree program;

(3) One representative from the West Virginia board of examiners for licensed practical nurses;

(4) One representative from the West Virginia nurses association;

(5) One nurse representing a rural health care facility;

(6) Two representatives of employers of nurses, as follows:

(A) One director of nursing; and

(B) One health care administrator;

(7) Two registered professional staff nurses engaged in direct patient care;

(8) One licensed practical nurse engaged in direct patient care; and

(9) Two ex officio members, as follows:

(A) The secretary of the department of health and human resources or a designee; and

(B) A representative from the workforce development office.

(b) Before the first day of July, two thousand four, the governor, by and with the consent of the Senate, shall appoint the eleven citizen members as follows:

(1) The following members for an initial term of two years:
(A) One representative from the West Virginia board of examiners for registered professional nurses representing an associate degree program;

(B) One representative from the West Virginia board of examiners for licensed practical nurses;

(C) One nurse representing a rural health care facility;

(D) One director of nursing; and

(E) One registered professional staff nurse engaged in direct patient care;

(2) The following members for an initial term of four years:

(A) One citizen member;

(B) One representative from the West Virginia board of examiners for registered professional nurses representing a bachelor and higher degree program;

(C) One representative from the West Virginia nurses association;

(D) One health care administrator;

(E) One registered professional staff nurse engaged in direct patient care; and

(F) One licensed practical nurse engaged in direct patient care.

(d) After the initial terms expire, the terms of all the members shall be four years, with no member serving more than two consecutive terms.
(e) The board shall designate a chairperson. Six members shall constitute a quorum.

§30-7B-6. Board’s powers and duties.

The board of directors shall have the following powers and duties:

1. Employ an executive director and other personnel necessary to carry out the provisions of this article;
2. Determine operational policy;
3. Seek and accept public and private funding;
4. Expend money from the center for nursing fund to carry out the purposes of this article;
5. Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine of this code to implement the provisions of this article;
6. Impanel an advisory committee of stakeholders to provide consultation to the board; and
7. Do such other acts as necessary to alleviate the nursing shortage in West Virginia.

§30-7B-7. Reimbursement for expenses.

The board members shall serve without compensation, but may be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of official duties in a manner consistent with guidelines of the travel management office of the department of administration.

§30-7B-8. Special revenue account.
(a) A special revenue account known as the "center for nursing fund" is hereby established in the state treasury to be administered by the board to carry out the purposes of this article.

(b) The account shall be funded by:

(1) Assessing all nurses licensed by the board of examiners for registered professional nurses, pursuant to section eight-a, article seven of this chapter, and the board of examiners for licensed practical nurses, pursuant to section seven-a, article seven-a of this chapter, a supplemental licensure fee not to exceed ten dollars per year; and

(2) Other public and private funds.

(c) Beginning the first day of January, two thousand six, and continuing at least two years, a minimum of an equivalent of one third of the funding from the annual supplemental licensure fees shall be used for loan and scholarship programs.

§30-7B-9. Reports.

The center shall report annually to the joint committee on government and finance on its progress in developing a statewide strategic plan to address the nursing shortage in West Virginia, along with drafts of proposed legislation needed to implement the center's plan.

§30-7B-10. Continuation.

The West Virginia center for nursing shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.
CHAPTER 191

(Com. Sub. for S. B. 675 — By Senators Ross and Love)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17-22-13, §17-22-15 and §17-22-16 of the code of West Virginia, 1931, as amended, all relating to the issuance of licenses and permits for outdoor advertising signs; increasing fees for licenses and permits; and establishing fees for inspections of signs and sign locations.

Be it enacted by the Legislature of West Virginia:

That §17-22-13, §17-22-15 and §17-22-16 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 22. OUTDOOR ADVERTISING.

§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

§17-22-15. Permit required for each sign, etc.; applications; refusal of permits; expiration and renewal; change of advertising copy; revocation; fee; judicial review.

§17-22-16. Permit identification number for signs; fastening to signs.

§17-22-13. Licenses required; application; expiration; exceptions; revocations; judicial review.

No person shall engage or continue in the business of outdoor advertising in this state without first obtaining a license for outdoor advertising from the commissioner; and no person shall construct, erect, operate, use, maintain, lease or sell any outdoor advertising sign, display or device in this state...
without first obtaining a license from the commissioner. The commissioner shall charge an annual license fee in the amount of one hundred twenty-five dollars, payable in advance, for licensees obtaining up to twenty permits. Licensees, including subsidiaries and affiliates, obtaining twenty-one or more permits shall pay an annual fee of one thousand dollars, payable in advance. Applications for licenses, or renewal of licenses, shall be made on forms furnished by the commissioner and shall contain any pertinent information required by the commissioner and shall be accompanied by the annual fee. Licenses granted under this section expire on the thirtieth day of June of each year and shall not be prorated. Applications for the renewal of licenses shall be made not less than thirty days prior to the date of expiration. Nothing in this section shall be construed to require any person to obtain a license who constructs, erects, operates, uses or maintains an outdoor advertising sign, display or device solely on his or her own property.

The commissioner may, after thirty days' notice in writing to the licensee, make and enter an order revoking any license granted by him or her upon repayment of a proportionate part of the license fee, in any case where he or she finds that any material information required to be given in the application for the license is knowingly false or misleading or that the licensee has violated any of the provisions of this article, unless the licensee, before the expiration of said thirty days, corrects the false or misleading information and complies with the provisions of this article. The order shall be accompanied by findings of fact and conclusions of law upon which the order was made and entered. Any person adversely affected by an order made and entered by the commissioner is entitled to judicial review of the order. The judicial review shall be in the circuit court for the county in which the owner of the sign has his or her principal place of business in this state, or in the
circuit court of Kanawha county if all parties agree. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals of West Virginia. Legal counsel and services for the commissioner in appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the attorney general or his or her assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner may employ special counsel to represent the commissioner in a particular proceeding.

§17-22-15. Permit required for each sign, etc.; applications; refusal of permits; expiration and renewal; change of advertising copy; revocation; fee; judicial review.

(a) Except as in this article otherwise provided, no person shall construct, erect, operate, use, maintain or cause or permit to be constructed, erected, operated, used or maintained any advertising sign, display or device without first obtaining a permit for the advertising sign, display or device from the commissioner and paying the annual fee for the advertising sign, display or device as provided in this section. The commissioner shall not issue a permit to any person who has not obtained the license provided for in section thirteen of this article.

(b) A separate application for a permit shall be made for each separate advertising sign, display or device, on a form furnished by the commissioner, the application shall be signed by the applicant or his or her representative duly authorized in writing to act for him or her and shall describe and set forth the size, shape and the nature of the proposed advertising sign, display or device and its actual or proposed location with sufficient accuracy to enable the commissioner to locate and
identify it. Every application for a changeable message sign shall be accompanied by a fee of five hundred dollars, which shall be retained by the commissioner if the permit is issued. Every application for all other signs shall be accompanied by a fee of twenty dollars for each advertising sign, display or device, which shall be retained by the commissioner if the permit is issued. In addition, a nonrefundable inspection fee of seventy-five dollars shall be charged for each proposed location along interstate and federal-aid primary highways. A nonrefundable inspection fee of twenty-five dollars shall be charged for each proposed location along all other public roads. An annual permit renewal fee, not to exceed sixty dollars per permit, shall be charged for renewal of each changeable message sign. Permit renewal fees for all other signs shall be established by legislative rule not to exceed twenty-five dollars per permit annually. Each portion of an advertising sign upon which a display is posted or exhibited constitutes a separate advertising sign for purposes of this section. If the permit is refused, the commissioner shall make and enter an order to that effect and shall cause a copy of the order to be served on the applicant by certified mail, return receipt requested, and shall refund one-half the fee to the applicant. The order shall be accompanied by findings of fact and conclusions of law upon which the order was made and entered. Each application shall be accompanied by an affidavit of the applicant or his or her agent that the owner or other person in control or possession of the real property upon which the advertising sign, display or device is to be constructed, erected, operated, used or maintained has consented to having the advertising sign, display or device on his or her property. Application shall be made in like manner for a permit to operate, use or maintain any existing advertising sign, display or device. Permits issued under this section expire on the thirtieth day of June of each year and shall not be prorated and may be renewed upon the payment of a renewal fee as provided
in this section. No application is required for a renewal of a permit.

(c) For all signs other than changeable message signs, if more than one side of an advertising sign is used for advertising, a permit application or renewal fee for each side is required. One permit application or renewal fee shall be charged for each changeable message sign. Advertisements sculptured in the round shall be treated as using three sides.

(d) The holder of a permit, during the term of the permit, has the right to change the advertising copy of the structure or sign for which it was issued without payment of any additional fee.

(e) The commissioner may, after thirty days' notice in writing to the permittee, make and enter an order revoking any permit issued by him or her under this section upon repayment of a proportionate part of the fee in any case where it shall appear to the commissioner that the application for the permit contains knowingly false or misleading information or that the permittee has violated any of the provisions of this article, unless the permittee shall, before the expiration of the thirty days, correct the false or misleading information and comply with the provisions of this article. The order shall be accompanied by findings of fact and conclusions of law upon which the order was made and entered. If the construction, erection, operation, use or maintenance of any advertising sign, display or device for which a permit is issued by the commissioner and the permit fee has been paid as provided for in this section is prevented by any zoning board, commission or other public agency which also has jurisdiction over the proposed advertising sign, display or device, or its site, the fee for the advertising sign, display or device shall be returned by the commissioner and the permit revoked. But one-half the fee shall be considered to have accrued upon the erection of an advertising sign
or structure or the display of advertising material followed by any inspection by the commissioner or his or her representatives.

(f) Any person adversely affected by an order made and entered by the commissioner refusing to grant or revoking a permit is entitled to judicial review of the order. The judicial review shall be: (1) In the county in which the person applying for the permit has his or her principal place of business in this state; or (2) in the circuit court for the county in which the sign for which the permit is sought is to be located; or (3) in the circuit court of Kanawha County if all parties agree. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals of West Virginia. Legal counsel and services for the commissioner in appeal proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the attorney general or his or her assistants, and in appeal proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation. The commissioner may employ special counsel to represent the commissioner in a particular proceeding.

§17-22-16. Permit identification number for signs; fastening to signs.

Every permit issued by the commissioner shall be assigned a separate identification number and each permittee shall fasten to each advertising sign or device and each advertising display not posted on an advertising sign a label or marker not larger than two inches by six inches, which shall be furnished by the commissioner, and on which shall be plainly visible the permit number, the expiration date of the permit and the name of the permittee. Permittees shall be charged five dollars for each label or marker issued. The construction, erection, operation, use or maintenance of an outdoor advertising sign, display or
11 device without having affixed to it a label or marker shall be 
12 prima facie evidence that it has been constructed or erected and 
13 is being operated, used or maintained in violation of the 
14 provisions of this article.

CHAPTER 192

(H. B. 4740 — By Delegates Michael, Doyle, Campbell, 
Leach, Boggs, Stalnaker and Warner)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by 
adding thereto a new article, designated §29-12D-1, §29-12D-2 
and §29-12D-3, all relating to the establishment, initial funding 
and operation of a patient injury compensation fund; creating a 
patient injury compensation fund; providing initial funding; 
providing the fund is not an insurer or insurance company under 
the code; providing for administration by the board of risk and 
insurance management; specifying certain powers and authority 
of the board; protecting the assets of the fund; requiring an annual 
audit of the fund by an independent actuary; providing immunity 
for the state and its agents for the debts, liabilities or obligations 
of the fund; providing for payments from the fund to qualified 
claimants; providing limits on the amount on payment in respect 
of any occurrence; authorizing payments from the fund either in 
lump sums or periodic payments; establishing procedures; 
providing for proration of payments under certain circumstances; 
authorizing the payment of reasonable attorney fees; and provid­
ing for appeals.

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 §29-12D-1, §29-12D-2 and §29-12D-3, all to read as follows:

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

§29-12D-1. Creation of patient injury compensation fund; purpose; initial funding of patient injury compensation fund.

§29-12D-2. Administration of fund; investment of fund assets; annual actuarial review and audit; fund assets and liabilities not assets and liabilities of the state.

§29-12D-3. Payments from the patient injury compensation fund.

§29-12D-1. Creation of patient injury compensation fund; purpose; initial funding of patient injury compensation fund.

(a) There is created the West Virginia patient injury compensation fund, for the purpose of providing fair and reasonable compensation to claimants in medical malpractice actions for any portion of economic damages awarded that is uncollectible as a result of limitations on economic damage awards for trauma care, or as a result of the operation of the joint and several liability principles and standards, set forth in article seven-b, chapter fifty-five of this code. The fund shall consist of all contributions, revenues and moneys which may be paid into the fund from time to time by the state of West Virginia or from any other source whatsoever, together with any and all interest, earnings, dividends, distributions, moneys or revenues of any nature whatsoever accruing to the fund.

(b) Initial funding for the fund shall be provided as follows: during fiscal year two thousand five, two million two hundred thousand dollars of the revenues that would otherwise be transferred to the tobacco account established at subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen. article three, chapter
thirty-three of this code shall be transferred to the fund; during
fiscal year two thousand six, two million two hundred thousand
dollars of the revenues that would otherwise be transferred to
the tobacco account established at subsection (b), section two,
article eleven-a, chapter four of this code pursuant to the
provisions of section fourteen, article three, chapter thirty-three
of this code, shall be transferred to the fund; and during fiscal
year two thousand seven, two million two hundred thousand
dollars of the revenues that would otherwise be transferred to
the tobacco account established at subsection (b), section two,
article eleven-a, chapter four of this code pursuant to the
provisions of section fourteen, article three, chapter thirty-three
of this code shall be transferred to the fund. Beginning fiscal
year two thousand eight, if and to the extent additional funding
for the fund is required from time to time to maintain the
actuarial soundness of the fund, the additional funding may be
provided by further act of the Legislature, either from the
revenue stream identified in this subsection or otherwise.
Payments to the tobacco fund shall be extended until the
tobacco fund is repaid in full.

(c) The fund is not and shall not be considered a defendant
in any civil action arising under article seven-b, chapter fifty-
five of this code.

(d) The fund is not and shall not be considered an insurance
company or insurer for any purpose under this code.

§29-12D-2. Administration of fund; investment of fund assets;
annual actuarial review and audit; fund assets
and liabilities not assets and liabilities of the state.

(a) The patient injury compensation fund shall be imple-
mented, administered and operated by the board of risk and
insurance management. In addition to any other powers and
authority expressly or impliedly conferred on the board of risk and insurance management in this code, the board may:

(1) Receive, collect and deposit all revenues and moneys due the fund;

(2) Employ, or in accordance with the provisions of law applicable contract for personal, professional or consulting services, retain the services of a qualified competent actuary to perform the annual actuarial study of the fund required by this section and advise the board on all aspects of the fund’s administration, operation and defense which require application of the actuarial science;

(3) Contract for any services necessary or advisable to implement the authority and discharge the responsibilities conferred and imposed on the board by this article;

(4) Employ, or contract with, legal counsel of the board’s choosing to advise and represent the board and represent the fund in respect of any and all matters relating to the operation of the fund and payments out of the fund;

(5) Employ necessary or appropriate clerical personnel to carry out the responsibilities of the board under this part; and

(6) Promulgate rules, in accordance with article three, chapter twenty-nine-a of this code as it considers necessary or advisable to implement the authority of and discharge the responsibilities conferred and imposed on the board by this article.

(b) The assets of the fund, and any and all income, dividends, distributions or other income or moneys earned by or accruing to the benefit of the fund, shall be held in trust for the purposes contemplated by this article, and shall not be spent for
any other purpose: *Provided,* That the assets of the fund may be used to pay for all reasonable costs and expenses of any nature whatsoever associated with the ongoing administration and operation of the fund. All assets of the fund from time to time shall be deposited with, held and invested by, and accounted for separately by the investment management board. All moneys and assets of the fund shall be invested and reinvested by the investment management board in the same manner as provided by law for the investment of other trust fund assets held and invested by the investment management board.

(c) The board shall cause an annual review of the assets and liabilities of the fund to be conducted on an annual basis by a qualified, independent actuary.

(d) The board shall cause an audit of the fund to be conducted on an annual basis by a qualified, independent auditor.

(e) The state of West Virginia is not liable for any liabilities of the fund. Claims or expenses against the fund are not a debt of the state of West Virginia or a charge against the general revenue fund of the state of West Virginia.

§29-12D-3. **Payments from the patient injury compensation fund.**

(a) Other than payments in connection with the ongoing operation and administration of the fund, no payments may be made from the fund other than in satisfaction of claims for economic damages to qualified claimants who would have collected economic damages but for the operation of the limits on economic damages set forth in article seven-b, chapter fifty-five of this code.

(b) For purposes of this article, a qualified claimant must be both a “patient” and a “plaintiff” as those terms are defined in article seven-b, chapter fifty-five of this code.
(c) Any qualified claimant seeking payment from the fund must establish to the satisfaction of the board that he or she has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages, following procedures prescribed by the board by legislative rule.

(d) Upon a determination by the board that a qualified claimant to the fund for compensation has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages arising under article seven-b, chapter fifty-five of this code, the board shall make a payment or payments to the claimant for economic damages. The economic damages must have been awarded but be uncollectible after the exhaustion of all reasonable means of recovery of applicable insurance proceeds. In no event shall the amount paid by the board in respect to any one occurrence exceed one million dollars or the maximum amount of money that could have been collected from all applicable insurance prior to the creation of the patient injury compensation fund under this article, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(e) The board, in its discretion, may make payments to a qualified claimant in a lump sum amount or in the form of periodic payments. Periodic payments are to be based upon the present value of the total amount to be paid by the fund to the claimant by using federally approved qualified assignments.

(f) In its discretion, the board may make a payment or payments out of the fund to a qualified claimant in connection with the settlement of claims arising under article seven-b, chapter fifty-five of this code, all according to rules promulgated by the board. The board shall prior to making payment determine that payment from the fund to a qualified claimant is
in the best interests of the fund. When the claimant and the board agree upon a settlement amount, the following procedure shall be followed:

(1) A petition shall be filed by the claimant with the court in which the action is pending, or if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between the claimant and the board.

(2) The court shall set the petition for hearing as soon as the court’s calendar permits. Notice of the time, date and place of hearing shall be given to the claimant and to the board.

(3) At the hearing the court shall approve the proposed settlement if the court finds it to be valid, just and equitable.

(g) If and to the extent that any payment to one or more qualified claimants under this section would deplete the fund during any fiscal year, payments to and among qualified claimant’s shall be prorated during the fiscal year according to the rules promulgated by the board. Any amounts due and unpaid to qualified claimants shall be paid in subsequent fiscal years from available funds, but only to the extent funds are available in any fiscal year, according to the board’s rules.

(h) Payments out of the fund may be used to pay reasonable attorney fees of attorneys representing qualified claimants receiving compensation in respect of economic damages as established by the board of risk and insurance management.

(i) The claimant may appeal a final decision made by the board pursuant to the provisions of article five, chapter twenty-nine-a of this code.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17, all relating generally to the creation of a pharmaceutical program for the state; legislative findings; definitions; creation of the prescription drug assistance clearinghouse program; requiring costs of program to be paid by drug manufacturers; transfer of ownership of the program to the state; establishment of pharmaceutical discount program; eligibility for participation in the pharmaceutical discount program; discount pass through; creation of a West Virginia pharmaceutical cost management council; establishing membership; establishing powers and responsibilities; reporting requirements; authority to investigate the feasibility of purchasing Canadian drugs; authority to establish a pricing schedule to be implemented upon concurrent resolution of the Legislature; authority to explore numerous strategies, policies, and programs, including, but not limited to, referenced prices for prescription drug purchases and pricing in the state; authority to implement certain designated programs; state responsibilities; prohibiting restraint of trade; providing civil and criminal penalties for restraint of trade; advertising costs and reporting; rule-making authority; sunset provisions; and identifying potential use of savings.
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 §5A-3C-1, §5A-3C-2, §5A-3C-3, §5A-3C-4, §5A-3C-5, §5A-3C-6, §5A-3C-7, §5A-3C-8, §5A-3C-9, §5A-3C-10, §5A-3C-11, §5A-3C-12, §5A-3C-13, §5A-3C-14, §5A-3C-15, §5A-3C-16 and §5A-3C-17, all to read as follows:


§5A-3C-1. Title.
§5A-3C-2. Purpose.
§5A-3C-3. Definitions.
§5A-3C-4. Creation of clearinghouse program.
§5A-3C-5. Pharmaceutical discount program; establishment; eligible individuals; discount pass through; terms.
§5A-3C-6. Creation of program; administrative support; medicaid and chip program.
§5A-3C-7. Multistate discussion group.
§5A-3C-8. West Virginia pharmaceutical cost management council.
§5A-3C-9. Investigation of Canadian drugs; wholesaling; federal waivers.
§5A-3C-10. Director’s powers; ability to enter drug purchasing contracts.
§5A-3C-11. Agency’s management ability continued.
§5A-3C-12. Restraint of trade; civil and criminal violations defined.
§5A-3C-13. Advertising costs; reporting of same.
§5A-3C-14. State role.
§5A-3C-15. Rulemaking.
§5A-3C-16. Sunset provision.
§5A-3C-17. Potential use of savings.

§5A-3C-1. Title.

1 The provisions of this article shall be known as and referred to as the "West Virginia Pharmaceutical Availability and Affordability Act".

§5A-3C-2. Purpose.

1 (a) The Legislature finds:
(1) That the rising cost of prescription drugs has imposed a significant hardship on individuals who have limited budgets, are uninsured or who have prescription coverage that is unable to control costs successfully due to cost shifting and disparate pricing policies;

(2) That the average cost per prescription for seniors rose significantly between one thousand nine hundred ninety-two and two thousand, and is expected to continue increasing significantly through two thousand ten;

(3) That there is an increasing need for citizens of West Virginia to have affordable access to prescription drugs; and

(4) That the Legislature does not intend the imposition of the programs under this article to penalize or otherwise jeopardize the benefits of veterans and other recipients of federal supply schedule drug prices.

(b) In an effort to promote healthy communities and to protect the public health and welfare of West Virginia residents, the Legislature finds that it is its responsibility to make every effort to provide affordable prescription drugs for all residents of West Virginia.

§5A-3C-3. Definitions.

In this article:

(1) “Advertising or marketing” means any manner of communication of information, either directly or indirectly, that is paid for and usually persuasive in nature about products, services or ideas related to pharmaceuticals by identified sponsors through various media, persons or other forms as further defined by legislative rule.
(2) "AWP" or "average wholesale price" means the amount determined from the latest publication of the blue book, a universally subscribed pharmacist reference guide annually published by the Hearst Corporation. "AWP" or "average wholesale price" may also be derived electronically from the drug pricing database synonymous with the latest publication of the blue book and furnished in the national drug data file (NDDF) by first data bank (FDB), a service of the Hearst Corporation.

(3) "Dispensing fee" means the fee charged by a pharmacy to dispense pharmaceuticals.

(4) "Drug manufacturer" or "pharmaceutical manufacturer" means any entity which is engaged in: (A) The production, preparation, propagation, compounding, conversion or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; or (B) in the packaging, repackaging, labeling, relabeling or distribution of prescription drug products. "Drug manufacturer" or "pharmaceutical manufacturer" does not include a wholesale distributor of drugs or a retail pharmacy licensed under state law.

(5) "Federal supply schedule" or "FSS" means the price available to all federal agencies for the purchase of pharmaceuticals authorized in the Veterans Health Care Act of 1992, PL 102-585. FSS prices are intended to equal or better the prices manufacturers charge their "most-favored" non-federal customers under comparable terms and conditions.

(6) "Multiple-source drug", "innovator drug" and "noninnovator drug" mean the following:

(A) The term "multiple-source drug" means, for which there are two or more drug products which are: Rated as
therapeutically equivalent (under the food and drug administration’s most recent publication of “Approved Drug Products with Therapeutic Equivalence Evaluations”), except as provided in paragraph (B) of this subdivision, are pharmaceutically equivalent and bioequivalent, as determined by the food and drug administration, and the term “innovator drug” shall hereinafter be referred to as “brand”. The term “innovator drug” means a drug which is produced or distributed under an original new drug application approved by the food and drug administration, including a drug product marketed by any cross-licensed producers or distributors operating under the new drug application and any multiple-source drug that was originally marketed under an original new drug application approved by the food and drug administration. The term “noninnovator drug” shall hereinafter be referred to as “generic”. The term “noninnovator drug” means a multiple-source drug that is not an “innovator drug”.

(B) Paragraph (A) of this subdivision shall not apply if the food and drug administration changes by regulation the requirement that, for purposes of the publication described in paragraph (A) of this subdivision, in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent.

(7) “Labeler” means an entity or person that receives prescription drugs from a manufacturer or wholesaler and repackages those drugs for later retail sale and that has a labeler code from the federal food and drug administration pursuant to 21 C. F. R. §207.20 (1999).

(8) “Person” means any natural person or persons or any corporation, partnership, company, trust or association of persons.

(9) “Pharmaceutical drug detailing” or “detailing” means the function performed by a sales representative who is
employed by a pharmaceutical manufacturer for the purpose of:
Promotion of pharmaceutical drugs or related products;
education about pharmaceutical drugs or related products; or to
provide samples of pharmaceutical drugs, related products or
related materials, gifts, food or meals.

(10) “Savings” means the difference between the previous
price of a prescription drug including any discounts, rebates or
price containments and the current price after the effective date
of this article for the public employees insurance agency,
children’s health insurance program, medicaid and workers’
compensation programs or other programs which are payors for
prescription drugs.

(11) “Sole source” means a pharmaceutical that provides a
unique and powerful advantage available in the market to a
broad group of patients established under federal law.

(12) “West Virginia Pharmaceutical Cost Management
Council” or “council” means the council created pursuant to
section eight of this article.

§5A-3C-4. Creation of clearinghouse program.

(a) There is hereby created the state prescription drug
assistance clearinghouse program. The brand pharmaceutical
manufacturers shall create and implement a program to assist
state residents who are low income or uninsured to gain access
to prescription medications through existing private and public
sector programs and prescription drug assistance programs
offered by manufacturers, including discount and coverage
programs. The brand pharmaceutical manufacturers shall use
available computer software programs that access an eligible
individual with the appropriate private or public programs
relating to the individual’s medically necessary drugs. The
brand pharmaceutical manufacturers shall provide education to
individuals and providers to promote the program and to expand enrollment and access to necessary medications for low-income or uninsured individuals qualifying for the programs. The participating brand pharmaceutical manufacturers shall be responsible for the cost of the establishment of the program, and be responsible for running the program, regardless of the date of transfer of the program to the state, for the period of time until a date no earlier than the thirtieth day of June, two thousand five, and ownership of the technology, website and other program features shall be transferred to the state on the same date. The secretary of the department of health and human resources and the director of the public employees insurance agency shall provide joint oversight over the establishment and construction of the program and program features for the period of time prior to the transfer of ownership to the state. The pharmaceutical council shall recommend the state agency to own, control and operate the program, technology and program features, and shall include such recommendation in its report on or before the first day of September, two thousand four, to the joint committee on government and finance, as provided for in section eight of this article. In addition, the pharmaceutical manufacturers shall report to the Joint Committee on Government and Finance on a monthly basis all activities related to the implementation of this program including the number of citizens serviced and the services provided.

(b) The participating brand pharmaceutical manufacturers shall contribute the funding for the promotion of the public relations program attendant to the establishment of the program. The participating brand pharmaceutical manufacturers shall be responsible for the cost of the establishment of the program and the cost of the ongoing program, regardless of the date of transfer of ownership of the program to the state, for the period of time until the thirty-first day of December, two thousand four.
§5A-3C-5. Pharmaceutical discount program; establishment; eligible individuals; discount pass through; terms.

There is hereby established a discount drug program to provide low-income, uninsured individuals with access to prescription drugs from participating brand pharmaceutical companies and pharmacists through either a state-sponsored discount card program or a program that extends current brand pharmaceutical manufacturer prescription drug assistance programs:

(a) The state hereby establishes a state-sponsored prescription drug discount card program for certain eligible residents of West Virginia:

(1) Eligible individuals include uninsured residents of West Virginia up to two hundred per cent of the federal poverty guideline who have not been covered by a prescription drug program, whether public or private, at least six months prior to applying to the discount card program;

(2) The state may negotiate voluntary discounts with brand pharmaceutical manufacturers and pharmacists: Provided, That the total discount received from the manufacturer shall pass through to the eligible resident;

(3) Failure of a brand pharmaceutical manufacturer to participate in the voluntary discount card program will not result in prior authorization on drugs in the medicaid program which would not otherwise be subject to prior authorization but for the failure of the manufacturer to participate in this program; and

(4) The state shall not establish a formulary or preferred drug list as part of the discount card program.
(b) The brand pharmaceutical manufacturers may extend existing prescription drug assistance programs to eligible residents of West Virginia. Eligible individuals include uninsured residents of West Virginia up to two hundred percent of the federal poverty level who have not been covered by a prescription drug program, whether public or private, at least six months prior to applying to the program.

(c) The program established under this section shall be structured so that a member presenting a discount card at a participating pharmacy will receive the full benefit of the pharmacy discount, as well as the manufacturer's discount, at a point of sale transaction. The program, or the pharmacy benefit manager contracted by the program, shall coordinate the drug discount information provided by participating pharmacies and manufacturers so that the available drug discounts are provided to the member at the point of sale.

(d) Manufacturers participating in the voluntary program established under this section shall cooperate with the program, or the pharmacy benefit manager contracted by the program, to provide the current list of drugs and the percentage of discount from the AWP for such drugs, or the rebates that the manufacturer will provide under the program. It is the intent of this program that adequate drug price and discount or rebate information be provided by the manufacturer, such that the program and participating pharmacies will have available such drug prices and discounts or rebates at a point of sale pharmaceutical drug transaction. Retail pharmacies will be responsible for no more than fifty percent of the discount offered by the manufacturer to the participant.

(1) Pharmacies participating in the voluntary program(s) established under this section will be responsible for no more than fifty percent of the discount offered by the manufacturer to the participant, and be paid a dispensing fee of no more than
three dollars and fifty cents per prescription with regard to prescriptions filled under the program(s).

(2) Upon the presentation of a valid discount card, payment for the prescription and otherwise meeting appropriate criteria to have their prescription filled, the cardholder will have their prescription filled by a participating pharmacy. To accomplish the transaction, the participating pharmacy shall electronically transmit the transaction to the program or pharmacy benefit manager contracted by the program for processing. The program, or the program's pharmacy benefit manager, shall determine the discounted cost of the drug, including the discount provided, the discount provided by the pharmacy, the discount or rebate provided by the manufacturer, the pharmacy dispensing fee, and any pharmacy benefit manager transaction fee. The program, or the program’s pharmacy benefit manager, shall then transmit to the manufacturer an electronic statement of the amount the manufacturer owes on the transaction to cover the manufacturer's discount or rebate and the program’s or the pharmacy benefit manager’s processing fee. The manufacturer shall, in turn, at least every fourteen days, transmit such monetary amounts for the transaction to the program, or the program’s pharmacy benefit manager, and the program, or the program’s pharmacy benefit manager, shall pass such discount or rebate amounts back to the participating pharmacy which originated the transaction immediately.

(e) The pharmaceutical manufacturers shall report to the Joint Committee on Government and Finance on a monthly basis all activities related to the implementation of this program including the number of citizens serviced and the services provided, as well as, the benefits, the costs and the discounts obtained.

§5A-3C-6. Creation of program; administrative support; medicaid and chip program.
(a) There is hereby created in the state a program to obtain favorable pharmaceutical prices for state agencies and other qualified entities pursuant to this article.

(b) The medicaid program and the West Virginia children’s health insurance program may be exempt from participation in this program until approval by the center for medicare and medicaid services has been granted if it is determined to be required by the council.

(c) Administrative staff support for the council created by this article shall be provided by the departments represented on the council.

(d) The council shall establish a pricing schedule using or referencing the FSS prices, or using or referencing to the price, as adjusted for currency valuations, set by Canada patented medicine prices review board (PMPRB) or any other appropriate referenced price that will maximize savings to the broadest percentage of the population of this state.

(e) By September fifteenth of two thousand four, the council shall report back to the Legislature the pricing schedule developed and a strategic plan for implementation. The council shall implement the proposed pricing schedule and strategic plan upon concurrent resolution of the Legislature. If, at the time of the acceptance or rejection of the concurrent resolution to implement the proposed pricing schedule and strategy, the concurrent resolution is not passed due to the Legislature’s lack of acceptance of the same, the Legislature shall accept or reject a concurrent resolution to implement the pricing schedule and strategy using or referencing the FSS: Provided, That acceptance or rejection of the above referenced resolutions shall occur prior to the end of the regular session of the Legislature in two thousand five.
(f) If neither of the above referenced resolutions pass during the regular session of the Legislature in two thousand five, the Legislature may, at any time in the future, pass a concurrent resolution to implement the above referenced pricing schedule and strategy or any subsequent recommendation of the council to the Legislature and the Legislature determines that the proposed pricing schedule and strategy are the most effective method of reducing pharmaceutical prices for the citizens of the state.

(g) Qualified entities, including, but not limited to, licensed private insurers, self insured employers, free clinics and other entities who provide pharmaceuticals either directly or through some form of coverage to the citizens of West Virginia shall have an option to apply for participation in the program established by this article in the form and manner established by the council. The council, in its sole discretion, shall approve or deny participation through review of documentation determined to be necessary for full consideration and as established by rule. The council shall consider, but not be limited to, the fiscal stability and the size of each applicant.

(h) Pharmaceutical manufacturers may request a waiver from the pricing schedule to be granted by the council for a particular drug in which the development, production, distribution costs, other reasonable costs and reasonable profits, but exclusive of all marketing and advertising costs as determined by the council, is more than the pricing schedule rate of the pharmaceutical or in those cases in which the pharmaceutical in question has a sole source. The determination of reasonable costs and reasonable profits may fluctuate between different pharmaceuticals under consideration by the council. The council shall determine by legislative rule fees to be paid by the applicant at the time a waiver request is made and documentation required to be submitted at the time of the waiver request.
§5A-3C-7. Multistate discussion group.

For the purposes of reviewing or amending the program establishing the process for making pharmaceuticals more available and affordable to the citizens of West Virginia, the state may continue to enter into multistate discussions and agreements. For purposes of participating in these discussions, the state shall be represented by members of the council created in section eight of this article.

§5A-3C-8. West Virginia pharmaceutical cost management council.

(a) There is hereby created the West Virginia pharmaceutical cost management council which consists of the secretary of the department of administration or his or her designee, the director of the public employees insurance agency or his or her designee, the commissioner of the bureau of medical services of the department of health and human resources or his or her designee, the commissioner of the bureau of medical services of the department of health and human resources or his or her designee, the executive director of the workers' compensation commission or his or her designee, the commissioner of the bureau of medical services of the department of health and human resources or his or her designee, the executive director of the workers' compensation commission or his or her designee, the commissioner of the bureau of medical services of the department of health and human resources or his or her designee, the executive director of the workers' compensation commission or his or her designee, the commissioner of the bureau of medical services of the department of health and human resources or his or her designee, the executive director of the workers' compensation commission or his or her designee, the commissioner of the bureau of medical services of the department of health and human resources or his or her designee, the executive director of the workers' compensation commission or his or her designee, five members from the public who shall be appointed by the governor with the advice and consent of the Senate. One public member shall be a licensed pharmacist employed by a community retail pharmacy, one public member shall be a representative of a pharmaceutical manufacturer with substantial operations located in the state of West Virginia that has at least seven hundred fifty employees, one public member shall be a primary care physician, one public member shall represent those who will receive benefit from the establishment of this program and one public member shall have experience in the financing, development or management of a health insurance company which provides pharmaceutical coverage. Each public member shall serve for a term of four years. Of the public members of
the council first appointed, one shall be appointed for a term ending the thirtieth day of June, two thousand six, and two each for terms of three and four years. Each public member shall serve until his or her successor is appointed and has qualified. A member of the council may be removed by the governor for cause.

(b) The secretary of the department of administration shall serve as chairperson of the council, which shall meet at times and places specified by the chairperson or upon the request of two members of the council.

(c) Authority members shall not be compensated in their capacity as members but shall be reimbursed for reasonable expenses incurred in the performance of their duties.

(d) The council has the power and authority to:

(1) Contract for the purpose of implementing the cost containment provisions of this article;

(2) File suit;

(3) Execute as permitted by applicable federal law, prescription drug purchasing agreements with:

(A) All departments, agencies, authorities, institutions, programs, any agencies or programs of the federal government, quasi-public corporations and political subdivisions of this state, including, but not limited to, the children’s health insurance program, the division of corrections, the division of juvenile services, the regional jail and correctional facility authority, the workers’ compensation fund, state colleges and universities, public hospitals, state or local institutions, such as nursing homes, veterans’ homes, the division of rehabilitation, public health departments, state programs, including, but not limited to, programs established in sections four and five of this
Provided, That any contract or agreement executed with or on behalf of the bureau of medical services shall contain all necessary provisions to comply with the provisions of Title XIX of the Social Security Act, 42 U. S. C. §1396 et seq., dealing with pharmacy services offered to recipients under the medical assistance plan of West Virginia;

(B) Governments of other states and jurisdictions and their individual departments, agencies, authorities, institutions, programs, quasi-public corporations and political subdivisions; and

(C) Regional or multi-state purchasing alliances or consortia, formed for the purpose of pooling the combined purchasing power of the individual members in order to increase bargaining power; and

(4) Consider strategies by which West Virginia may manage the increasing costs of prescription drugs and increase access to prescription drugs for all of the state’s citizens, including the authority to:

(A) Explore the enactment of fair prescription drug pricing policies;

(B) Explore discount prices or rebate programs for seniors and persons without prescription drug coverage;

(C) Explore programs offered by pharmaceutical manufacturers that provide prescription drugs for free or at reduced prices;

(D) Explore requirements and criteria, including the level of detail, for prescription drug manufacturers to disclose to the council expenditures for advertising, marketing and promotion, based on aggregate national data;
(E) Explore the establishment of counter-detailing programs aimed at educating health care practitioners authorized to prescribe prescription drugs about the relative costs and benefits of various prescription drugs, with an emphasis on generic substitution for brand name drugs when available and appropriate; prescribing older, less costly drugs instead of newer, more expensive drugs, when appropriate; and prescribing lower dosages of prescription drugs, when available and appropriate;

(F) Explore disease state management programs aimed at enhancing the effectiveness of treating certain diseases identified as prevalent among this state’s population with prescription drugs;

(G) Explore prescription drug purchasing agreements with large private sector purchasers of prescription drugs and including those private entities in pharmacy benefit management contracts: Provided, That no private entity may be compelled to participate in a purchasing agreement;

(H) Explore the feasibility of using or referencing, the federal supply schedule or referencing to the price, as adjusted for currency valuations, set by the Canada patented medicine prices review board (“PMPRB”), or any other appropriate referenced price to establish prescription drug pricing for brand name drugs in the state; and to review and determine the dispensing fees for pharmacies in such as established in section six of this article;

(I) Explore, if possible, joint negotiations for drug purchasing and a shared prescription drug pricing schedule and shared preferred drug list for use by the public employees insurance agency, the medicaid program, other state payors and private insurers;
(J) Explore coordination between the medicaid program, the public employees insurance agency and, to the extent possible, in-state hospitals and private insurers toward the development of a uniform preferred prescription drug list which is clinically appropriate and which leverages retail prices;

(K) Explore policies which promote the use of generic drugs, where appropriate;

(L) Explore a policy that precludes a drug manufacturer from reducing the amounts of drug rebates or otherwise penalize an insurer, health plan or other entity which pays for prescription drugs based upon the fact that the entity uses step therapy or other clinical programs before a drug is covered or otherwise authorized for payment;

(M) Explore arrangements with entities in the private sector, including self-funded benefit plans and nonprofit corporations, toward combined purchasing of health care services, health care management services, pharmacy benefits management services or pharmaceutical products on the condition that no private entity be compelled to participate in the prescription drug purchasing pool; and

(N) Explore other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug prices and increasing affordable access to prescription drugs for all West Virginia citizens;

(5) Contract with appropriate legal, actuarial and other service providers required to accomplish any function within the powers of the council;

(6) Develop other strategies, as permitted under state and federal law, aimed at managing escalating prescription drug prices and increasing affordable access to prescription drugs for all West Virginia citizens;
(7) Explore the licensing and regulation of pharmaceutical
detailers, including the requirement of continuing professional
education, the imposition of fees for licensing and continuing
education, the establishment of a special revenue account for
deposit of the fees and the imposition of penalties for noncom-
pliance with licensing and continuing education requirements,
and rules to establish procedures to implement the provisions of
the subdivision;

(8) The council shall report to the Legislature’s joint
committee on government and finance on or before the first day
of September, two thousand four, and report on or before the
thirty-first day of December, two thousand four, and annually
thereafter to the Legislature, and provide recommendations to
the Legislature on needed legislative action and other functions
established by the article or requested by the joint committee on
government and finance of the Legislature; and

(9) The council shall, upon the passage of this article,
immediately commence to study the fiscal impact to this state
of the federal “Medicare Prescription Drug Improvement and
Modernization Act of 2003” and shall report to the Legisla-
ture’s joint committee on government and finance on or before
the fifteenth day of October, two thousand four, as to the
findings of the council.

(10) The council shall develop an evaluation methodology
to certify and audit savings in the discount savings program by
determining the impact on growth and profit of the pharmaceu-
tical manufacturers to ensure that prices have not been inflated
to offset the discount card value.

(11) The council shall evaluate the clearinghouse estab-
lished by this article and the discount card program established
by this article to report to the Joint Committee on Government
and Finance, and the Legislative Oversight Commission on
Health and Human Resources Accountability, their findings and recommendations for further action by the Legislature.

(12) The council shall further: (1) Review determine that the implementation of the programs under this article will not jeopardize, reduce or penalize the benefits of veterans or other recipients of FSS drug prices, considering their respective co-pay structures, and the pricing mechanisms of their respective programs; (2) commence negotiations to obtain independent agreements or multi-state agreements as many as ten states to use or reference a pricing schedule as set forth in section six of this article; (3) and determine the ability to establish a savings of forty-two percent of the retail cost to be reported to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Health and Human Resources Accountability, as established in section eight of this article.

§5A-3C-9. Investigation of Canadian drugs; wholesaling; federal waivers.

The council created in section eight of this article and the director of the public employees insurance agency are authorized to investigate the feasibility of purchasing prescription drugs from sources in Canada, which may include the feasibility of the state or an instrumentality thereof serving as a wholesale distributor of prescription drugs in the state.

(a) Upon a determination by the council or the director of the public employees insurance agency that the same is feasible and in the best interests of the citizens of the state, the council or the director is authorized to pursue waivers from the federal government, including, but not limited to, from the United States food and drug administration, as necessary for the state to accomplish prescription drug purchasing from sources in Canada provided, however, if a waiver is not granted, the council is authorized to take necessary legal action.
16 (b) Upon a favorable finding by the appropriate federal agencies or courts, notwithstanding any provision of this code to the contrary, the council or the director of the public employees insurance agency may establish and implement a methodology to provide wholesale drugs to licensed pharmacies located within West Virginia, provided however, prior to the implementation, the Legislature must adopt a concurrent resolution authorizing such action.

§5A–3C-10. Director’s powers; ability to enter drug purchasing contracts.

1 Notwithstanding any provision of this code to the contrary, nothing contained in this article shall be construed to limit the powers and authority granted to the director of the public employees insurance agency pursuant to article sixteen-c, chapter five of this code. Notwithstanding any provision of this code to the contrary and specifically subdivision four, subsection (a), section four, article five-c, chapter five of this code, the director is authorized to execute prescription drug purchasing agreements without further enactment of the Legislature.

§5A–3C-11. Agency’s management ability continued.

1 Nothing contained in this article shall be construed to limit the ability of the various state agencies to enter into contracts or arrangements or to otherwise manage their pharmacy programs until such time as the programs created or authorized pursuant to this article are implemented.

§5A-3C-12. Restraint of trade; civil and criminal violations defined.

1 (a) The following are considered to restrain trade or commerce unreasonably and shall be unlawful:
(1) A contract, combination or conspiracy between two or more persons:

(A) For the purpose or with the intent to fix, control or maintain the market price, rate or fee of pharmaceuticals; or

(B) Allocate or divide customers or markets, functional or geographic, for any pharmaceutical.

(2) The establishment, maintenance or use of a monopoly or an attempt to establish a monopoly of trade or commerce, any part of which is within this state, by any persons for the purpose of or with the intent to exclude competition or control, fix or maintain pharmaceutical prices.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than one nor more than ten years, or fined in an amount consistent with the Clayton Act 15 U.S.C. §15 et seq. which may include treble damages, or both fined and confined.

(c) Any person violating the provisions of this section is liable for a civil penalty and fine in an amount consistent with the Clayton Act 15 U.S.C. §15 et seq. which may include treble damages, for each violation.

(d) The county prosecutor shall investigate suspected violations of, and institute criminal proceedings pursuant to, the provisions of this section.

(e) The attorney general or special counsel appointed by the governor, in his or her discretion, shall represent the state in all civil proceedings brought on behalf of the state to enforce the provisions of this section. After payment of all attorney fees and costs, no less than fifty percent of all judgments or settlements shall be placed in the general revenue fund of the state.
§5A-3C-13. Advertising costs; reporting of same.

(a) Advertising costs for prescription drugs, based on aggregate national data, must be reported to the state council by all manufacturers and labelers of prescription drugs dispensed in this state that employs, directs or utilizes marketing representatives. The reporting shall assist this state in its role as a purchaser of prescription drugs and an administrator of prescription drug programs, enabling this state to determine the scope of prescription drug advertising costs and their effect on the cost, utilization and delivery of health care services and furthering the role of this state as guardian of the public interest.

(b) The council shall establish, by legislative rule, the reporting requirements of information by labelers and manufacturers which shall include all national aggregate expenses associated with advertising and direct promotion of prescription drugs through radio, television, magazines, newspapers, direct mail and telephone communications as they pertain to residents of this state.

(c) The following shall be exempt from disclosure requirements:

(1) All free samples of prescription drugs intended to be distributed to patients;

(2) All payments of reasonable compensation and reimbursement of expenses in connection with a bona fide clinical trial. As used in this subdivision, "clinical trial" means an approved clinical trial conducted in connection with a research study designed to answer specific questions about vaccines, new therapies or new ways of using known treatments; or

(3) All scholarship or other support for medical students, residents and fellows to attend significant educational, scientific or policy-making conference of national, regional or specialty
medical or other professional association if the recipient of the scholarship or other support is selected by the association.

(d) The council is further authorized to establish time lines, the documentation, form and manner of reporting required as the council determines necessary to effectuate the purpose of this article. The council shall report to the joint committee on government and finance, in an aggregate form, the information provided in the required reporting.

(e) Notwithstanding any provision of law to the contrary, information submitted to the council pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia freedom of information act. Data compiled in aggregate form by the council for the purposes of reporting required by this section is a public record as defined in the West Virginia freedom of information act, as long as it does not reveal trade information that is protected by state or federal law.

§5A-3C-14. State role.

For purpose of implementing this article, the state represented by the council shall have authority to negotiate pharmaceutical prices to be paid by program participants. These negotiated prices shall be available to all programs.

§5A-3C-15. Rulemaking.

The council may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement any section of this article.

§5A-3C-16. Sunset provision.

The council shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day
3 of July, two thousand eight, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

§5A-3C-17. Potential use of savings.

Savings identified by all program participants shall be quantified and certified to the council and included in the annual report of the council to the Legislature provided for in section eight of this article. Savings, or any part thereof, created by the implementation of this program may, in the sole discretion of the Legislature, be directed towards the maintenance of existing state health programs and the expansion of insurance programs for the uninsured and underinsured.

CHAPTER 194

(H. B. 4480 —By Delegates Beane, Ennis, Butcher, Manuel, Perdue, Blair and Romine)

[Passed March 12, 2004: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §22C-11-4 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22C-11-6, all relating to continuation of West Virginia’s participation in the interstate commission on the Potomac river basin.

Be it enacted by the Legislature of West Virginia:

That §22C-11-4 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 §22C-11-6, all to read as follows:
ARTICLE 11. INTERSTATE COMMISSION ON THE POTOMAC RIVER BASIN.

§22C-11-4. Effective date; findings.
§22C-11-6. Continuation of participation in compact.

§22C-11-4. Effective date; findings.

1 This article shall become effective upon the adoption of
2 substantially similar amendments to the interstate compact by
3 each of the signatory states to the compact, and upon the
4 approval of the amendments to the compact by the Congress of
5 the United States.

§22C-11-6. Continuation of participation in compact.

1 West Virginia's membership in the interstate commission
2 on the Potomac river basin, shall continue to exist, pursuant to
3 the provisions of article ten, chapter four of this code, until the
4 first day of July, two thousand ten, unless sooner terminated,
5 continued or reestablished pursuant to the provisions of that
6 article.

CHAPTER 195

(H. B. 4308 — By Delegates Leach, Michael, Perdue and Susman)

[Amended and Again Passed March 21, 2004, as a Result of the Objections of the
Governor; in Effect Ninety Days from Passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5-11A-3a, relating to
providing immunity from civil damages to a worker, contractor,
engineer or architect, who in good faith provides services or
materials, without remuneration, to build or install certain handicap accessibility features in accordance with applicable building codes and state and federal laws.

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 §5-11A-3a, to read as follows:

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-3a. Volunteer services or materials to build or install universal accessibility features; workers, contractors, engineers, architects; immunity from civil liability.

1 Any person, including a worker, contractor, engineer or architect, who in good faith provides services or materials, without remuneration, to build or install handicap accessible features as set forth in section five of this article, may not be liable for any civil damages as the result of any act or omission in providing such services or materials: Provided, That the universal accessible feature or features shall be built or constructed in accordance with applicable state and federal laws and applicable building codes.

CHAPTER 196

(Com. Sub. for H. B. 4291 — By Delegates Amores, Perdue, Long, Foster and Trump)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §30-1-7a of the code of West Virginia, 1931, as amended, relating to continuing education requirements for licensed healthcare professionals on the subject of end-of-life care training, including pain management coursework.

Be it enacted by the Legislature of West Virginia:

That §30-1-7a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-7a. Continuing education.

(a) Each board referred to in this chapter shall establish continuing education requirements as a prerequisite to license renewal. Each board shall develop continuing education criteria appropriate to its discipline, which shall include, but not be limited to, course content, course approval, hours required and reporting periods.

(b)(1) Notwithstanding any other provision of this code or the provision of any rule to the contrary, each person issued a license to practice medicine and surgery or a license to practice podiatry or a license as a physician assistant by the West Virginia board of medicine, each person licensed as a pharmacist by the West Virginia board of pharmacy, each person licensed to practice registered professional nursing or licensed as an advanced nurse practitioner by the West Virginia board of examiners for registered professional nurses, each person licensed as a licensed practical nurse by the West Virginia state board of examiners for licensed practical nurses and each person licensed to practice medicine and surgery as an osteopathic physician and surgeon or certified as an osteopathic physician assistant by the West Virginia board of osteopathy...
shall complete two hours of continuing education coursework in the subject of end-of-life care including pain management during each continuing education reporting period through the reporting period ending the thirtieth day of June, two thousand five. The two hours shall be part of the total hours of continuing education required by each board by rule and not two additional hours.

(2) Effective as of the reporting period beginning the first day of July, two thousand five, the coursework requirement imposed by this subsection will become a one-time requirement, and all licensees who have not completed the coursework requirement shall complete the coursework requirement prior to his or her first license renewal.

CHAPTER 197

(H. B. 4484 — By Mr. Speaker, Mr. Kiss, and Delegates Cann, Varner, Stemple and Beach)

[Passed March 1, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-3-11a of the code of West Virginia, 1931, as amended, relating to allowing the board of medicine to issue a limited license to practice medicine and surgery without examination to an individual appointed to a West Virginia medical school faculty who holds a valid license to practice medicine and surgery from another country under certain circumstances.

Be it enacted by the Legislature of West Virginia:
That §30-3-11a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-11a. Endorsement of licenses to practice medicine and surgery as medical school faculty.

(a) The board shall issue a limited license to practice medicine and surgery without examination to an individual appointed to a West Virginia medical school faculty who holds a valid license to practice medicine and surgery from another state, the District of Columbia, the Commonwealth of Puerto Rico, Canada or other country the board determines has substantially equivalent requirements for licensure as those jurisdictions, and who has completed the application form prescribed by the board, remitted a nonrefundable application fee in the amount of one hundred fifty dollars and who presents satisfactory proof to the board that:

(1) He or she is of good moral and professional character;

(2) He or she is physically and mentally capable of engaging in the practice of medicine and surgery;

(3) He or she is able to communicate in English;

(4) He or she is a graduate of a school of medicine which is approved by the liaison committee on medical education or by the World Health Organization or by the board with the degree of doctor of medicine or its equivalent;

(5) He or she has successfully completed one year of approved graduate clinical training or a fellowship of at least one year, or has received training which the board determines to be equivalent to or exceeds the one year graduate clinical training or fellowship requirement;
(6) He or she has not committed any act in this or any other jurisdiction which would constitute the basis for disciplining a physician under section fourteen of this article; and

(7) He or she has been offered and has accepted a faculty appointment to teach in a medical school in this state.

(b) The board shall investigate the applicant and may request a personal interview to review the applicant’s qualifications and professional credentials.

(c) The medical practice of a physician licensed under this section is limited to the medical center of the medical school to which the physician has been appointed to the faculty.

(d) A limited license issued under this section is valid for a term of one year. No limited license issued pursuant to this section may be renewed.

(e) Before the limited license has expired, a physician licensed under this section may apply for a license to practice medicine and surgery in West Virginia pursuant to the provisions of section twelve of this article: Provided, That any license granted by the board pursuant to this subsection, retains the practice limitations set out in subsection (c) of this section.

(f) Any license issued under this section will automatically expire and be void, without notice to the physician, when the physician’s faculty appointment is terminated. The dean of the medical school shall notify the board within five days of the termination of a faculty appointment of a physician licensed pursuant to this section.

(g) A physician licensed under this section must keep all medical licenses issued by other jurisdictions in good standing and must notify the board, within fifteen days of its occurrence, of any denial, suspension or revocation of or any limitation placed on a medical license issued by another jurisdiction.
AN ACT to amend and reenact §30-3-12 of the code of West Virginia, 1931, as amended; to amend and reenact §30-14-10 of said code; and to amend and reenact §33-20F-4, §33-20F-5 and §33-20F-7 of said code, all relating to physicians generally; permitting a physician who allows his or her medical license to expire upon retirement to retain the license certificate issued by the board of medicine; authorizing the board of osteopathy to propose legislative rules allowing inactive license status; clarifying and correcting the premium taxes that the physicians’ mutual insurance company will be subject to; providing exemption to certain physicians from special assessment; providing for license suspension and civil penalty for failure to pay the special assessment; and creating a sunset provision.

Be it enacted by the Legislature of West Virginia:

That §30-3-12 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §30-14-10 of said code be amended and reenacted; and that §33-20F-4, §33-20F-5 and §33-20F-7 of said code be amended and reenacted, all to read as follows:

Chapter

30. Professions and Occupations.
33. Insurance.
CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

20F. Physician’s Mutual Insurance Company.

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.

(a) A license to practice medicine and surgery or podiatry in this state is valid for a term of two years and shall be renewed upon a receipt of a reasonable fee, as set by the board, submission of an application on forms provided by the board and, beginning with the biennial renewal application forms completed by licensees and submitted to the board in one thousand nine hundred ninety-three, a certification in accordance with rules and regulations promulgated by the board in accordance with chapter twenty-nine-a of this code of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during the preceding two-year period. Continuing medical education satisfactory to the board is continuing medical education designated as Category I by the American Medical Association or the Academy of Family Physicians and continuing podiatric education satisfactory to the board is continuing podiatric education approved by the council on podiatric education.

In addition, the Legislature hereby finds and declares that it is in the public interest to encourage alternate categories of continuing education satisfactory to the board for physicians and podiatrists. In order to provide adequate notice of the same to physicians and podiatrists, no later than the first day of June, one thousand nine hundred ninety-one, the board shall file rules
under the provisions of section fifteen, article three, chapter twenty-nine-a of this code, delineating any alternate categories of continuing medical or podiatric education which may be considered satisfactory to the board and any procedures for board approval of such continuing education.

Notwithstanding any provision of this chapter to the contrary, failure to timely submit to the board a certification in accordance with rules and regulations promulgated by the board in accordance with chapter twenty-nine-a of this code of successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, shall, beginning the first day of July, one thousand nine hundred ninety-three, result in the automatic suspension of any license to practice medicine and surgery or podiatry until such time as the certification in accordance with rules and regulations promulgated by the board in accordance with chapter twenty-nine-a of this code, with all supporting written documentation, is submitted to and approved by the board.

Any individual who accepts the privilege of practicing medicine and surgery or podiatry in this state is required to provide supporting written documentation of the continuing education represented as received within thirty days of receipt of a written request to do so by the board. If a licensee fails or refuses to provide supporting written documentation of the continuing education represented as received as required in this section, such failure or refusal to provide supporting written documentation is prima facie evidence of renewing a license to practice medicine and surgery or podiatry by fraudulent misrepresentation.

(b) The board may renew, on an inactive basis, the license of a physician or podiatrist who is currently licensed to practice medicine and surgery or podiatry in, but is not actually practic-
A physician or podiatrist holding an inactive license shall not practice medicine and surgery or podiatry in this state. His or her inactive license may be converted by the board to an active one upon a written request to the board that accounts for his or her period of inactivity to the satisfaction of the board: Provided, That beginning on the first day of July, one thousand nine hundred ninety-three, such licensee submits written documentation of participation in and successful completion of a minimum of fifty hours of continuing medical or podiatric education satisfactory to the board, as appropriate to the particular license, during each preceding two-year period. An inactive license may be obtained upon receipt of a reasonable fee, as set by the board, and submission of an application on forms provided by the board on a biennial basis.

The board shall not require any physician or podiatrist who is retired or retiring from the active practice of medicine and surgery or the practice of podiatry and who is voluntarily surrendering their license to return to the board the license certificate issued to them by the board.

ARTICLE 14. OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14-10. Annual renewal of license; fee; refresher training a prerequisite; effect of failure to renew; reinstatement.

(a) All holders of certificates of license to practice as osteopathic physicians and surgeons in this state shall renew them biennially on or before the first day of July, by the payment of a reasonable renewal fee, the amount of such reasonable fee to be set by the board rules to the secretary of the board. The secretary of the board shall notify each certificate holder by mail of the necessity of renewing his or her certificate at least thirty days prior to the first day of July of each year.
(b) As a prerequisite to renewal of a certificate of license issued by the board, each holder of such a certificate shall furnish biennially to the secretary of the board satisfactory evidence of having completed thirty-two hours of educational refresher course training, of which the total amount of hours must be AOA approved, and fifty percent of the required thirty-two hours shall be category (1).

(c) The failure to renew a certificate of license shall operate as an automatic suspension of the rights and privileges granted by its issuance. The board may propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, providing that an osteopathic physician may renew a certificate of license on an inactive basis.

(d) A certificate of license suspended by a failure to make a biennial renewal thereof may be reinstated by the board upon compliance of the certificate holder with the following requirements:

1. Presentation to the board of satisfactory evidence of educational refresher training of quantity and standard approved by the board for the previous two years;

2. Payment of all fees for the previous two years that would have been paid had the certificate holder maintained his or her certificate in good standing; and

3. Payment to the board of a reasonable reinstatement fee, the amount of such reasonable fee to be set by the board rules.

CHAPTER 33. INSURANCE.

ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.

§33-20F-4. Authorization for creation of company; requirements and limitations.
§33-20F-5. Governance and organization.
§33-20F-7. Initial capital and surplus; special assessment; failure to pay assessment; disposition of civil penalty collected.
§33-20F-4. Authorization for creation of company; requirements and limitations.

(a) Subject to the provisions of this article, a physicians' mutual insurance company may be created as a domestic, private, nonstock, nonprofit corporation. As an incentive for its creation, the company may be eligible for funds from the Legislature in accordance with the provisions of section seven of this article. The company must remain for the duration of its existence a domestic mutual insurance company owned by its policyholders and may not be converted into a stock corporation, a for-profit corporation or any other entity not owned by its policyholders. The company may not declare any dividend to its policyholders; sell, assign or transfer substantial assets of the company; or write coverage outside this state, except for counties adjoining this state, until after any and all debts owed by the company to the state have been fully paid.

(b) For the duration of its existence, the company is not and may not be considered a department, unit, agency, or instrumentality of the state for any purpose. All debts, claims, obligations, and liabilities of the company, whenever incurred, shall be the debts, claims, obligations, and liabilities of the company only and not of the state or of any department, unit, agency, instrumentality, officer, or employee of the state.

(c) The moneys of the company are not and may not be considered part of the general revenue fund of the state. The debts, claims, obligations, and liabilities of the company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The company is not subject to provisions of article nine-a, chapter six of this code or the provisions of article one, chapter twenty-nine-b of this code.
(e)(1) All premiums collected by the company are subject to the premium taxes, additional premium taxes, additional fire and casualty insurance premium taxes and surcharges contained in sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of this chapter: Provided, That while the loan to the company of moneys from the West Virginia tobacco settlement medical trust fund pursuant to section nine of this article remains outstanding, the commissioner may waive the company's premium taxes, additional premium taxes and additional fire and casualty insurance premium taxes if payment would render the company insolvent or otherwise financially impaired.

(2) On and after the first day of July, two thousand three, any premium taxes and additional premium taxes paid by the company and by any insurer on its medical malpractice line pursuant to sections fourteen and fourteen-a, article three of this chapter, shall be temporarily applied toward replenishing the moneys appropriated from the West Virginia tobacco settlement medical trust fund pursuant to subsection (c), section two, article eleven-a, chapter four of this code pending repayment of the loan of such moneys by the company.

(3) The state treasurer shall notify the commissioner when the moneys appropriated from the West Virginia tobacco settlement medical trust have been fully replenished, at which time the commissioner shall resume depositing premium taxes and additional premium taxes diverted pursuant to subdivision (2) of this subsection in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

(4) Payments received by the treasurer from the company in repayment of any outstanding loan made pursuant to section nine of this article shall be deposited in the West Virginia tobacco settlement medical trust fund and dedicated to replenishing the moneys appropriated therefrom under subsection (c), section two, article eleven-a, chapter four of this code. Once the
moneys appropriated from the West Virginia tobacco settlement medical trust fund have been fully replenished, the treasurer shall deposit any payments from the company in repayment of any outstanding loan made pursuant to section nine of this article in said fund and transfer a like amount from said fund to the commissioner for disbursement in accordance with the provisions of sections fourteen and fourteen-a, article three of this chapter.

§33-20F-5. Governance and organization.

(a)(1) The board of risk and insurance management shall implement the initial formation and organization of the company as provided by this article.

(2) From the first day of July, two thousand three, until the thirtieth day of June, two thousand four, the company shall be governed by a provisional board of directors consisting of the members of the board of risk and insurance management, the dean of the West Virginia University School of Medicine or a physician representative designated by him or her, and five physician directors, elected by the policyholders whose policies are to be transferred to the company pursuant to section nine of this article.

(3) Only physicians who are licensed to practice medicine in this state pursuant to article three or article fourteen, chapter thirty of this code and who have purchased medical professional liability coverage from the board of risk and insurance management are eligible to serve as physician directors on the provisional board of directors. One of the physician directors shall be selected from a list of three physicians nominated by the West Virginia Medical Association. The board of risk and insurance management shall develop procedures for the nomination of the remaining physician directors and for the conduct of the election, to be held no later than the first day of
June, two thousand three, of all of the physician directors, including, but not limited to, giving notice of the election to the policyholders. These procedures shall be exempt from the provisions of article three, chapter twenty-nine-a of this code.

(b) From the first day of July, two thousand four, the company shall be governed by a board of directors consisting of eleven directors, as follows:

(1) Five directors who are physicians licensed to practice medicine in this state by the board of medicine or the board of osteopathy, including at least one general practitioner and one specialist: Provided, That only physicians who have purchased medical professional liability coverage from the board of risk and insurance management are eligible to serve as physician representatives on the company's first board of directors;

(2) Three directors who have substantial experience as an officer or employee of a company in the insurance industry;

(3) Two directors with general knowledge and experience in business management who are officers and employees of the company and are responsible for the daily management of the company; and

(4) One director who is a dean of a West Virginia school of medicine or osteopathy or his or her designated physician representative. This director's position shall rotate annually among the dean of the West Virginia University School of Medicine, the dean of the Marshall University Joan C. Edwards School of Medicine and the dean of the West Virginia School of Osteopathic Medicine. This director shall serve until such time as the moneys loaned to the company from the West Virginia tobacco settlement medical trust fund have been replenished as provided in subsection (e), section four of this article. After the moneys have been replenished to the West Virginia tobacco settlement medical trust fund, this director
shall be a physician licensed to practice medicine in this state by the board of medicine or the board of osteopathy.

(c) In addition to the eleven directors required by subsection (b) of this section, the bylaws of the company may provide for the addition of at least two directors who represent an entity or institution which lends or otherwise provides funds to the company.

(d) The directors and officers of the company are to be chosen in accordance with the articles of incorporation and bylaws of the company. The initial board of directors selected in accordance with the provisions of subdivision (3), subsection (a) of this section shall serve for the following terms: (1) Three for four-year terms; (2) three for three-year terms; (3) three for two-year terms; and (4) two for one-year terms. Thereafter, the directors shall serve staggered terms of four years. If an additional director is added to the board as provided in subsection (c) of this section, his or her initial term shall be for four years. No director chosen pursuant to subsection (b) of this section may serve more than two consecutive terms.

(e) The incorporators are to prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and the provisions of chapters thirty-one and thirty-three of this code.

§33-20F-7. Initial capital and surplus; special assessment; failure to pay assessment; disposition of civil penalty collected.

(a) There is hereby created in the state treasury a special revenue account designated as the “Board of Risk and Insurance Management Physicians’ Mutual Insurance Company Account” solely for the purpose of receiving moneys transferred from the West Virginia Tobacco Medical Trust Fund pursuant to sub-
section (c), section two, article eleven-a, chapter four of this code for the company’s use as initial capital and surplus.

(b) On the first day of July, two thousand three, a special one-time assessment, in the amount of one thousand dollars, shall be imposed on every physician licensed by the board of medicine or by the board of osteopathy for the privilege of practicing medicine in this state: Provided, That the following physicians shall be exempt from the assessment:

(1) A faculty physician who meets the criteria for full-time faculty under subsection (f), section one, article eight, chapter eighteen-b of this code, who is a full-time employee of a school of medicine or osteopathic medicine in this state, and who does not maintain a private practice;

(2) A resident physician who is a graduate of a medical school or college of osteopathic medicine enrolled and who is participating in an accredited full-time program of post-graduate medical education in this state;

(3) A physician who has presented suitable proof that he or she is on active duty in armed forces of the United States and who will not be reimbursed by the armed forces for the assessment;

(4) A physician who receives more than fifty percent of his or her practice income from providing services to federally qualified health center as that term is defined in 42 U.S.C. § 1396d(l)(2);

(5) A physician who practices solely under a special volunteer medical license authorized by section ten-a, article three or section twelve-b, article fourteen, chapter thirty of this code. The assessment is to be imposed and collected by the board of medicine and the board of osteopathy on forms prescribed by each licensing board;
(6) A physician who is licensed on an inactive basis pursuant to subsection (b), section twelve, article three, chapter thirty of this code or section ten, article fourteen, chapter thirty or a physician who voluntarily surrenders his license: Provided, That a retired osteopathic physician, who submits to the board of osteopathy an affidavit asserting that he or she receives no monetary remuneration for any medical services provided, executed under the penalty of perjury and if executed outside the state of West Virginia, verified, may be considered to be licensed on an inactive basis: Provided, however, That if a physician elects to resume an active license to practice in the state and the physician has never paid the assessment, then as a condition of receiving an active status license, the physician must pay the special one-time assessment; and

(7) A physician who practices less than forty hours a year providing medical genetic services to patients within this state.

(c) The entire proceeds of the special assessment collected pursuant to subsection (b) of this section shall be dedicated to the company. The board of medicine and the board of osteopathy shall promptly pay over to the company all amounts collected pursuant to this section to be used as policyholder surplus for the company.

(d) Any physician who applies to purchase insurance from the company and who has not paid the assessment pursuant to subsection (b) of this section shall pay one thousand dollars to the company as a condition of obtaining insurance from the company.

(e) A physician who fails to pay the special one-time assessment imposed on the first day of July, two thousand three, pursuant to subsection (b) of this section, on or before the thirtieth day of June, two thousand four, or when the license is due for renewal, whichever is earlier, and has received written notice of the assessment and option to elect inactive status, at
least thirty days before the licensure renewal date or by the
thirtieth day of May, two thousand four, is subject to a civil
penalty in the amount of two hundred fifty dollars payable to
either the board of medicine or the board of osteopathy.
Furthermore, and notwithstanding any provision of chapter
thirty to the contrary, the board of medicine or the board of
osteopathy shall immediately suspend the license to practice
medicine or podiatry of any physician who received notice and
failed to pay the special assessment by the first day of July, two
thousand four. Any license to practice medicine suspended
pursuant to this section shall remain suspended until both the
special assessment and the civil penalty are paid in full.

(f) The entire proceeds of the civil penalty collected
pursuant to subsection (e) of this section shall be dedicated to
the company. The board of medicine and the board of osteopa-
thy shall promptly pay over to the company all amounts
collected pursuant to subsection (e) of this section to be used as
policyholder surplus for the company.

(g) The requirements of subsection (b), (c), (d), (e) and (f)
of this section shall terminate on January 1, 2008 unless
continued or reestablished.

CHAPTER 199
(H. B. 4587 — By Delegates Foster, Palumbo and Amores)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-3C-1 of the code of West
Virginia, 1931, as amended, relating to including persons who are
members or consultants to review organizations within the
definition of health care professionals for peer review purposes; including patient safety review in peer review; and including certain other organizations within the meaning of a review organization.

Be it enacted by the Legislature of West Virginia:

That §30-3C-1 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3C. HEALTH CARE PEER REVIEW ORGANIZATION PROTECTION.

§30-3C-1. Definitions.

As used in this article:

"Health care professionals" means individuals who are licensed to practice in any health care field and individuals, who, because of their education, experience or training participate as members of or consultants to a review organization.

"Peer review" means the procedure for evaluation by health care professionals of the quality and efficiency of services ordered or performed by other health care professionals, including practice analysis, inpatient hospital and extended care facility utilization review, medical audit, ambulatory care review, claims review and patient safety review.

"Professional society" includes medical, psychological, nursing, dental, optometric, pharmaceutical, chiropractic and podiatric organizations having as members at least a majority of the eligible licentiates in the area or health care facility or agency served by the particular organization.

"Review organization" means any committee or organization engaging in peer review, including a hospital utilization review committee, a hospital tissue committee, a medical audit
committee, a health insurance review committee, a health
maintenance organization review committee, hospital, medical,
dental and health service corporation review committee, a
hospital plan corporation review committee, a professional
health service plan review committee or organization, a dental
review committee, a physicians’ advisory committee, a podiatry
advisory committee, a nursing advisory committee, any
committee or organization established pursuant to a medical
assistance program, the joint commission on accreditation of
health care organizations or similar accrediting body or any
entity established by such accrediting body or to fulfill the
requirements of such accrediting body, any entity established
pursuant to state or federal law for peer review purposes, and
any committee established by one or more state or local
professional societies or institutes, to gather and review
information relating to the care and treatment of patients for the
purposes of: (i) Evaluating and improving the quality of health
care rendered; (ii) reducing morbidity or mortality; or (iii)
establishing and enforcing guidelines designed to keep within
reasonable bounds the cost of health care. It shall also mean any
hospital board committee or organization reviewing the
professional qualifications or activities of its medical staff or
applicants for admission thereto, and any professional standards
review organizations established or required under state or
federal statutes or regulations.

CHAPTER 200

(H. B. 4247 — By Delegates Mahan, R. Thompson, Cann,
Kominar, Armstead and Faircloth)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]
AN ACT to amend and reenact §30-13-21 and §30-13-22 of the code of West Virginia, 1931, as amended, all relating to clarifying the board of registration for professional engineers may assess civil penalties.

Be it enacted by the Legislature of West Virginia:

That §30-13-21 and §30-13-22 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. ENGINEERS.

§30-13-21. Disciplinary action—Revocation, suspension, refusal to issue, restore or renew, probation, civil penalty, reprimand.


§30-13-21. Disciplinary action—Revocation, suspension, refusal to issue, restore or renew, probation, civil penalty, reprimand.

(a) The board may suspend or revoke or refuse to issue, restore or renew a certificate of registration of, or place on probation, impose a civil penalty or reprimand any professional engineer who has:

1. Perpetrated any fraud or deceit in obtaining or attempting to obtain or renew a certificate of registration or certificate of authorization;

2. Been negligent, incompetent or committed an act of misconduct in the practice of engineering;

3. Been convicted of or has entered a plea of nolo contendere to any crime under the laws of the United States or any state or territory thereof, which is a felony whether related to practice or not; and conviction of or entry of a plea of nolo contendere to any crime, whether a felony, misdemeanor or
otherwise, an essential element of which is dishonesty, or which is directly related to the practice of engineering;

(4) Failed to comply with any of the provisions of this article or any of the rules promulgated under it;

(5) Been disciplined by another state, territory, the District of Columbia, foreign country, the United States government or any other governmental agency, if at least one of the grounds for discipline is the same or substantially equivalent to those grounds for discipline contained in this article;

(6) Failed within thirty days to provide information requested by the board as a result of a formal or informal complaint to the board which would indicate a violation of this article;

(7) Knowingly made false statements or signed false statements, certificates or affidavits to induce payment;

(8) Aided or assisted another person in violating any provision of this article or the rules promulgated;

(9) Violated any terms of probation imposed by the board or using a seal or practicing engineering while the professional engineer’s license is suspended, revoked, nonrenewed or inactive;

(10) Signed or affixed the professional engineer’s seal or permitted the professional engineer’s seal or signature to be affixed to any specifications, reports, drawings, plans, design information, construction documents or calculations or revisions which have not been prepared or completely checked by the professional engineer or under the professional engineer’s direct supervision or control;
(11) Engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public;

(12) Provided false testimony or information to the board; and

(13) Been habitually intoxicated or addicted to or by the use of drugs or alcohol.

(b) In addition to any other penalty provided in this article, the board may assess civil penalties against any person who violates any provision of this article or any rule promulgated by the board for each offense in an amount determined by the board.

(c) The board shall prepare and shall adopt “rules of professional responsibility for professional engineers”. The board may revise and amend these “rules of professional responsibility for professional engineers” from time to time and shall notify each registrant in writing of any revisions or amendments.

(d) The board may:

(1) Revoke a certificate of authorization;

(2) Suspend a certificate of authorization of any firm for a period of time not exceeding two years where one or more of its officers or directors of the firm have been found guilty of any conduct which would authorize a revocation or suspension of his or her certificate of registration under the provisions of this article;

(3) Place the person or firm on probation for a period of time and make the person or firm subject to conditions as the board may specify;
(4) Assess a civil penalty and related costs for each count or separate offense in an amount set by the board.


(a) Any person may file a complaint with the board that a person or firm subject to the provisions of this article has committed a fraud, been deceitful, been grossly negligent, incompetent, guilty of misconduct or has violated the “rules of professional responsibility for professional engineers”.

(b) All complaints, unless dismissed by the board as unfounded, trivial or unless settled informally, shall be heard by the board within six months after the date each complaint was received by the board.

(c) The board shall fix the time and place for hearings on complaints and a copy of all charges, together with a notice of the time and place of hearing on the complaint the person or firm complained against or mailed to the last known address of the person or firm at least thirty days prior to the hearing. At the hearing, the person or firm shall have the right to appear in person or by counsel, or both, to cross-examine witnesses and to produce evidence and witnesses in his, her or its defense. If the accused person or firm fails or refuses to appear, the board may proceed to hear the complaint and determine the validity of the charges.

(d) If after the hearing a majority of the board votes in favor of sustaining the charges, the board shall reprimand or assess a civil penalty against the person or firm complained against. The board may also suspend, revoke, refuse to issue or refuse to restore or renew an individual’s certificate of registration or a firm’s certificate of authorization. In addition, the board may place a registrant on probation.
(e) Any person or firm aggrieved by any action of the board in assessing a civil penalty, denying, suspending, refusing to issue, refusing to restore or renew or revoking a certificate of registration or a certificate of authorization, may appeal the board’s decision to the circuit court.

(f) Any civil penalty assessed as a result of a hearing shall be paid within fifty days after the decision becomes final.

(g) The board may, upon petition of a person or firm, reissue a certificate of registration or authorization, provided that a majority of the members of the board votes in favor of such issuance.

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CHAPTER 201

(Com. Sub. for S. B. 460 — By Senators Bowman, Bailey, Jenkins, Snyder, White and Smith)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
surveyors; definitions; establishing licensure and endorsement requirements; restructuring and renaming the board; and providing a civil cause of action and criminal penalties.

Be it enacted by the Legislature of West Virginia:


ARTICLE 13A. PROFESSIONAL SURVEYORS.

§30-13A-1. Legislative findings; license required to practice.
§30-13A-4. Board of surveyors.
§30-13A-7. Fees; special revenue account; administrative fines.
§30-13A-8. Education, experience and examination requirements for a surveying license.
§30-13A-10. Surveying license requirements.
§30-13A-11. Underground surveying endorsement requirements.
§30-13A-12. License, endorsement and certificate from another state; license, endorsement and certificate to practice in this state.
§30-13A-13. License and endorsement renewal requirements.
§30-13A-14. Inactive license and endorsement requirements.
§30-13A-15. Expired license and endorsement requirements.
§30-13A-16. Retired license and endorsement requirements.
§30-13A-17. Requirements for when a person fails an examination.
§30-13A-18. Display of license, endorsement or certificate.
§30-13A-19. Signature and seal or stamp.
§30-13A-25. Delivery of plat and description; recordation.
§30-13A-27. "West Virginia Coordinate Systems"; definition; plane coordinates, limitations of use.
§30-13A-29. Refusal to issue or renew, suspension or revocation; disciplinary action.
§30-13A-33. Injunctions.
§30-13A-34. Criminal proceedings; penalties.
§30-13A-36. Exemption from licensing and regulation.
§30-13A-37. Continuation of board.

§30-13A-1. Legislative findings; license required to practice.

The practice of surveying and underground surveying involves special knowledge in mathematics and physical and applied sciences and specific knowledge in the principles and methods of surveying and underground surveying, which knowledge can only be acquired through education and practical experience in surveying and underground surveying. Land surveying and underground surveying involve precise practices and should only be performed by a person who has specific training in surveying or underground surveying.

Therefore, the Legislature finds that to protect the public interest and to provide for the regulation of surveying and underground surveying in this state, a person must have a license, as provided in this article, to practice as a surveyor in
the state of West Virginia and a person must have a surveyor’s license and an endorsement, as provided in this article, to practice as an underground surveyor in the state of West Virginia.


This article shall be known and may be cited as the “West Virginia Professional Surveyors Act”.


As used in this article, the following words and terms have the following meanings, unless the context clearly indicates otherwise:

(a) “Applicant” means a person making application for a license, endorsement or certificate, or a firm making application for a certificate of authorization, under the provisions of this article.

(b) “Board” means the West Virginia board of professional surveyors.

(c) “Boundary survey” means a survey in which property lines and corners of a parcel of land have been established by a survey and a description of survey has been written and a plat has been prepared for the property.

(d) “Cadastral survey” means a survey representing the ownership, relative positions and dimensions of land, objects and estates.

(e) “Certificate” means a document issued by the board.

(f) “Certificate holder” means a person holding a certificate issued by the board.
(g) "Certificate of authorization" means a certificate issued under the provisions of this article to a firm providing surveying or underground surveying services.

(h) "Construction survey" means the laying of stakes for a construction project.

(i) "Direct supervision" means the responsible licensee or endorsee is in direct control of all field and office surveying operations: Provided, That direct control does not necessarily require the actual physical presence of the responsible licensee or endorsee at the site of the survey, nor prohibit the responsible licensee or endorsee from maintaining simultaneous direct supervision of more than one survey.

(j) "Endorsee" means a person holding an endorsement to practice underground surveying issued under the provisions of this article.

(k) "Endorsement" means an endorsement to practice underground surveying issued under the provisions of this article.

(l) "Firm" means any nongovernmental business entity, including an individual, partnership or corporation, providing surveying or underground surveying services.

(m) "Geodetic control survey" means a survey involving the precise measurement of points on the earth's surface which form the framework or control for a large map or project.

(n) "Geographic information system" means a system of hardware, software and procedures designed to support the capture and management of spatially referenced information.
(o) "Global positioning system survey" means any measurement of elevations or positions either absolute or relative which utilizes the observation of artificial satellites.

(p) "Hydrographic survey" means a survey that measures and determines the topographic features of water bodies and the adjacent land areas, including the width, depth and course of water bodies and other relative features.

(q) "Inactive" means the status granted by the board to a licensee or endorsee.

(r) "Description of survey", under this article only, means a description established by a survey describing the physical location of land or the associated effects on the land.

(s) "License" means a surveying license issued under the provisions of this article.

(t) "Licensee" means a person holding a surveying license issued under the provisions of this article.

(u) "Metes and bounds" means a description where the land or the associated effects on the land have been measured by starting at a known point and describing, in sequence, the lines by direction and distance forming the boundaries of the land or a defined area relative to the physical land features, associated effects or structural improvements on the land.

(v) "Monument" means a permanent marker, either boundary or nonboundary, used to establish corners or mark boundary lines of a parcel of land or reference the geospatial relationship of other objects.

(w) "Mortgage/loan inspection survey" means a survey in which property lines and corner have not been established.
(x) “Oil or gas well survey” means a survey and plat of a proposed oil or gas well, including the location of the well, the surface or mineral tract on which the well is located and the physical features surrounding the well. An oil or gas well survey must be performed in accordance with other provisions of this code affecting oil and gas well surveys.

(y) “Partition survey” means a survey where the boundary lines of a newly created parcel of land are established and the new corners are monumented.

(z) “Photogrammetry” means the use of aerial photography, other imagery and surveying principles to prepare scaled maps or other survey products reflecting the contours, features and fixed works of the earth’s surface.

(aa) “Practice of surveying” means providing professional surveying services, including consulting, investigating, expert testimony, evaluating, planning, mapping and surveying.

(bb) “Responsible charge” means direct control and surveying work under the direct supervision of a licensee or person authorized in another state or country to engage in the practice of surveying.

(cc) “Retracement survey” means a survey where the boundary lines and corners of a parcel of land are reestablished from an existing legal or deed description.

(dd) “Strip” means a description of an area by reference to an alignment, usually a right-of-way or an easement, stating the number of feet on each side of the alignment, the relative position of the alignment, a reference to the measurements and monuments where the alignment crosses a parcel of land and the source of title for each parcel of land the alignment crosses.
(ee) "Subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts or parcels of land.

(ff) "Surface mine survey" means a survey of the surface mine permit area, including the location of the surface mine, the surface or mineral tracts on which the surface mine is located, the physical features surrounding the surface mine, all creeks or streams near the surface mine and any other identifying characteristics of the land to specify the location of the surface mine permit area. A surface mine survey must be performed in accordance with other provisions of this code affecting surface mine surveys.

(gg) "Survey" or "land survey" means to measure a parcel of land and ascertain its boundaries, corners and contents or make any other authoritative measurements. A survey can be any of the following, but not limited to:

(1) The performance of a boundary, cadastral, construction, geodetic control, hydrographic, land, mortgage/loan inspection, oil or gas well, partition, photogrammetry, retracement, subdivision or surface mine survey by a licensed surveyor;

(2) The location, relocation, establishment, reestablishment, laying out or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement, strip or alignment or elevation of any fixed works by a licensed surveyor; or

(3) The performance of an underground survey by an endorsed underground surveyor.

(hh) "Surveying" or "land surveying" means providing, or offering to provide, professional services using such sciences as mathematics, geodesy, and photogrammetry, and involving both: (1) The making of geometric measurements and gathering related information pertaining to the physical or legal features
of the earth, improvements on the earth, the space above, on or
below the earth; and (2) providing, utilizing or developing the
same into survey products such as graphics, data, maps, plans,
reports, descriptions or projects. Professional services include
acts of consultation, investigation, testimony evaluation, expert
technical testimony, planning, mapping, assembling and
interpreting gathered measurements and information related to
any one or more of the following:

(A) Determining by measurement the configuration or
contour of the earth’s surface or the position of fixed objects
thereon.

(B) Determining by performing geodetic surveys the size
and shape of the earth or the position of any point on the earth.

(C) Determining the position for any survey control
monument or reference point.

(D) Creating, preparing or modifying electronic, computer-
ized or other data relative to the performance of the activities in
the above-described paragraphs (A) through (C), inclusive, of
this subdivision.

(E) Locating, relocating, establishing, reestablishing or
retracing property lines or boundaries of any tract of land, road,
right-of-way or easement.

(F) Making any survey for the division, subdivision, or
consolidation of any tract or tracts of land.

(G) Locating or laying out alignments, positions or eleva-
tions for the construction of fixed works.

(H) Determining, by the use of principles of surveying, the
position for any boundary or nonboundary survey monument or
reference point; or establishing or replacing any such monu-
ment or reference point.

(I) Creating, preparing or modifying electronic or comput-
erized or other data relative to the performance of the activities
in the above-described paragraphs (E) through (H), inclusive,
of this subdivision.

Any person who engages in surveying, who by verbal
claim, sign, advertisement, letterhead, card or in any other way
represents themselves to be a professional surveyor, or who
implies through the use of some other title that they are able to
perform, or who does perform, any surveying service or work
or any other service designated by the practitioner which is
recognized as surveying, is practicing, or offering to practice,
surveying within the meaning and intent of this article.

(ii) “Surveyor”, “professional surveyor” or “land surveyor”
means a person licensed to practice surveying under the
provisions of this article.

(jj) “Surveyor, retired”, “professional surveyor, retired” or
“land surveyor, retired” means a licensed surveyor no longer
practicing surveying or underground surveying, who has chosen
to retire and has been granted the honorific title of “Profes-

(kk) “Surveyor-in-charge” means a licensee or endorsee
designated by a firm to oversee the surveying activities and
practices of the firm.

(II) “Surveyor intern” means a person who has passed an
examination covering the fundamentals of land surveying.

(mm) “Underground survey” means a survey that includes
the measurement of underground mine workings and surface
features relevant to the underground mine, the placing of survey
points (spads) for mining direction, the performance of horizontal and vertical control surveys to determine the contours of a mine, the horizontal and vertical location of mine features, and the preparation of maps, reports and documents, including mine progress maps and mine ventilation maps. An underground mine survey must be performed in accordance with other provisions of this code affecting underground mine surveys.

(nm) "Underground surveyor" means a person endorsed to practice underground surveying.

§30-13A-4. Board of surveyors.

(a) The "West Virginia board of examiners of land surveyors" is hereby continued and commencing the first day of July, two thousand four, and shall be known as the "West Virginia Board of Professional Surveyors".

(b) To be effective on the first day of July, two thousand four, the governor shall appoint, by and with the advice and consent of the Senate, one person who is a licensed professional surveyor and has practiced surveying for at least five years, for a term of three years, to replace the member of the board whose term expires on the first day of July, two thousand four.

(c) To be effective on the first day of July, two thousand five, the governor shall appoint, by and with the advice and consent of the Senate:

(1) One person who has a license in another field of practice other than surveying and also has a surveyor license by examination and has practiced surveying for at least ten years for a term of four years;

(2) One person who is an endorsed underground surveyor with at least ten years of experience for a term of four years; and
(3) One citizen member who is not licensed, endorsed or certified under the provisions of this article and does not perform any services related to the practice licensed, endorsed or certified under the provisions of this article for a term of three years.

(d) To be effective on the first day of July, two thousand six, the governor shall appoint, by and with the advice and consent of the Senate, one person who is a licensed professional surveyor with at least ten years of experience for a term of four years to replace the member of the board whose term expires on the first day of July, two thousand six.

(e) After the initial appointment term, the board term shall be for four years.

(f) Commencing with the board terms beginning the first day of July, two thousand five, the board shall consist of the following five members:

   (1) Two licensed professional surveyors with at least ten years of experience in land surveying;

   (2) One person who has a license in another field of practice other than surveying and also who has a surveyor license by examination and has practiced surveying for at least ten years;

   (3) One endorsed underground surveyor who has practiced underground surveying for at least five years; and

   (4) One citizen member who is not licensed, endorsed or certified under the provisions of this article and does not perform any services related to the practice licensed, endorsed or certified under the provisions of this article.
(g) Each licensed or endorsed member of the board, at the
time of his or her appointment, must have held a license or
endorsement in this state for a period of not less than three
years immediately preceding the appointment and each member
must be a resident of this state during the appointment term.
Members must represent the three congressional districts of the
state.

(h) No member may serve more than two consecutive full
terms and any member having served two full terms may not be
appointed for one year after completion of his or her second full
term. A member shall continue to serve until his or her
successor has been appointed and qualified. Any member
currently serving on the board on the effective date of this
article may be reappointed in accordance with the provisions of
this section.

(i) The governor may remove any member from the board
for neglect of duty, incompetency or official misconduct.

(j) Any member of the board immediately and automati-
cally forfeits his or her membership if he or she has his or her
license or endorsement to practice suspended or revoked by the
board, is convicted of a felony under the laws of any state or the
United States or becomes a nonresident of this state.

(k) The board shall designate one of its members as
chairperson and one member as secretary-treasurer.

(l) Each member of the board shall receive compensation
and expense reimbursement in accordance with section eleven,
article one of this chapter.

(m) A majority of the members of the board shall constitute
a quorum.
(n) The board must hold at least one annual meeting. Other meetings shall be held at the call of the chairperson, or upon the written request of two members, at such time and place as designated in the call or request.


The board has all the powers and duties set forth in article one of this chapter and also the following powers and duties:

1. Hold meetings, conduct hearings and administer examinations and reexaminations;

2. Set the requirements for a license, endorsement, certificate, surveyor-in-charge and certificate of authorization;

3. Establish qualifications for licensure and procedures for submitting, approving and disapproving applications for a license, endorsement certificate and certificate of authorization;

4. Examine the qualifications of any applicant for a license, endorsement, or certificate;

5. Establish procedures for persons who have begun one of the education, experience or examination requirements for licensure, stated in subdivision (1), subsection (a), section eight of this article, and has not completed the requirements prior to the thirty-first day of December, two thousand four;

6. Prepare, conduct, administer and grade written, oral or written and oral examinations and reexaminations for a license, endorsement or certificate;

7. Determine the passing grade for the examinations;

8. Administer, or contract with third parties to administer, the examinations and reexaminations required under the provisions of this article;
(9) Maintain records of the examinations and reexaminations the board or a third party administers, including the number of persons taking the examination or reexamination and the pass and fail rate;

(10) Maintain an accurate registry of names and addresses of all licensees, endorsees and certificate holders;

(11) Maintain an accurate registry of names and addresses of firms holding a certificate of authorization;

(12) Establish the standards for surveys, surveying and underground surveying;

(13) Define, by legislative rule, the fees charged under the provisions of this article;

(14) Issue, renew, deny, suspend, revoke or reinstate licenses, endorsements and certificates and discipline such persons;

(15) Issue, renew, deny, suspend, revoke or reinstate certificates of authorization and discipline such firms;

(16) Establish, by legislative rule, and implement the continuing education requirements for licensees and endorsees;

(17) Sue and be sued in its official name as an agency of this state;

(18) Set the job requirements for investigators and employees necessary to enforce the provisions of this article;

(19) Hire, fix the compensation of and discharge investigators and the employees necessary to enforce the provisions of this article;
(20) Investigate alleged violations of the provisions of this article, the rules promulgated hereunder, and orders and final decisions of the board;

(21) Conduct hearings upon charges calling for discipline of a licensee, endorsee or certificate holder, or revocation or suspension of a license, endorsement, certificate or certificate of authorization;

(22) Set disciplinary action and issue orders;

(23) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(24) Take all other actions necessary and proper to effectuate the purposes of this article.


(a) The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article including:

(1) Setting the standards and requirements for licensure, endorsement, certification, surveyor-in-charge and certificate of authorization;

(2) Setting the procedure for examinations and reexaminations;

(3) Establishing requirements for third parties to administer examinations and reexaminations;

(4) Establishing procedures for the issuance and renewal of a license, endorsement, certificate and certificate of authorization;
(5) Setting a schedule of fees and rates for nonrenewal;

(6) Establishing and implementing requirements for continuing education for licensees and endorsees;

(7) Evaluating the curriculum, experience and the instructional hours required for a license, endorsement and certificate;

(8) Denying, suspending, revoking, reinstating or limiting the practice of a licensee, endorsee, certificate holder or a holder of a certificate of authorization;

(9) Establishing electronic signature requirements; and

(10) Proposing any other rules or taking other action necessary to effectuate the provisions of this article.

(b) All rules in effect on the effective date of this article shall remain in effect until they are amended, modified, repealed or replaced.

§30-13A-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the state treasury designated the “board of examiners of land surveyors fund”, which fund is hereby continued. Commencing on the first day of July, two thousand four, the “board of examiners of land surveyors fund” shall be designated the “board of professional surveyors fund”. The fund shall be used by the board for the administration of this article. Except as may be provided in section eleven, article one of this chapter, the board shall retain the amounts in the special revenue fund from year to year. No compensation or expense incurred under this article is a charge against the general revenue fund.
(b) Any amounts received as fines imposed pursuant to this article shall be deposited into the general revenue fund of the state treasury.

§30-13A-8. Education, experience and examination requirements for a surveying license.

(a) Before a person may apply for a surveying license to practice under the provisions of this article, the person must have completed one of the following educational, experience and examination requirements:

(1) Prior to the thirty-first day of December, two thousand four, has completed or is in the process of completing one of the following education, experience and examination requirements:

(A) Is a graduate of a surveying curriculum of two scholastic years, has six years or more of experience in surveying under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying, has passed the examination prescribed by the board, which examination shall cover the basic subject matter of land surveying and land surveying skills and techniques, and has passed the West Virginia examination;

(B) Is not a graduate of a surveying curriculum, has eight years or more of experience in surveying under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying, has passed the examination prescribed by the board, which examination shall cover the basic subject matter of land surveying and land surveying skills and techniques, and has passed the West Virginia examination;

(C) Is a graduate of a surveying curriculum of two or more years, has passed the surveyor-in-training (SIT) examination
which must have included an eight-hour portion of fundamen-
tals in science, mathematics and surveying, has six years or
more of experience in surveying under the direct supervision of
a licensee or a person authorized in another state or country to
game in the practice of surveying, and has passed the exami-
nation prescribed by the board, which examination consists of
principles and practices of land surveying and has passed the
West Virginia examination; or

(D) Prior to the thirty-first day of December, two thousand
four, if a person has begun one of the education, experience or
examination requirements, stated in this subdivision, and has
not completed the requirements prior to the thirty-first day of
December, two thousand four, then the person must notify the
board that he or she will be making application under this
subdivision and comply with the procedures prescribed by the
board; or

(2) On and after the first day of January, two thousand five,
has completed one of the following education, experience and
examination requirements:

(A) Has a four-year degree or a bachelor degree in survey-
ing approved by the board, which degree must include a
minimum of thirty hours of surveying or surveying-related
courses, has passed an examination in the fundamentals of land
surveying, has two years or more of experience in surveying in
responsible charge, has passed an examination in the principles
and practice of land surveying and has passed the West Virginia
examination;

(B) Has a four-year degree or a bachelor degree, has
completed a minimum of thirty hours of surveying or
surveying-related courses, has passed an examination in the
fundamentals of land surveying, has four years or more of
experience in surveying, including two years of experience in
responsible charge under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination;

(C) Has a two-year degree or an associate degree in surveying or a related field approved by the board, which degree must include a minimum of thirty hours of surveying or surveying-related courses, has passed an examination in the fundamentals of land surveying, has four years or more of experience in surveying, including two years of experience in responsible charge under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination; or

(D) Is not a graduate of a surveying curriculum, has completed the national society of professional surveyors survey technician program, has obtained a level IV certification, issued by the national society of professional surveyors, with a total of five and one-half years of experience in surveying under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying, has passed an examination in the fundamentals of land surveying, has four additional years of experience in surveying, including two years of responsible charge under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying, has passed an examination in the principles and practice of land surveying and has passed the West Virginia examination: Provided, That the person intending to apply for the license pursuant to the provisions of this subdivision so notifies the board before the first day of January, two thousand five.
92 (b) A person graduating from a two-year or four-year
93 approved surveying degree program with a grade point average
94 of 3.0 or higher is permitted to take the examination in the
95 fundamentals of land surveying during his or her final semester.

96 (c) A person must pass the examination in the fundamentals
97 of land surveying and complete the work experience before he
98 or she is allowed to take the examination in the principles and
99 practice of land surveying and the West Virginia examination.

100 (d) The examination in the fundamentals of land surveying,
101 the examination in the principles and practice of land surveying
102 and the West Virginia examination shall each be held at least
103 once each year at the time and place determined by the board.
104 A person who fails to pass all or any part of an examination
105 may apply for reexamination, as prescribed by the board, and
106 shall furnish additional information and fees as required by the
107 board.


1 (a) To be recognized as a surveyor intern by the board, a
2 person must meet the following requirements:

3 (1) Is of good moral character;

4 (2) Is at least eighteen years of age;

5 (3) Is a citizen of the United States or is eligible for
6 employment in the United States;

7 (4) Holds a high school diploma or its equivalent;

8 (5) Has not been convicted of a crime involving moral
9 turpitude;
(6) Has completed one of the education requirements set out in section eight of this article; and

(7) Has passed an examination in the fundamentals of land surveying.

(b) A surveyor-in-training recognized by the board prior to the first day of July, two thousand four, shall for all purposes be considered a surveyor intern under this section.

(c) A surveyor intern must pass the principles and practice of land surveying examination and the West Virginia examination within ten years of passing the fundamentals of land surveying examination. If the examinations are not passed within ten years, then the surveyor intern must retake the fundamentals of land surveying examination.

§30-13A-10. Surveying license requirements.

(a) The board shall issue a surveying license to practice under the provisions of this article to an applicant who meets the following requirements:

(1) Is of good moral character;

(2) Is at least eighteen years of age;

(3) Is a citizen of the United States or is eligible for employment in the United States;

(4) Holds a high school diploma or its equivalent;

(5) Has not been convicted of a crime involving moral turpitude; and

(6) Has completed all of one of the education, experience and examination requirements set out in section eight of this article.
(b) An application for a surveying license shall be made on forms provided by the board and include the following:

1. Name and address of the applicant;
2. Applicant's education and experience;
3. Location and date of passage of all the examinations;
4. Names of five persons for reference, at least three of whom shall be licensees or persons authorized in another state or country to engage in the practice of surveying, and who have knowledge of the applicant's work; and
5. Any other information the board prescribes.

(d) A license to practice land surveying issued by the board prior to the first day of July, two thousand four, shall for all purposes be considered a license issued under this section:

Provided, That a person holding a license to practice land surveying issued prior to the first day of July, two thousand four, must renew the license pursuant to the provisions of section thirteen of this article.

§30-13A-11. Underground surveying endorsement requirements.

(a) The board shall issue an endorsement to practice underground surveying under the provisions of this article to an applicant who meets the following requirements:

1. Is a licensed surveyor;
2. Has three years or more experience in underground surveying under the direct supervision of an endorsee or a
person authorized in another state or country to engage in the practice of underground surveying; and

(3) Has passed an examination as prescribed by the board.

(b) An application for an underground surveying endorsement shall be made on forms provided by the board and include the following:

(1) Name and address of the applicant;

(2) Applicant’s underground surveying experience;

(3) Names of three persons for reference, all three of whom shall be endorsees or persons authorized in another state or country to engage in the practice of underground surveying, and who have knowledge of the applicant’s work; and

(4) Any other information the board prescribes.

(c) An applicant shall pay all the applicable fees.

(d) The examination for underground surveying shall be held at least once each year at the time and place determined by the board. An applicant who fails to pass all or any part of the examination may apply for reexamination, as prescribed by the board, at any time and shall furnish additional information and fees as required by the board.

(e) A license to practice underground surveying issued by the board prior to the first day of July, two thousand four, shall for all purposes be considered an endorsement issued under this section: Provided, That a person holding a license to practice underground surveying issued prior to the first day of July, two thousand four, must renew and then receive an endorsement pursuant to the provisions of section thirteen of this article.
§30-13A-12. License, endorsement and certificate from another state; license, endorsement and certificate to practice in this state.

The board may issue a license, endorsement or certificate to practice surveying or underground surveying in this state to an applicant of good moral character who holds a valid license, endorsement, certificate, registration or other authorization to practice surveying or underground surveying from another state if the applicant demonstrates that:

1. He or she holds a license, endorsement, certificate, registration or other authorization to practice surveying or underground surveying in another state which was granted after completion of educational requirements substantially equivalent to those required in this state;

2. He or she holds a license, endorsement, certificate, registration or other authorization to practice surveying or underground surveying in another state which was granted after completion of experience requirements substantially equivalent to those required in this state;

3. He or she holds a license, endorsement, certificate, registration or other authorization to practice surveying or underground surveying in another state which was granted after passing, in that or another state, examinations that are substantially equivalent to the examinations required in this state and has passed the West Virginia examination;

4. He or she is not currently being investigated by a disciplinary authority of another state, does not have charges pending against his or her license, endorsement, certificate, registration or other authorization to practice surveying or underground surveying and has never had a license, endorsement, certificate, registration or other authorization to practice surveying or underground surveying revoked;
30 (5) He or she has not previously failed an examination for licensure, endorsement or certification in this state;

31 (6) He or she has paid all the applicable fees; and

32 (7) Has completed such other action as required by the board.

§30-13A-13. License and endorsement renewal requirements.

1 (a) A licensee or endorsee wanting to continue in active practice shall, annually or biennially upon or before the first day of July, renew his or her license or endorsement and pay a renewal fee.

2 (b) At least thirty days prior to the first day of July, either annually or biennially, the secretary-treasurer of the board shall mail to every licensee and endorsee a notice of renewal, an application for renewal and the amount of the renewal fee.

3 (c) The board shall charge a fee for each renewal of a license or endorsement and a late fee for any renewal not paid in a timely manner.

4 (d) The board shall require as a condition for the renewal of a license or endorsement that each licensee or endorsee participate in continuing education.

§30-13A-14. Inactive license and endorsement requirements.

1 (a) A licensee or endorsee who does not want to continue in active practice shall notify the board in writing and be granted inactive status.

2 (b) A person granted inactive status shall pay an inactive fee and is exempt from the continuing education requirements and cannot practice in this state.
When an inactive licensee or endorsee wants to return to active practice, he or she must complete all the continuing education requirements and pay all the applicable fees as set by rule.

§30-13A-15. Expired license and endorsement requirements.

(a) If a license or endorsement is not renewed when due, then the board shall automatically place the licensee or endorsee on expired status.

(b) The fee for a person on expired status shall increase at a rate, determined by the board, for each month or fraction thereof that the renewal fee is not paid, up to a maximum of thirty-six months.

(c) Within thirty-six months of being placed on expired status, if a licensee or endorsee wants to return to active practice, he or she must complete all the continuing education requirements and pay all the applicable fees as set by rule.

(d) After thirty-six months of being placed on expired status, a license or endorsement cannot be renewed. A person whose license or endorsement has expired must reapply for a new license or endorsement.

§30-13A-16. Retired license and endorsement requirements.

(a) A licensee or endorsee who does not want to continue practicing surveying or underground surveying and who has chosen to retire shall notify the board in writing and be granted retired status.

(b) A person granted retired status shall be given the honorific title of “Professional Surveyor, Retired” and cannot practice in this state.
§30-13A-17. Requirements for when a person fails an examination.

(a) Any person failing any of the examinations for surveying or underground surveying shall not be permitted to work as a licensed surveyor or underground surveyor under the provisions of this article until the person has passed all the examinations.

(b) A person failing the fundamentals of land surveying examination may still gain experience as required in section eight of this article until he or she passes the examination.

(c) A person who has passed the fundamentals of land surveying examination, but failed the principles and practice examination or West Virginia examination may only work as a surveyor intern under the direct supervision of a licensee or a person authorized in another state or country to engage in the practice of surveying until he or she passes all of the examinations.

(d) Any person failing the examination for underground surveying shall not be permitted to work as an endorsed underground surveyor under the provisions of this article until the person has passed the examination. This subsection does not preclude the person from practicing as a licensed surveyor.

§30-13A-18. Display of license, endorsement or certificate.

(a) The board shall prescribe the form for a license, endorsement and certificate and may issue a duplicate license, endorsement and certificate upon payment of a fee.

(b) A licensee, endorsee and a certificate holder shall conspicuously display his or her license, endorsement or certificate at his or her principal place of practice.
§30-13A-19. Signature and seal or stamp.

(a) Each licensee must have a seal or a stamp, authorized by the board, which seal or stamp shall include the licensee’s name and license number and the words “Professional Surveyor”.

(b) Each endorsee must have a seal or a stamp, authorized by the board, which seal or stamp shall include the endorsee’s name and endorsement license number and the words “Professional Surveyor SU”.

(c) All final survey documents prepared by a licensee or an endorsee shall be signed and stamped with the licensee’s or the endorsee’s seal or stamp, or an electronic signature, seal or stamp may be affixed.

(d) It is unlawful for a person who is not licensed or not endorsed to affix a signature and stamp or seal on a document.


(a) Each firm practicing surveying or underground surveying in West Virginia shall have a certificate of authorization.

(b) The board shall issue a certificate of authorization to a firm that:

(1) Practices surveying or underground surveying in West Virginia;

(2) Provides proof that the firm has employed a surveyor-in-charge;

(3) Has paid all applicable fees; and

(4) Completes such other requirements as specified by the board.

(a) A firm wanting to continue in active practice shall, annually or biennially upon or before the first day of January, renew its certificate of authorization and pay a renewal fee.

(b) At least thirty days prior to the first day of January, either annually or biennially, the secretary-treasurer of the board shall mail to every certificate of authorization holder a notice of renewal, an application for renewal and the amount of the renewal fee.

(c) The board shall charge a fee for each renewal of a certificate of authorization and a late fee for any renewal not paid in a timely manner.


(a) The board shall prescribe the form for a certificate of authorization and may issue a duplicate certificate of authorization upon payment of a fee.

(b) A firm shall conspicuously display its certificate of authorization at its principal place of practice.


(a) A firm with a certificate of authorization practicing surveying or underground surveying in West Virginia must operate all surveying or underground surveying activities under the supervision and management of a surveyor-in-charge who shall be a licensee or endorsee who is licensed or endorsed in this state.

(b) The designated surveyor-in-charge is responsible for the surveying or underground surveying work in this state provided by the firm.
(c) A licensee or endorsee cannot be designated as a surveyor-in-charge for more than one firm without approval of the board.

(d) A licensee or endorsee who performs part-time or consulting surveying or underground surveying services for a firm cannot be designated as a surveyor-in-charge for that firm unless the licensee or endorsee is an officer, a majority interest holder or owner of the firm.

(e) The responsibilities of a surveyor-in-charge include:

(1) Renewal of the certificate of authorization;

(2) Notification to the board of any change in the surveyor-in-charge;

(3) Supervising the firm’s employees, including licensees, endorsees, certificate holders and other personnel providing surveying or underground surveying services in this state; and

(4) Ensuring that the policies of the firm adhere to the provisions of this article.

(f) The board may authorize a licensee or endorsee to supervise the work of an individual that is not an employee of the licensee or endorsee, nor is employed by the same firm as the licensee or endorsee. The potential supervisor must apply to the board for this authorization.


(a) No survey document intended to be used in the transfer of real property, prepared by a licensee or endorsee, shall be filed with any county clerk or accepted by any public official of this state unless the licensee’s or endorsee’s signature and seal or stamp have been affixed thereto, except that any document,
§30-13A-25. Delivery of plat and description; recordation.

(a) When a licensee or endorsee prepares a boundary survey, he or she shall make a plat of the land and provide a description of survey of the land. The licensee or endorsee shall give a copy of the plat and the description of survey to the client.

(b) If the title to the land that was surveyed is conveyed and the instrument conveying the title uses the description of survey, the plat shall be recorded simultaneously with the instrument, except when a plat has already been recorded and a reference to the recordation of the plat is given instead.


(a) The purpose of these standards is to establish minimum technical criteria to govern the performance of surveyors when more stringent specifications are not required. Further, the purpose is to protect the inhabitants of this state from dishonest
or incompetent surveying and generally to protect the public welfare.

(b) The client discussion prior to the survey shall cover the purpose of the survey, the scope of services, including the time for completion of the survey, disputes with adjoiners, fees and all pertinent details of the contract.

(c) The record search shall include the record description based on current and prior deeds, conveyance from common grantor, or if necessary, the original survey or grant. It shall also include descriptions of adjoining properties, other sources of information or resolution of conflicts in descriptions. All records of information sources used shall be retained as a permanent record.

(d) A licensee, endorsee, an exempt person under section thirty-six of this article or persons under the direct supervision of a licensee, endorsee or exempt person shall physically go to the land and perform the survey.

(e) The field survey shall consist of the following:

(1) A field search for controlling evidence;

(2) A discussion of evidence with the owner or client;

(3) A reasonable attempt at notifying the adjoiners;

(4) A reasonable attempt of talking to the adjoiners or others having knowledge of the boundaries; and

(5) The location of evidence by appropriate methods and procedures.

(f) The surveyor shall use methods and equipment suitable for the purpose of the survey and the field notes shall be retained as a permanent record.
(g) Distance shall be reported in feet or meters, or parts thereof, and angles or directions shall be reported in degrees or parts thereof. The observations shall be measured to a precision that will produce the desired level of accuracy. The area of the tract being surveyed shall be measured and reported to a precision consistent with the purpose of the survey. All measuring devices shall be checked periodically for accuracy and condition.

(h) Monumentation is required for all new or reestablished corners, or reference monument for inaccessible corners, and is encouraged at intervisible points between corners. Set monuments shall be made of durable material and set firmly in the ground. Pipes shall have a minimum inside diameter of one inch, while rebars shall have a minimum outside diameter of five-eighths inch and both shall have a minimum length of thirty inches. Other markers shall have a minimum cross-sectional area of one-half square inch and shall be made of durable material, identifiable and unique. Natural objects chosen for corners shall be durable, unique and easily identifiable.

(i) All rebars, pipes and other markers, except natural objects, shall have caps bearing the surveyor’s license number or company name.

(j) A plat shall be prepared for all boundary or partition surveys, unless specifically prohibited by the client in the contract. The plat shall show the results of the field survey and be provided to the client. Plats shall be to a scale large enough to show significant details.

(k) The following information shall be shown on plats, when applicable:

1. A north arrow and a basis of bearings;
(2) The date of the survey;

(3) The measured length and direction of each boundary line by distance, bearing and quadrant: Provided, That in the case of a strip survey the station and offset method may be utilized to describe the strip;

(4) General location information;

(5) Ties to significant objects;

(6) The evidence of possession on or near the property line;

(7) The description of all corners or reference monuments, including whether the corners were found (fd) or set;

(8) The outlined area of the property and all significant parts, including streets, alleys and nonlotted areas of a subdivision;

(9) The acres, acreage or square footage of the property;

(10) Any overlaps and gaps in record lines, former deed or grant lines, as needed;

(11) The subdivision name, lot, block and plat reference;

(12) The tax map and parcel number, if available, of all the tracts shown on the plat;

(13) The name of the current or past owners of the subject property, or both;

(14) The name of the adjoining landowners;

(15) The current conveyance reference for the subject property;
(16) The current conveyance reference for the adjoining landowners;

(17) The name and location of any creeks, rivers or roads near the property to help locate the property;

(18) The plat’s title for reference when recording;

(19) The district or municipality, county and state where the property is located; and

(20) The name, address, license number, signature and seal of the surveyor.

(1) A description of survey shall be prepared for all boundary, partition and retracement surveys, except mortgage inspection surveys, and be provided to the client.

(m) The following shall be included in a description of survey, when applicable:

(1) A metes and bounds description, or strip description, if applicable, of the property;

(2) The point of beginning;

(3) The description of monumentation at each corner and objects encountered along the line, including the adjoining landowners;

(4) The length and direction of each line;

(5) The radius, chord bearing and distance of a curved boundary line;

(6) The lot and block numbers for newly platted partitions or subdivisions;
(7) The acreage or square footage of the property;

(8) The watershed or topographic location where the property is located;

(9) A reference to the conveyance by which the current owner claims title, including the grantor, grantee, date and recording reference;

(10) A reference to the accompanying plat;

(11) The district or municipality, county and state where the property is located; and

(12) The name of the individual preparing the description of the survey.

(n) The report of survey shall be used when the plat and the description of survey do not adequately address all matters considered by the surveyor in performing the survey and should be provided to the client with the plat and the description of survey.

(o) The report of survey shall include all unusual circumstances surrounding the survey, with weight being given to conflicting evidence and encroachments, overlaps or gaps and how they were resolved and the names of adjoiners contacted and the information they supplied.

(p) A mortgage/loan inspection survey in which boundaries on a property have not been surveyed in accordance with the methods set forth by the board, then the plat must be stamped “a mortgage inspection survey only, not a boundary survey”. The surveyor must notify a landowner or other person commissioning their services if a survey or an inspection was performed.
§30-13A-27. "West Virginia Coordinate Systems"; definition; plane coordinates, limitations of use.

(a) The systems of plane coordinates which have been established by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey) or its successors for defining and stating the geographic position or locations of points on the surface of the earth within the state of West Virginia are hereafter to be known and designated as the "West Virginia Coordinate System of 1927" and the "West Virginia Coordinate System of 1983".

(b) For the purpose of the use of this system the state is divided into a "North Zone" and a "South Zone".

The area now included in the following counties shall constitute the north zone: Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pleasants, Preston, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt and Wood.

The area now included in the following counties shall constitute the south zone: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis, Lincoln, Logan, McDowell, Mason, Mercer, Mingo, Monroe, Nicholas, Pendleton, Pocahontas, Putnam, Raleigh, Randolph, Roane, Summers, Upshur, Wayne, Webster and Wyoming.

(c) As established for use in the north zone, the West Virginia coordinate system of 1927 or the West Virginia coordinate system of 1983 shall be named and in any land description in which it is used it shall be designated the "West Virginia Coordinate System of 1927 North Zone" or "West Virginia Coordinate System of 1983 North Zone".

As established for use in the south zone, the West Virginia coordinate system of 1927 or the West Virginia coordinate
system of 1983 shall be named and in any land description in which it is used it shall be designated the “West Virginia Coordinate System of 1927 South Zone” or “West Virginia Coordinate System of 1983 South Zone”.

(d) The plane coordinate values for a point on the earth’s surface, used to express the geographic position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in U.S. survey feet and decimals of a foot when using the West Virginia coordinate system of 1927 and determined in meters and decimals when using the West Virginia coordinate system of 1983, but which may be converted to and expressed in feet and decimals of a foot. One of these distances, to be known as the “x-coordinate”, shall give the position in an east-and-west direction. The other, to be known as the “y-coordinate”, shall give the position in a north-and-south direction.

These coordinates shall be made to depend upon and conform to plane rectangular coordinate values for the monumented points of the north American horizontal geodetic control network as published by the national ocean survey/national geodetic survey (formerly the United States coast and geodetic survey), or its successors, and whose plane coordinates have been computed on the system defined by this section. Any such station may be used for establishing a survey connection to either West Virginia coordinate system.

(e) For purposes of describing the location of any survey station or land boundary corner in the state of West Virginia, it shall be considered a complete, legal and satisfactory description of such location to give the position of said survey station or land boundary corner on the system of plane coordinates defined in this section. Nothing contained in this section shall require a purchaser or mortgagee of real property to rely wholly on a land description, any part of which depends exclusively upon either West Virginia coordinate system.
(f) When any tract of land to be defined by a single description extends from one into the other of the coordinate zones specified in this section, the position of all points on its boundaries may refer to either of the two zones. The zone which is being used specifically shall be named in the description.

(g) (1) For purposes of more precisely defining the West Virginia coordinate system of 1927, the following definition by the United States coast and geodetic survey (now national ocean survey/national geodetic survey) is adopted:

The "West Virginia Coordinate System of 1927 North Zone" is a Lambert conformal conic projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 39 degrees and 00 minutes and 40 degrees and 15 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 79 degrees 30 minutes west of Greenwich and the parallel 38 degrees 30 minutes north latitude. This origin is given the coordinates: \( x = 2,000,000 \) feet and \( y = 0 \) feet.

The "West Virginia Coordinate System of 1927 South Zone" is a Lambert conformal conic projection of the Clarke Spheroid of 1866, having standard parallels at north latitudes 37 degrees 29 minutes and 38 degrees 53 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 81 degrees 00 minutes west of Greenwich and the parallel 38 degrees 00 minutes north latitude. This origin is given the coordinates: \( x = 2,000,000 \) feet and \( y = 0 \) feet.

(2) For purposes of more precisely defining the West Virginia coordinate system of 1983, the following definition by the national ocean survey/national geodetic survey is adopted:
The "West Virginia Coordinate System of 1983 North Zone" is a Lambert conformal conic projection of the north American datum of 1983, having standard parallels at north latitudes 39 degrees and 00 minutes and 40 degrees and 15 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 79 degrees 30 minutes west of Greenwich and the parallel 38 degrees 30 minutes north latitude. This origin is given the coordinates: \( x = 600,000 \) meters and \( y = 0 \) meters.

The "West Virginia Coordinate System of 1983 South Zone" is a Lambert conformal conic projection of the north American datum of 1983, having standard parallels at north latitudes 37 degrees 29 minutes and 38 degrees 53 minutes, along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 81 degrees 00 minutes west of Greenwich and the parallel 37 degrees 00 minutes north latitude. This origin is given the coordinates: \( x = 600,000 \) meters and \( y = 0 \) meters.

(h) No coordinates based on the West Virginia coordinate system, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public records or deed records unless such point is based on a public or private monumented horizontal control station established in conformity with the standards of accuracy and specifications for first order or better geodetic surveying as prepared and published by the federal geodetic control committee (FGCC) of the United States department of commerce. Standards and specifications of the FGCC or its successor in force on date of said survey shall apply. The publishing of the existing control stations, or the acceptance with intent to publish the newly established control stations, by the national ocean survey/national geodetic survey will constitute evidence of adherence to the FGCC specifications. The limitations speci-
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fied in this section may be modified by a duly authorized state
agency to meet local conditions.

(i) The use of the term “West Virginia Coordinate System
of 1927 North or South Zone” or “West Virginia Coordinate
System of 1983 North or South Zone” on any map, report or
survey or other document shall be limited to coordinates based
on the West Virginia coordinate system as defined in this
section.

(j) A plat and a description of survey must show the basis
of control identified by the following:

(1) The monument name or the point identifier on which the
survey is based;

(2) The order of accuracy of the base monument; and

(3) The coordinate values used to compute the corner
positions.

(k) Nothing in this section shall prevent the recordation in
any public record of any deed, map, plat, survey, description or
of any other document or writing of whatever nature which
would otherwise constitute a recordable instrument or docu-
ment even though the same is not based upon or done in
conformity with the West Virginia coordinate system estab-
lished by this section, nor shall such nonconformity with such
system invalidate any deed, map, plat, survey, description or
other document which is otherwise proper.


(a) The board may, on its own motion, conduct an investi-
gation to determine whether there are any grounds for disciplin-
ary action against a licensee, endorsee, certificate holder or
certificate of authorization holder. The board shall, upon the
verified written complaint of any person, conduct an investiga-
tion to determine whether there are any grounds for disciplinary
action against a licensee, endorsee, certificate holder or
certificate of authorization holder.

(b) Upon receipt of a written complaint filed against any
licensee, endorsee, certificate holder or certificate of authoriza-
tion holder, the board shall provide a copy of the complaint to
the licensee, endorsee, certificate holder or certificate of
authorization holder.

(c) If the board finds, upon investigation, that probable
cause exists that the licensee, endorsee, certificate holder or
certificate of authorization holder has violated any provision of
this article or the rules promulgated hereunder, then the board
shall serve the licensee, endorsee, certificate holder or certifi-
cate of authorization holder with a written statement of charges
and a notice specifying the date, time and place of the hearing.
The hearing shall be held in accordance with the provisions of
this article.

§30-13A-29. Refusal to issue or renew, suspension or revocation;
disciplinary action.

(a) The board may refuse to issue, refuse to renew, suspend,
revoke or limit any licensee, endorsee, certificate holder or
certificate of authorization holder, or practice privilege of a
licensee, endorsee, certificate holder or certificate of authoriza-
tion holder, and may take disciplinary action against a licensee,
endorsee, certificate holder or certificate of authorization holder
who, after notice and a hearing, has been adjudged by the board
as unqualified for any of the following reasons:

(1) Fraud or deceit in obtaining or maintaining a license,
endorsement, certificate or certificate of authorization;
(2) Failure by any licensee, endorsee, certificate holder or certificate of authorization holder to maintain compliance with the requirements for the issuance or renewal of a license, endorsement, certificate or certificate of authorization;

(3) Dishonesty, fraud, professional negligence in the performance of land surveying or underground surveying services, or a willful departure from the accepted standards of surveying and the professional conduct of surveyors;

(4) Violation of any provision of this article, any rule promulgated hereunder, any professional standard or rule of professional conduct;

(5) Failure to comply with the provisions of this article, any rule promulgated hereunder or any order or final decision of the board;

(6) Failure to respond to a request or action of the board;

(7) Has been convicted of a crime involving moral turpitude;

(8) Conviction of a felony or a crime involving dishonesty or fraud under the laws of the United States or this state, or conviction of any similar crime under the laws of any other state, if the underlying act or omission involved would have constituted a crime under the laws of this state;

(9) Any conduct adversely affecting the licensee's, endorsee's, certificate holder's or certificate of authorization holder's fitness to perform surveying or underground surveying services; or

(10) Knowingly using any false or deceptive statements in advertising.
(b) If the board suspends, revokes, refuses to issue, refuses to renew or limits any license, endorsement, certificate, certificate of authorization or practice privilege, the board shall make and enter an order to that effect and give written notice of the order to the person by certified mail, return receipt requested, which order shall include a statement of the charges setting forth the reasons for the action, and notice of the date, time and place of the hearing. If a license, endorsement, certificate or certificate of authorization is ordered suspended or revoked, then the licensee, endorsee, certificate holder or certificate of authorization holder shall, within twenty days after receipt of the order, return the license, endorsement, certificate or certificate of authorization to the board. The hearing shall be held in accordance with the provisions of this article.

(c) Disciplinary action includes, but is not limited to, a reprimand, censure, probation, administrative fines, and mandatory attendance at continuing education seminars.


(a) Any person adversely affected by an order entered by the board is entitled to a hearing. A hearing on a statement of the charges shall be held in accordance with the provisions for hearings set forth in section eight, article one of this chapter and the procedures specified by the board by rule.

(b) Any licensee, endorsee, certificate holder or certificate of authorization holder, adversely affected by any decision of the board entered after a hearing, may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code and may appeal any ruling resulting from judicial review in accordance with article five, chapter twenty-nine-a of this code.

If the board has suspended, revoked or refused to renew a license, endorsement, certificate or certificate of authorization, the licensee, endorsee, certificate holder or certificate of authorization holder shall be afforded an opportunity to demonstrate his, her or its qualifications to resume practice. The application for reinstatement shall be in writing and subject to the procedures specified by the board.


(a) It is unlawful for any person to practice or offer to practice surveying or underground surveying in this state without a license or endorsement issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are a licensed surveyor or an endorsed underground surveyor, unless such person has been duly licensed or endorsed under the provisions of this article.

(b) It is unlawful for any firm to practice or offer to practice surveying or underground surveying in this state without a certificate of authorization issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that it is a surveying or underground surveying firm, unless such firm has been issued a certificate of authorization under the provisions of this article.

§30-13A-33. Injunctions.

(a) When, by reason of an investigation under this article or otherwise, the board or any other interested person believes that a person has violated or is about to violate any provision of this article, any rule promulgated hereunder, any order of the board or any final decision of the board, the board or any other interested person may apply to any court of competent jurisdic-
tion for an injunction against such person enjoining such person from the violation. Upon a showing that the person has engaged in or is about to engage in any prohibited act or practice, an injunction, restraining order or other appropriate order may be granted by the court without bond.

(b) The board may fine and issue cease and desist orders against individuals or firms found to be in violation of the provisions of this article or any rule adopted thereunder.

(c) A cause of action by the board may be brought in the circuit court of the county where the board’s office is located or in the circuit court of the county where the cause of action took place.

§30-13A-34. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a person has knowingly violated the provisions of this article, the board may bring its information to the attention of the relevant county prosecuting attorney or other appropriate law-enforcement officer who may cause appropriate criminal proceedings to be brought.

(b) If a court of law finds that a person knowingly violated any provision of this article, any rule promulgated hereunder, any order of the board or any final decision of the board, then the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined no less than one hundred dollars and no more than one thousand dollars for each violation, confinement in a regional correctional facility for up to thirty days for each violation, or both fined and confined.

In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

§30-13A-36. Exemption from licensing and regulation.

(a) The following persons are exempt from licensing and regulation under the provisions of this article:

(1) Any employee or agent of a person, firm, association or corporation, when such employee or agent is engaged in the practice of land surveying exclusively for the person, firm, association or corporation by which employed, or, if a corporation, its parents, affiliates or subsidiaries, and such person, firm, association or corporation does not hold himself, herself or itself out to the public as being engaged in the business of land surveying.

(2) Any employee or officer of the United States, this state or any political subdivision thereof, or their agents, when such employee is engaged in the practice of land surveying exclusively for such governmental unit.

(b) The minimum standards for boundary surveys contained in section twenty-six of this article apply, notwithstanding the exemptions provided by this section.

§30-13A-37. Continuation of board.

The West Virginia board of professional surveyors shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact §30-21-8 and §30-21-9 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-21-10a, all relating to authorizing the board of examiners of psychologists to set fees and other requirements by legislative rule.

Be it enacted by the Legislature of West Virginia:

That §30-21-8 and §30-21-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be further amended by adding thereto a new section, designated §30-21-10a, all to read as follows:

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

§30-21-8. Issuance of license; renewal of license; renewal fee; display of license.


§30-21-10a. Rulemaking.

§30-21-8. Issuance of license; renewal of license; renewal fee; display of license.

1 (a) The board shall issue a license to engage in the practice of psychology to those persons who meet the requirements of this article.

2 (b) The license shall be valid for a period of two years from the date issued and may be renewed for a period of two years
without examination upon application for renewal on a form
prescribed by the board and payment to the board of a reason-
able renewal fee to be set by the board by legislative rule::
Provided, That the board may deny an application for renewal
for any reason which would justify the denial of an original
application for a license.

(c) The board shall prescribe the form of licenses and each
license shall be conspicuously displayed by the licensee at his
principal place of practice.


(a) Upon proper application, the board may issue, without
examination, a temporary permit to engage in the practice of
psychology in this state:

(1) Pending examination, to an applicant who meets the
qualifications of subdivisions (1), (2), (3), (4), (6) and (7),
subsection (a), section seven of this article, which temporary
permit shall expire thirty days after the board gives written
notice of the results of the examination held next following the
issuance of such temporary permit and such permit may not be
renewed nor may another permit be issued to the same person;
and

(2) To a psychologist who is not a resident of this state and
who meets the requirements of subdivisions (1), (2), (3), (4), (6)
and (7), subsection (a), section seven of this article, which
temporary permit shall be valid only for a period of ninety days
in the calendar year in which issued, and such permit may not
be renewed nor may another permit be issued to the same
person in the same calendar year.

(b) The fee for any temporary permit shall be set by the
board by legislative rule.
§30-21-10a. Rulemaking.

(a) The board may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide for:

(1) Licensure requirements, including requirements for applications, examinations, reciprocity, temporary permits and reinstatement;

(2) Fees for licenses, renewals of licenses and other services provided by the board;

(3) Experience, education and continuing education requirements and approval of courses; and

(4) Any other purpose to carry out the requirements of this article.

(b) Any rules in effect as of the passage of this article will remain in effect until amended, modified, repealed or replaced.

CHAPTER 203

(H. B. 4641 — By Delegates Michael, Leach, Long, Kominar, Foster, Beane and Perdue)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-7C-1, §30-7C-2, §30-7C-3, §30-7C-4, §30-7C-5 and §30-7C-6, all relating to the delegation of dialysis care; authorizing delegation under certain
circumstances; providing for training and testing standards; providing for approval or disapproval of training programs and testing organizations; providing for exceptions to training and testing requirements; authorizing rulemaking and emergency rulemaking; requiring facilities to provide information to the board; and providing for the expiration of authority in absence of sunrise application.

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 §30-7C-1, §30-7C-2, §30-7C-3, §30-7C-4, §30-7C-5 and §30-7C-6, all to read as follows:

ARTICLE 7C. DELEGATION OF DIALYSIS CARE.

§30-7C-1. Definitions.

§30-7C-2. Authority to delegate care.

§30-7C-3. Training and testing standards; approval.

§30-7C-4. Rule-making authority.

§30-7C-5. Facilities to determine qualifications and provide information to board.

§30-7C-6. Authority contingent upon submission of application to regulate dialysis technicians.

§30-7C-1. Definitions.

1 As used in this article:

2 (1) “Approved dialysis technician training program” means any board approved program used to train dialysis technicians including, but not limited to, a board approved dialysis facility-sponsored training program or another state approved program.

3 (2) “Board” means the West Virginia board of examiners for registered professional nurses.

4 (3) “Dialysis care” means performing and monitoring dialysis procedures which includes initiating and discontinuing
dialysis, drawing blood, and administering the following medications:

(A) Heparin either to prime the pump, initiate treatment or for administration throughout the treatment, in an amount prescribed by a physician or other practitioner duly authorized to so prescribe. This may be done either intravenously, peripherally via a fistula needle or in another clinically acceptable manner;

(B) Normal saline via the dialysis extracorporeal circuit as needed throughout the dialysis procedure; and

(C) Intradermal anesthetic in an amount prescribed by a physician or other practitioner duly authorized to so prescribe.

(4) "Direct supervision" means initial and ongoing direction, procedural guidance, observation, and evaluation, and the on-site presence of a registered nurse or physician.

(5) "West Virginia dialysis technician or dialysis technician" means an individual who has successfully completed an approved dialysis technician training program and who has achieved national certification as a dialysis technician, or an individual who meets the requirements set forth in the board’s rule pertaining to dialysis technicians practicing prior to the first day of July, two thousand four.

§30-7C-2. Authority to delegate care.

(a) A person licensed as a registered professional nurse under the provisions of article seven of this chapter may delegate dialysis care to a dialysis technician if:

(1) The dialysis technician has completed the requirements set forth in this article and established by the board by rule;

(2) The registered professional nurse considers the dialysis technician to be competent; and,
(3) The dialysis technician provides the care under the 
direct supervision of the registered professional nurse.

(b) A person licensed as a registered professional nurse 
under the provisions of article seven of this chapter may not 
delegate dialysis care to a person who is listed on the nurse aide 
abuse registry with a substantiated finding of abuse, neglect or 
misappropriation of property.

§30-7C-3. Training and testing standards; approval.

(1) The board shall prescribe standards for an approved 
dialysis technician training program, and prescribe testing 
standards and requirements, by legislative rule.

(2) Persons and organizations providing training programs 
and testing services must be approved by the board.

(3) Approval may be denied or withdrawn for failure to 
meet the standards set out in code or rule, or failure to meet the 
requirements of section five of this article.

§30-7C-4. Rule-making authority.

(a) The board shall propose rules for legislative approval in 
accordance with the provisions of article three, chapter twenty-
nine-a of the code to:

(1) Prescribe standards for training programs;

(2) Prescribe testing standards and requirements;

(3) Prescribe requirements for persons and organizations 
providing training programs and testing services;

(4) Assess fees for the approval of training programs, tests 
and providers of training programs and testing services;
(5) Prescribe standards for individuals who are practicing as dialysis technicians prior to the first day of July, two thousand four, in the transition of meeting the requirements of this article; and

(6) Provide for any other requirements to carry out the purposes of this article.

(b) The board may promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code for the purposes set forth in subsection (a) of this section.

§30-7C-5. Facilities to determine qualifications and provide information to board.

(a) Facilities which provide dialysis care through the employment of dialysis technicians shall determine that the dialysis technicians in their employment have met the standards and requirements of this article and the legislative rules promulgated pursuant to this article, including determining whether any dialysis technician is listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect or misappropriation of property.

(b) On or before the first day of July of each year, every facility in the state of West Virginia which provides dialysis care through the employment of dialysis technicians shall provide a list to the board of the names and addresses of all dialysis technicians employed at the facility.

§30-7C-6. Authority contingent upon submission of application to regulate dialysis technicians.

The authority to delegate the performance of dialysis care pursuant to the provisions of this article shall cease on the first day of August, two thousand five, unless an application to regulate dialysis technicians is submitted by the first day of
AN ACT to amend and reenact §12-4-14 of the code of West Virginia, 1931, as amended, relating to requiring state agencies administering funds or grants to notify grantees of certain audit reporting requirements; barring grantees not complying with reporting requirements from subsequently receiving funds or grants; and allowing audits to be filed electronically.

Be it enacted by the Legislature of West Virginia:

That §12-4-14 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Audits of corporations, associations or other organizations which receive state funds or grants.

(a) Any corporation, association or other organization in West Virginia that is not a local government as defined in section one-a, article nine, chapter six of this code and which receives state funds or grants in the amount of fifteen thousand dollars or more shall file an audit of the disbursement of funds with the legislative auditor’s office. The audit shall be filed within two years of the disbursement of funds or grants by the grantor and shall be made by an independent certified public
accountant at the cost of the grantee and show that the funds or
grants were spent for the purposes intended when the grant was
made. The state agency administering the funds or grants shall
notify the grantee of the reporting requirements set forth in this
section. A grantee failing to file a required audit within the
two-year time period is barred from subsequently receiving
state funds or grants until the grantee has filed the audit and is
otherwise in compliance with the provisions of this section.

(b) Audits of state funds or grants under fifteen thousand
dollars may be authorized by the joint committee on govern-
ment and finance to be conducted by the legislative auditor’s
office, at no cost to the grantee: Provided, That volunteer fire
departments satisfy the audit requirements of this section by
submitting a sworn statement of annual expenditures to the
legislative auditor’s office, along with a filing fee of seventy-
five dollars, on or before the fourteenth day of February of each
year, if the volunteer fire department elects not to be audited.
The sworn statement of expenditures shall be signed by the
chief or director of the volunteer fire department, and shall be
made under oath and acknowledged before a notary public. An
additional filing fee of twenty-five dollars shall be included
with the sworn statement of annual expenditures if the state-
ment is submitted between the fifteenth day of February and the
fifteenth day of March. An additional filing fee of fifty dollars
shall be included with the sworn statement of annual expendi-
tures if the statement is submitted between the sixteenth day of
March and the fifteenth day of April. If the sworn statement is
not submitted on or before the fifteenth day of April, the
volunteer fire department shall file an audit of the disbursement
of funds, made by an independent certified public accountant,
with the legislative auditor’s office no later than the first day of
July. The audit shall be made at the cost of the volunteer fire
department. If the audit made by the independent certified
public accountant is not filed with the legislative auditor by the
first day of July, the legislative auditor shall notify the state
treasurer who shall withhold payment of one thousand dollars from any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section sixteen-a, article twelve of said chapter and pay the amount withheld to the fund from which it was distributed to be redistributed the following year pursuant to the applicable provisions of those sections. If the volunteer fire department does not timely file a sworn statement of annual expenditures or an audit of the disbursement of funds, made by an independent certified public accountant, with the legislative auditor's office for three consecutive years, the legislative auditor shall notify the state treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section sixteen-a, article twelve of said chapter and pay the amount withheld to the fund from which it was distributed to be redistributed the following year pursuant to the applicable provisions of those sections.

(c) The office of the legislative auditor may assign an employee or employees to perform audits at the direction of the legislative auditor of the disbursement of funds or grants to volunteer fire departments. The volunteer fire department shall cooperate with the legislative auditor, the legislative auditor's employees and the state auditor in performing their duties under this section. If the legislative auditor determines a volunteer fire department is not cooperating, the legislative auditor shall notify the state treasurer who shall withhold payment of any amount that would otherwise be distributed to the fire department under the provisions of sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section sixteen-a, article twelve of said chapter until the legislative auditor informs the treasurer that the fire department has cooperated as required by this section. The state treasurer shall
pay the amount withheld into a special revenue account hereby created in the state treasury and designated the "Volunteer Fire Department Audit Account". If, after one year from payment of the amount withheld into the special revenue account, the legislative auditor informs the state treasurer of continued no cooperation by the fire department, the state treasurer shall pay the amount withheld to the fund from which it was distributed to be redistributed the following year pursuant to the applicable provisions of those sections.

(d) Filing fees paid by volunteer fire departments pursuant to this section shall be paid into a special revenue account created in the state treasury known as the "Special Legislative Audit Fund". Expenditures from the fund are authorized to be made by the legislative auditor's office solely for the purposes of payment of costs associated with the audits conducted pursuant to this section. Any person who files a fraudulent sworn statement of expenditures under this section is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than five thousand dollars or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(e) Whenever the state auditor performs an audit of a volunteer fire department for any purpose the auditor shall also conduct an audit of other state funds received by the fire department pursuant to sections fourteen-d and thirty-three, article three, chapter thirty-three of this code and section sixteen-a, article twelve of said chapter. The auditor shall send a copy of any such audit to the legislative auditor. The legislative auditor may accept an audit performed by the auditor in lieu of performing an audit under this section.

(f) Any audit submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of article one, chapter thirty-nine-a of this code.
AN ACT to amend and reenact §8-27-23 of the code of West Virginia, 1931, as amended, relating generally to the procurement of supplies, equipment, materials and contracts for the construction of facilities by urban mass transportation systems.

Be it enacted by the Legislature of West Virginia:

That §8-27-23 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 27. INTERGOVERNMENTAL RELATIONS—URBAN MASS TRANSPORTATION SYSTEMS.

§8-27-23. Competitive bids; publication of solicitation for sealed bids.

1 (a) Any contract for the construction of facilities by any authority, when the expenditure required exceeds the sum of ten thousand dollars, shall be based solely on competitive sealed bids.

(b) Except as provided below, the procurement of all supplies, equipment and materials, where the expenditure required exceeds the sum of ten thousand dollars, shall be based on the competitive procedure that is best suited under the circumstances of the procurement.
(c) In determining the competitive bid procedures that is best suited under the circumstances, an authority shall conduct:

(1) Competitive sealed bidding if:

(A) Time permits a competitive bid process to be used;

(B) The award of the bid will be made primarily on price and price-related factors;

(C) It is likely to be unnecessary to conduct discussions with suppliers regarding bids, including discussions regarding price; and

(D) There is a reasonable expectation of receiving more than one sealed bid; or

(2) Competitive negotiation where competitive sealed bidding is not best suited under the circumstances.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section, an authority may provide for the procurement of property or services covered by this section using other than competitive procedures only when:

(1) The property or services needed are available only from one responsible source and no other type of property or service will satisfy the authority’s needs;

(2) The authority’s need for the property or service is urgent, unusual and compelling because the authority would be seriously injured unless the authority is permitted to limit the number of sources from which it solicits;

(3) It is necessary to award a contract to a particular source or sources in order to maintain a facility, producer, manufacturer or other supplier in case of emergency; or
(4) It is necessary to establish or maintain an alternative source or sources of supply for the property or service to increase or maintain competition.

(e) All sealed bids or competitive negotiated proposals received in response to a solicitation or request for bid may be rejected if an authority determines that the action is in the public interest.

(f) Sealed bids shall be opened publicly at the time and place stated in the solicitation and the authority shall evaluate the bids without discussions with bidders and award a contract with reasonable promptness to the responsible source whose bid conforms to the solicitation and is most advantageous to the authority, considering only price and other price-related factors included in the solicitation.

(g) The evaluation of competitive proposals may include written or oral discussions conducted with all responsible bidders or suppliers at any time after receipt of the proposals and before the award or may be made without discussions. In either event, the award shall be made to the lowest responsible bidder or supplier.

(h) Adequate public notice of the solicitation of bids and proposals shall be given. Public notice shall be given not less than seven days before the date set for bid opening or, in the case of competitive negotiation, not less than seven days before the due date for receipt of proposals: Provided, That bids for the construction of facilities shall be obtained by public notice published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, with such publication being made at least fourteen days before the final date for submitting bids.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §17G-1-1, §17G-1-2, §17G-1-3, §17G-2-1, §17G-2-2 and §17G-2-3, all relating to racial profiling data collection; defining terms; requiring all state law-enforcement officers to collect certain data during traffic stops; requiring the division of motor vehicles to develop forms and compile the data collected; establishing penalties for agencies which fail to comply; providing limited civil liability protection for officers collecting data; providing form content; providing consultation with law-enforcement organizations relating to developing forms; requiring director of the governor’s committee on crime, delinquency and correction to conduct analysis and distribute data; requiring promulgation of emergency and legislative rules; providing effective date for requiring collection of data; providing for annual report to the Legislature; and expiring data collection requirements.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new chapter, designated §17G-1-1, §17G-1-2, §17G-1-3, §17G-2-1, §17G-2-2 and §17G-2-3, all to read as follows:

CHAPTER 17G. RACIAL PROFILING DATA COLLECTION ACT.
Article
1. Racial Profiling Data Collection.
2. Analysis of Traffic Stops Study and Annual Report by Director of the Governor's Committee on Crime, Delinquency and Correction.

ARTICLE 1. RACIAL PROFILING DATA COLLECTION.

§17G-1-1. Definitions.
§17G-1-2. Information obtained by law-enforcement officers during a traffic stop.
§17G-1-3. Law-enforcement officer exemption from civil liability.

§17G-1-1. Definitions.

The following words and phrases, when used in this chapter, shall, for the purposes of this chapter, have the meanings respectively ascribed to them in this article:

(a) “Gross data” means aggregate data regarding the information obtained under section two of this article.

(b) “Law-enforcement agency” means every state, county or municipal agency with officers who are authorized to direct or regulate traffic or to make arrests or issue citations or warnings for violations of traffic laws and ordinances.

(c) “Minority group” means individuals of any ethnic descent, including, but not limited to, African-American, Hispanic, Native American, Middle Eastern, Asian or Pacific Islander.

§17G-1-2. Information obtained by law-enforcement officers during a traffic stop.

Each time a law-enforcement officer stops a driver of a motor vehicle for a violation of any motor vehicle statute or ordinance, other than for a nonviolation stop, including, but not limited to, a checkpoint for driving under the influence, license, registration or seat belts, the officer shall obtain and prepare a brief report based on the officer’s visual observation and
perception of basic information about the nature, duration and
outcome of the stop, including, but not limited to, information
relating to the perceived racial characteristics of each operator
stopped. The report is to be provided to the West Virginia
law-enforcement agency which employs the law-enforcement
officer: Provided, That the failure of the law-enforcement
officer to obtain and report racial profiling data shall not affect
the validity of the underlying traffic citation or warning.

The information to be collected shall include:

(a) The identifying characteristics of the operator stopped,
including perceived race, ethnicity or national origin, gender
and age;

(b) The location and duration of the stop;

(c) The traffic violation or violations alleged to have been
committed that led to the stop;

(d) Whether or not a warning or citation was issued as a
result of the stop and if so, the specific violation, if any,
charged or warning given;

(e) Whether a search was performed as a result of the stop;

(f) If a search was performed, whether the person consented
to the search, the probable cause or reasonable suspicion for the
search, whether the person was searched, whether the person’s
property was searched and the duration of the search;

(g) If a search was of a passenger in the motor vehicle, the
perceived age, gender and race or minority group of the
passenger;

(h) Whether any contraband was discovered or seized in the
course of the search and the type of any contraband discovered
or seized;
36 (i) Identify whether the search involved canine units or
37 advanced technology; and

38 (j) Any additional information which the law-enforcement
39 agency considers appropriate.

§17G-1-3. Law-enforcement officer exemption from civil liability.

1 Any law-enforcement officer who, in good faith, records
2 traffic stop information under the requirements of section two
3 of this article may not be held civilly liable for the act of
4 inaccurately recording the information unless the officer’s
5 conduct was unconstitutional, unreasonable, intentional or
6 reckless.

ARTICLE 2. ANALYSIS OF TRAFFIC STOPS STUDY AND ANNUAL
REPORT BY DIRECTOR OF THE GOVERNOR’S
COMMITTEE ON CRIME, DELINQUENCY AND
CORRECTION.

§17G-2-1. Format of traffic stops data collection forms.
§17G-2-2. Law-enforcement agency traffic stops data collection and submission.

§17G-2-1. Format of traffic stops data collection forms.

1 The division of motor vehicles shall provide a form as
2 required by section three of this article, in both printed and
3 electronic format, to be used by law-enforcement officers when
4 making a traffic stop to record the information listed in section
5 two, article one of this chapter.

§17G-2-2. Law-enforcement agency traffic stops data collection
and submission.

1 (a) Each law-enforcement agency shall report its data
2 described in section two, article one of this chapter to the
3 division of motor vehicles in a report format as prescribed by
4 the division.
(b) If a law-enforcement agency fails to comply with the provisions of this section, the division of motor vehicles shall notify the agency by certified mail of its failure to comply. If the agency continues to fail to comply, the governor may withhold state-controlled funds appropriated to the noncompliant law-enforcement agency until reports are made as required by this article.


(a) To facilitate the commencement of data collection on the first day of January, two thousand five, the director of the governor’s committee on crime, delinquency and corrections, in consultation with the division of motor vehicles, shall propose emergency and legislative rules in accordance with article three, chapter twenty-nine-a of this code. These rules shall include, but are not limited to:

(1) The manner of reporting the information to the division of motor vehicles;

(2) Promulgation of a form or forms for reporting purposes by various law-enforcement agencies;

(3) A means of reporting the information required in section two, article one of this chapter on warning citations to the division of motor vehicles;

(4) In consultation with the fraternal order of police, the sheriff’s association, the deputy sheriff’s association and representatives of law-enforcement agencies, a means of providing training to law-enforcement officers on completion and submission of the data on the proposed form;

(5) A means of reporting back to individual law-enforcement agencies, from time to time, at the request of a law-
(6) A limitation that the data is to be used solely for the purposes of this chapter;

(7) Safeguards to protect the identity of individual law-enforcement officers collecting data required by section two, article one of this chapter when no citation or warning is issued;

(8) Methodology for collection of gross data by law-enforcement agencies and the analysis of the data;

(9) The number of motor vehicle stops and searches of motor vehicles occupied by members of a perceived minority group; the number of motor vehicle stops and searches of motor vehicles occupied by persons who are not members of a minority group; the population of minorities in the areas where the stops occurred; estimates of the number of all vehicles traveling on the public highways where the stops occurred; factors to be included in any evaluation that the data may indicate racial profiling, racial stereotyping or other race-based discrimination or selective enforcement; and other data deemed appropriate by the governor’s committee on crime, delinquency and correction for the analysis of the protection of constitutional rights; and

(10) Protocols for reporting collected data by the division of motor vehicles to the governor’s committee on crime, delinquency and correction and the analysis thereof.

(b) On or before the first day of February, two thousand six and each year thereafter, the director of the governor’s committee on crime, delinquency and correction shall publish a public report of the data collected and provide a copy thereof to all law-enforcement agencies subject to this chapter and provide a
copy of the report and analysis of the data collected to the
governor and to the joint committee on government and
finance.

(c) The provisions of sections two and three, article one of
this chapter and section two of this article shall become
effective after the thirty-first day of December, two thousand
four.

(d) The provisions of this chapter shall be of no force or
effect after the thirty-first day of December, two thousand
seven.

CHAPTER 207

(Com. Sub. for S. B. 596 — By Senators Tomblin,
Mr. President, and Kessler)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-12-5 of the code of West Vir­
ginia, 1931, as amended, relating to the powers and duties of the
board of directors of the state board of risk and insurance
management with respect to the purchase of or contracting for
insurance on state properties, activities and responsibilities;
clarifying the power of the board to reasonably limit the amount,
kind and types of insurance and the conditions, limitations and
exclusions of such insurance covering state property, activities
and responsibilities; and giving the board of risk and insurance
management general powers to determine under what conditions
an offer of property or liability insurance coverage should be
made to a political subdivision, charitable or public service
organization or an emergency medical services agency.
Be it enacted by the Legislature of West Virginia:

That §29-12-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

(a) (1) The board has, without limitation and in its discretion as it seems necessary for the benefit of the insurance program, general supervision and control over the insurance of state property, activities and responsibilities, including:

(A) The acquisition and cancellation of state insurance;

(B) Determination of the kind or kinds of coverage;

(C) Determination of the amount or limits for each kind of coverage;

(D) Determination of the conditions, limitations, exclusions, endorsements, amendments and deductible forms of insurance coverage;

(E) Inspections or examinations relating to insurance coverage of state property, activities and responsibilities;

(F) Reinsurance; and,

(G) Any and all matters, factors and considerations entering into negotiations for advantageous rates on and coverage of such state property, activities and responsibilities.

(2) The board shall endeavor to secure reasonably broad protection against loss, damage or liability to state property and on account of state activities and responsibilities by proper, adequate, available and affordable insurance coverage and
through the introduction and employment of sound and accepted principles of insurance, methods of protection and principles of loss control and risk.

(3) The board is not required to provide insurance for every state property, activity or responsibility.

(4) Any policy of insurance purchased or contracted for by the board shall provide that the insurer shall be barred and estopped from relying upon the constitutional immunity of the state of West Virginia against claims or suits: Provided, That nothing herein shall bar a state agency or state instrumentality from relying on the constitutional immunity granted the state of West Virginia against claims or suits arising from or out of any state property, activity or responsibility not covered by a policy or policies of insurance: Provided, however, That nothing herein shall bar the insurer of political subdivisions from relying upon any statutory immunity granted such political subdivisions against claims or suits.

(5) The board shall make a complete survey of all presently owned and subsequently acquired state property subject to insurance coverage by any form of insurance, which survey shall include and reflect inspections, appraisals, exposures, fire hazards, construction and any other objectives or factors affecting or which might affect the insurance protection and coverage required.

(6) The board shall keep itself currently informed on new and continuing state activities and responsibilities within the insurance coverage herein contemplated. The board shall work closely in cooperation with the state fire marshal’s office in applying the rules of that office insofar as the appropriations and other factors peculiar to state property will permit.

(7) The board may negotiate and effect settlement of any and all insurance claims arising on or incident to losses of and
 damages to covered state properties, activities and responsibilities hereunder and shall have authority to execute and deliver proper releases of all such claims when settled. The board may adopt rules and procedures for handling, negotiating and settlement of all such claims. Any discussion or consideration of the financial or personal information of an insured may be held by the board in executive session closed to the public, notwithstanding the provisions of article nine-a, chapter six of this code:

(8) The board may employ an executive director for an annual salary of seventy thousand dollars and such other employees, including legal counsel, as may be necessary to carry out its duties. The legal counsel may represent the board before any judicial or administrative tribunal and perform such other duties as may be requested by the board.

(9) The board may enter into any contracts necessary to the execution of the powers granted to it by this article or to further the intent of this article.

(10) The board may make rules governing its functions and operations and the procurement of state insurance. Except where otherwise provided by statute, rules of the board are subject to the provisions of article three, chapter twenty-nine-a of this code.

(11) The funds received by the board, including, but not limited to, state agency premiums, mine subsidence premiums and political subdivision premiums, shall be deposited with the West Virginia investment management board with the interest income and returns on investment a proper credit to such property insurance trust fund or liability insurance trust fund as applicable.

(b) (1) Definitions. — The following words and phrases when used in this subsection, for the purposes of this subsec-
tion, have the meanings respectively ascribed to them in this subsection;

(A) "Political subdivision" has the same meaning as in section three, article twelve-a of this chapter;

(B) "Charitable" or "public service organization" means any hospital in this state which has been certified as a critical access hospital by the federal centers for medicare and medicaid upon the designation of the state office of rural health policy, the office of community and rural health services, the bureau for public health or the department of health and human resources and any bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane, patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or organization or a rescue unit or other similar volunteer community service organization or association, but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any candidate for public office: and

(C) "Emergency medical service agency" has the same meaning as in section three, article four-c, chapter sixteen of this code.

(2) If requested by a political subdivision, a charitable or public service organization or an emergency medical services agency, the board may, but is not required to, provide property and liability insurance to insure the property, activities and responsibilities of the political subdivision, charitable or public service organization or emergency medical services agency. The board may enter into any contract necessary to the execution of the powers granted by this article or to further the intent of this article.
(A) Property insurance provided by the board pursuant to this subsection may also include insurance on property leased to or loaned to the political subdivision, a charitable or public service organization or an emergency medical services agency which is required to be insured under a written agreement.

(B) The cost of insurance, as determined by the board, shall be paid by the political subdivision, the charitable or public service organization or the emergency medical services agency and may include administrative expenses. For purposes of this section, if an emergency medical services agency is a for-profit entity, its claims history may not adversely affect other participants’ rates in the same class.

c (1) The board has general supervision and control over the optional medical liability insurance programs providing coverage to health care providers as authorized by the provisions of article twelve-b of this chapter. The board is hereby granted and may exercise all powers necessary or appropriate to carry out and effectuate the purposes of this article.

(2) The board shall:

(A) Administer the preferred medical liability program and the high risk medical liability program and exercise and perform other powers, duties and functions specified in this article;

(B) Obtain and implement, at least annually, from an independent outside source, such as a medical liability actuary or a rating organization experienced with the medical liability line of insurance, written rating plans for the preferred medical liability program and high-risk medical liability program on which premiums shall be based;

(C) Prepare and annually review written underwriting criteria for the preferred medical liability program and the high-
risk medical liability program. The board may utilize review panels, including, but not limited to, the same specialty review panels to assist in establishing criteria;

(D) Prepare and publish, before each regular session of the Legislature, separate summaries for the preferred medical liability program and high-risk medical liability program activity during the preceding fiscal year, each summary to be included in the board of risk and insurance management audited financial statements as “other financial information” and which shall include a balance sheet, income statement and cash flow statement, an actuarial opinion addressing adequacy of reserves, the highest and lowest premiums assessed, the number of claims filed with the program by provider type, the number of judgments and amounts paid from the program, the number of settlements and amounts paid from the program and the number of dismissals without payment;

(E) Determine and annually review the claims history debit or surcharge for the high-risk medical liability program;

(F) Determine and annually review the criteria for transfer from the preferred medical liability program to the high-risk medical liability program;

(G) Determine and annually review the role of independent agents, the amount of commission, if any, to be paid therefor and agent appointment criteria;

(H) Study and annually evaluate the operation of the preferred medical liability program and the high-risk medical liability program and make recommendations to the Legislature, as may be appropriate, to ensure their viability, including, but not limited to, recommendations for civil justice reform with an associated cost-benefit analysis, recommendations on the feasibility and desirability of a plan which would require all health care providers in the state to participate with an associ-
ated cost-benefit analysis, recommendations on additional funding of other state run insurance plans with an associated cost-benefit analysis and recommendations on the desirability of ceasing to offer a state plan with an associated analysis of a potential transfer to the private sector with a cost-benefit analysis, including impact on premiums;

(i) Establish a five-year financial plan to ensure an adequate premium base to cover the long tail nature of the claims-made coverage provided by the preferred medical liability program and the high risk medical liability program. The plan shall be designed to meet the program's estimated total financial requirements, taking into account all revenues projected to be made available to the program, and apportioning necessary costs equitably among participating classes of health care providers. For these purposes, the board shall:

(i) Retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group malpractice plans, to estimate the total financial requirements of the program for each fiscal year and to review and render written professional opinions as to financial plans proposed by the board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the board or the executive director. All reasonable fees and expenses for actuarial services shall be paid by the board. Any financial plan or modifications to a financial plan approved or proposed by the board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the governor and to the Legislature without the actuary's written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs, including incurred but not reported claims, for the fiscal year for which the plan is proposed. The actuary's opinion for
any fiscal year shall include a requirement for establishment of
a reserve fund;

(ii) Submit its final, approved five-year financial plan, after
obtaining the necessary actuary’s opinion, to the governor and
to the Legislature no later than the first day of January preced-
ing the fiscal year. The financial plan for a fiscal year becomes
effective and shall be implemented by the executive director on
the first day of July of the fiscal year. In addition to each final,
approved financial plan required under this section, the board
shall also simultaneously submit an audited financial statement
based on generally accepted accounting practices (GAAP) and
which shall include allowances for incurred but not reported
claims: Provided, That the financial statement and the ac-
crual-based financial plan restatement shall not affect the
approved financial plan. The provisions of chapter twenty-
nine-a of this code shall not apply to the preparation, approval
and implementation of the financial plans required by this
section;

(iii) Submit to the governor and the Legislature a prospec-
tive five-year financial plan beginning on the first day of
January, two thousand three, and every year thereafter, for the
programs established by the provisions of article twelve-b of
this chapter. Factors that the board shall consider include, but
shall not be limited to, the trends for the program and the
industry; claims history, number and category of participants in
each program; settlements and claims payments; and judicial
results;

(iv) Obtain annually, certification from participants that
they have made a diligent search for comparable coverage in
the voluntary insurance market and have been unable to obtain
the same;
(J) Meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the medical liability programs established in article twelve-b of this chapter. The board shall review actual costs incurred any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of these programs for the current fiscal year are met;

(K) To analyze the benefit of and necessity for excess verdict liability coverage;

(L) Consider purchasing reinsurance, in the amounts as it may from time to time determine is appropriate, and the cost thereof shall be considered to be an operating expense of the board;

(M) Make available to participants, optional extended reporting coverage or tail coverage: Provided, That, at least five working days prior to offering such coverage to a participant or participants, the board shall notify the president of the Senate and the speaker of the House of Delegates in writing of its intention to do so and such notice shall include the terms and conditions of the coverage proposed;

(N) Review and approve, reject or modify rules that are proposed by the executive director to implement, clarify or explain administration of the preferred medical liability program and the high risk medical liability program. Notwithstanding any provisions in this code to the contrary, rules promulgated pursuant to this paragraph are not subject to the provisions of sections nine through sixteen, inclusive, article three, chapter twenty-nine-a of this code. The board shall comply with the remaining provisions of article three and shall hold hearings or receive public comments before promulgating
any proposed rule filed with the secretary of state: Provided,
That the initial rules proposed by the executive director and
promulgated by the board shall become effective upon approval
by the board notwithstanding any provision of this code;

(O) Enter into settlements and structured settlement
agreements whenever appropriate. The policy may not require
as a condition precedent to settlement or compromise of any
claim the consent or acquiescence of the policy holder. The
board may own or assign any annuity purchased by the board to
a company licensed to do business in the state;

(P) Refuse to provide insurance coverage for individual
physicians whose prior loss experience or current professional
training and capability are such that the physician represents an
unacceptable risk of loss if coverage is provided;

(Q) Terminate coverage for nonpayment of premiums upon
written notice of the termination forwarded to the health care
provider not less than thirty days prior to termination of
coverage;

(R) Assign coverage or transfer insurance obligations
and/or risks of existing or in-force contracts of insurance to a
third-party medical professional liability insurance carrier with
the comparable coverage conditions as determined by the
board. Any transfer of obligation or risk shall effect a novation
of the transferred contract of insurance and if the terms of the
assumption reinsurance agreement extinguish all liability of the
board and the state of West Virginia such extinguishment shall
be absolute as to any and all parties; and

(S) Meet and consult with and consider recommendations
from the medical malpractice advisory panel established by the
provisions of article twelve-b of this chapter.
(d) If, after the first day of September, two thousand two,
the board has assigned coverages or transferred all insurance
obligations and/or risks of existing or in-force contracts of
insurance to a third-party medical professional liability insur-
ance carrier, and the board otherwise has no covered partici-
pants, then the board shall not thereafter offer or provide
professional liability insurance to any health care provider
pursuant to the provisions of subsection (c) of this section or the
provisions of article twelve-b of this chapter unless the Legisla-
ture adopts a concurrent resolution authorizing the board to
reestablish medical liability insurance programs.

CHAPTER 208

(S. B. 402 — By Senators Ross, Minard, Snyder,
Unger, Boley and Minear)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-12-14 of the code of West
Virginia, 1931, as amended, relating to the authority of the board
of risk and insurance management to promulgate legislative rules
setting minimum contract terms for entities participating in
insurance programs and mandatory waiting periods for reentry
into insurance programs for entities which have terminated
coverage through the board.

Be it enacted by the Legislature of West Virginia:

That §29-12-14 of the code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.
§29-12-14. Promulgation of rules.

1 The board of risk and insurance management is authorized to propose rules for legislative approval, pursuant to the provisions of article three, chapter twenty-nine-a of this code, setting minimum contract terms for entities participating in insurance programs and mandatory waiting periods for reentry into insurance programs for entities which have terminated coverage through the board.

CHAPTER 209

(H. B. 4745 — By Delegates Warner, Michael, Stalnaker, Proudfoot, Boggs, Ashley and G. White)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17-2A-23 of the code of West Virginia, 1931, as amended, relating to administration of repairs to vehicles and equipment by the division of highways; and providing for decertification of certified vendors in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §17-2A-23 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-23. Administration of commercial vehicle and equipment related work orders.
In order to promote cost effective vehicle and equipment repair work efficiently and effectively and in order to provide for repair work to be done in a safe and timely manner when in-house repair is determined not to be cost effective or practical under the circumstances, the commissioner of highways may establish a cost effective analysis for determining the reasonableness and effectiveness of obtaining repair of vehicles and equipment by certain certified vendors.

The commissioner may issue a commercial work order to certified vendors for repair of vehicles and equipment when the commissioner determines that the repairs would extend the life of the equipment or vehicle a minimum of five years and that the expenditure would be the safest cost effective alternative to purchase of new vehicles and equipment or in-house repair.

Any commercial vendor of vehicle and equipment repair may apply to the commissioner for certification as a certified repair vendor under the provisions of this section. In order to qualify, the vendor must provide proof that it has the trained personnel, the required tools, equipment and facilities to provide the work. The commissioner shall inspect or cause to be inspected the facilities and shall review the qualifications of personnel of vendors applying for certification. If approved by the commissioner, the vendor may be certified as a qualified vendor for the type of repair work the commissioner determines the vendor is qualified to provide.

Prior to issuing a commercial work order with a certified vendor, the commissioner must determine the cost of repair of the vehicle or equipment. If on site inspection is required, the commissioner may issue a work order to provide for the inspection and estimate.

Preference for issuing vehicle and equipment repair work orders shall be given to in-state licensed qualified vendors:
Provided, That a vendor which fails to guarantee its work for at least one year, or which fails to guarantee its work for a longer period if the longer period is comparable to that offered by local rebuild or repair shops, or which fails to complete any work order in the time specified within the work order, or which fails to complete any work order to the specifications of the work order, shall be decertified for a period of one year.

Nothing herein requires the commissioner of highways to issue a work order to any particular commercial vendor.

The commissioner of highways shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code regarding certification of qualified vendors and awarding work orders. The legislative rule may include provisions for deviations from the standard cost principles in special situations and circumstances.

CHAPTER 210

(Com. Sub. for H. B. 4033 — By Mr. Speaker, Mr. Kiss, and Delegate Trump) [By Request of the Executive]

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17-16A-11 of the code of West Virginia, 1931, as amended, relating to authorizing the issuance of new parkway revenue bonds; establishing a two hundred million dollar ceiling on the aggregate outstanding principal amount of such parkway revenue bonds issued under such section from time to time outstanding; setting forth method of calculation of outstanding bond indebtedness; limitations; authorized expendi-
tures of bond proceeds; specifying condition precedent to issuance of additional bonds; and limiting effect of amendments to section.

Be it enacted by the Legislature of West Virginia:

That §17-16A-11 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-11. Parkway revenue bonds—West Virginia turnpike; related projects.

(a) The parkways authority is authorized to provide by resolution, at one time or from time to time, for the issuance of parkway revenue bonds of the state in an aggregate outstanding principal amount not to exceed, from time to time, two hundred million dollars for the purpose of paying: (i) All or any part of the cost of the West Virginia turnpike, which may include, but not be limited to, an amount equal to the state funds used to upgrade the West Virginia turnpike to federal interstate standards; (ii) all or any part of the cost of any one or more parkway projects that involve improvements to or enhancements of the West Virginia turnpike, including, without limitation, lane-widening on the West Virginia turnpike and that are or have been recommended by the parkways authority’s traffic engineers or consulting engineers or by both of them prior to the issuance of parkway revenue bonds for the project or projects; and (iii) to the extent permitted by federal law, all or any part of the cost of any related parkway project. For purposes of this section only, a “related parkway project” means any information center, visitors’ center or rest stop, or any combination thereof, and any expressway, turnpike, trunkline, feeder road, state local service road or park and forest road which connects to or intersects with the West Virginia turnpike and is located within
seventy-five miles of the turnpike as it exists on the first day of June, one thousand nine hundred eighty-nine, or any subsequent expressway, trunkline, feeder road, state local service road or park and forest road constructed pursuant to this article:

Provided, That nothing in this section shall be construed as prohibiting the parkways authority from issuing parkway revenue bonds pursuant to section ten of this article for the purpose of paying all or any part of the cost of any related parkway project: Provided, however, That none of the proceeds of the issuance of parkway revenue bonds under this section shall be used to pay all or any part of the cost of any economic development project, except as provided in section twenty-three of this article: Provided further, That nothing in this section shall be construed as prohibiting the parkways authority from issuing additional parkway revenue bonds to the extent permitted by applicable federal law for the purpose of constructing, maintaining and operating any highway constructed in whole or in part with money obtained from the Appalachian regional commission as long as the highway connects to the West Virginia turnpike as it existed as of the first day of June, one thousand nine hundred eighty-nine: And provided further, That, for purposes of this section, in determining the amount of bonds outstanding, from time to time, within the meaning of this section: Original par amount or original stated principal amount at the time of issuance of bonds shall be used to determine the principal amount of bonds outstanding, except that the amount of parkway revenue bonds outstanding under this section may not include any bonds that have been retired through payment, defeased through the deposit of funds irrevocably set aside for payment or otherwise refunded so that they are no longer secured by toll revenues of the West Virginia turnpike: And provided further, That the authorization to issue bonds under this section is in addition to the authorization and power to issue bonds under any other section of this code: And provided further, That, without limitation of the authorized purposes for
which parkway revenue bonds are otherwise permitted to be
issued under this section, and without increasing the maximum
principal par amount of parkway revenue bonds permitted to be
outstanding, from time to time, under this section, the authority
is specifically authorized by this section to issue, at one time or
from time to time, by resolution or resolutions under this
section, parkway revenue bonds under this section for the
purpose of paying all or any part of the cost of one or more
parkway projects that: (i) Consist of enhancements or improve-
ments to the West Virginia turnpike, including, without limita-
tion, projects involving lane widening, resurfacing, surface
replacement, bridge replacement, bridge improvements and
enhancements, other bridge work, drainage system improve-
ments and enhancements, drainage system replacements, safety
improvements and enhancements, and traffic flow improve-
ments and enhancements; and (ii) have been recommended by
the authority’s consulting engineers or traffic engineers, or both,
prior to the issuance of the bonds. Except as otherwise specifi-
cally provided in this section, the issuance of parkway revenue
bonds pursuant to this section, the maturities and other details
of the bonds, the rights of the holders of the bonds, and the
rights, duties and obligations of the parkways authority in
respect of the bonds shall be governed by the provisions of this
article insofar as the provisions are applicable.

(b) Notwithstanding the provisions of subsection (a) of this
section, no additional bonds authorized by the amendments to
this section enacted during the regular session of the Legislature
in the year two thousand four may be issued until the parkways
authority has adopted by written resolution a final, irrevocable
decision to fully fund and complete the construction of a Shady
Spring connector and interchange connecting to the West
Virginia turnpike from its toll funds or from the proceeds of
bonds issued for that purpose pursuant to subsection (a) of this
section, or from both, or funded, in whole or in part, by federal
highway funds if they are available.
AN ACT to amend and reenact §17C-17-8a, §17C-17-9 and §17C-17-11d of the code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §17C-17-9a; and to amend and reenact §17C-17A-1, §17C-17A-3, §17C-17A-6 and §17C-17A-12 of said code, all relating generally to regulating the weights of vehicles on roads and highways; authorizing tolerances for certain gross weight vehicle loads; requiring compliance with weight load limits on the national system of interstate and defense highways; providing tolerance limits for maximum gross vehicle weights; adding roads and highways eligible to qualify as part of the coal resource transportation road system; limiting certain reporting requirements relating to coal hauled on coal resource transportation roads; requiring certain receivers to report receiving vehicles transporting coal in excess of eighty-eight thousand pounds on non-coal transportation highways to the public service commission; and authorizing the commissioner of the division of highways to designate certain public roads, highways and bridges as feeder roads and designate them on a temporary basis as being qualified for inclusion in the coal resource transportation system.

Be it enacted by the Legislature of West Virginia:

That §17C-17-8a, §17C-17-9 and §17C-17-11d of the code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated
§17C-17-9a; and that §17C-17A-1, §17C-17A-3, §17C-17A-6 and §17C-17A-12 of said code be amended and reenacted, all to read as follows:

Article
17. Size, Weight and Load.
17A. Regulation of the Commercial Transportation of Coal.

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-8a. Tandem-axle load limit for the national system of interstate and defense highways.

§17C-17-9. Gross weight of vehicles and loads for the national system of interstate and defense highways.

§17C-17-9a. Gross weight of vehicles and loads.

§17C-17-1ld. Establishing maximum road highway weights.

§17C-17-8a. Tandem-axle load limit for the national system of interstate and defense highways.

1 (a) The gross weight imposed on the national system of interstate and defense highways by the wheels of a tandem-axle of a vehicle shall not exceed thirty-four thousand pounds.

4 (b) For the purpose of this article a tandem-axle load shall be defined as the total load transmitted to the road by two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than forty inches and not more than ninety-six inches apart, extending the full width of the vehicle.

§17C-17-9. Gross weight of vehicles and loads for the national system of interstate and defense highways.

1 (a) It shall be unlawful for any owner, lessee or borrower of a vehicle or combination of vehicles to operate on any national system of interstate and defense highways such vehicle or combination of vehicles with a gross weight in excess of the gross weight for which such vehicle or combination of vehicles is registered or in excess of any weight limitation set forth in
this chapter, whether such limitation be specifically stated in this chapter or set by express authority granted in this chapter.

(b) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth in section eight of this article, or the limit imposed upon the highway through any tandem-axle as set forth in section eight-a of this article, the total gross weight with load imposed upon the highway by any one group of two or more consecutive axles of a vehicle or combination of vehicles shall not exceed the gross weight given for the respective distance between the first and last axle of the total group of axles measured longitudinally to the nearest foot as set forth in the following table:

<table>
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<tr>
<th>Distance in feet between the extremes of any groups of two or more consecutive axles</th>
<th>Maximum load in pounds carried on any group of two or more consecutive axles</th>
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Provided, That no vehicle or combination of vehicles shall have a gross weight, including the load, in excess of sixty-five thousand pounds, except that the maximum gross weight of vehicles operating on the national system of interstate and defense highways and any highway providing reasonable access to and from terminals and facilities for food, fuel, repairs and rest within the state shall not be in excess of eighty thousand pounds and except as otherwise provided in this article. Notwithstanding the limits prescribed in this subsection, two consecutive sets of tandem-axles may carry a gross load of thirty-four thousand pounds each providing the overall distance between the first and last axles of such consecutive sets of tandem-axles is thirty-six feet or more: Provided, however, That the limits prescribed in this subsection shall not prohibit the operation of any vehicle or combination of vehicles of a type which could be lawfully operated in accordance with gross vehicle weights in effect on the first day of January, one thousand nine hundred seventy-five: Provided further, That no maximum weight in excess of or in conflict with any weight limitations prescribed by or pursuant to any act of Congress shall be permitted on the national system of interstate and defense highways.

§17C-17-9a. Gross weight of vehicles and loads.

(a) It shall be unlawful for any owner, lessee or borrower of a vehicle or combination of vehicles to operate on any highway
other than the national system of interstate and defense highways such vehicle or combination of vehicles with a gross weight in excess of the gross weight for which such vehicle or combination of vehicles is registered or in excess of any weight limitation set forth in this chapter, whether such limitation be specifically stated in this chapter or set by express authority granted this chapter.

(b) Subject to the limit upon the weight imposed upon the highway through any one axle as set forth in section eight of this article, the total gross weight on vehicles or combination of vehicles operated on any highway other than the national system of interstate and defense highways shall be as follows:

(1) A single unit truck having one steering axle and two axles in tandem shall be limited to a maximum gross weight of sixty thousand pounds with a tolerance of ten percent.

(2) A single unit truck having one steering axle and three axles in tridem arrangement shall be limited to a maximum gross weight of seventy thousand pounds with a tolerance of ten percent.

(3) A tractor-semitrailer combination with five axles shall be limited to a maximum gross weight of eighty thousand pounds with a tolerance of ten percent.

(4) A tractor-semitrailer combination with six or more axles shall be limited to a maximum gross weight of eighty thousand pounds with a tolerance of ten percent.

§17C-17-11d. Establishing maximum road highway weights.

Effective the first day of July, two thousand four, the maximum gross vehicle weight on existing state-maintained roads and public highways designated for gross weight vehicle load of sixty-five thousand pounds, seventy-three thousand five
hundred pounds and eighty thousand pounds shall have a tolerance of ten percent. All requirements for vehicle design and axle weights otherwise established under this code remain applicable. In no case may the commissioner authorize weight limits on any state-maintained road or public highway that would jeopardize or otherwise limit federal highway fund appropriations to this state. The commissioner of highways shall, by the thirty-first day of December, two thousand four, review and revise, as the commissioner deems appropriate, weight limits for all state-maintained roads and public highways and provide to the joint committee on government and finance a report denoting all weight limits as they have been designated on state-maintained roads and public highways.

ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTATION OF COAL.

§17C-17A-1. Legislative findings and creation of program.
§17C-17A-3. Authority of the division of highways and public service commission generally.
§17C-17A-6. Reporting requirements for shippers, vehicle owners and receivers of coal transported on public highways.
§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

§17C-17A-1. Legislative findings and creation of program.

(a) The Legislature finds and declares that:

(1) No other economic undertaking in the history of West Virginia has had a greater impact upon the citizens of this state, providing such an economic force and affecting the social construct and day-to-day life and environment of the people and communities of this state, than the activities associated with the extraction, transportation and consumption of coal or its byproducts. In areas of this state where the coal industry exists, the economic benefits of coal production are an indispensable part of the local community’s vitality.
(2) The historic progression of the coal industry has resulted in an increasing use of the public highways of this state for the transportation of coal to river ports, power generators or rail loading facilities. Roads where coal is transported are mainly two-lane rural roads and highways of varying grades and conditions. The daily presence of large commercial motor vehicles on these roads and highways causes significant impact to local communities and the local transportation infrastructure. Local residents are exposed on a daily basis to the dangers associated with sharing the road with a large number of these vehicles.

(3) The increased capacity and ability of coal-hauling vehicles, tied with increased economic pressures to reduce industry transportation costs, have created economic incentives for transporting coal at higher than legal limits and for drivers to drive long hours and operate these vehicles at higher rates of speed. Consequently, average vehicle weights have increased and many coal transport vehicles regularly exceed the lawful limit by more than one hundred percent. The excessive weights of these vehicles have also resulted in the rapid deterioration of state roads and bridges, creating significant costs to the state of millions of dollars in lost road and bridge use and life.

(4) Advances in truck stability, braking and safety technology have made modern coal transporters much safer conveyances than those used by the industry when the state’s current weight laws were enacted. Further advances in technology have made tracking and recording individual vehicles, their operators and loads significantly more efficient.

(5) Enforcement of truck safety and driver safety laws has been divided between various jurisdictions such as local and state law enforcement, the division of highways and the public service commission. As a result, local and state enforcement of
those comprehensive laws has not been uniform, with the result
that many of these laws have not been enforced.

(6) The resulting need for a remedy for hauling these
additional amounts of coal is most severe in a limited and
discrete geographic area of the state where the limited access to
rail and river transportation options and economic conditions
require a regulatory program that allows a greater weight
allowance for coal-hauling vehicles to address the unique
economic circumstances of that region.

(7) That this limited highway system must include addi-
tional safety protections for the public sharing the roads with a
large coal-hauling vehicle fleet and specialized training for
operators of these vehicles, requiring the program be designed
to assure that state weight and safety requirements be effec-
tively administered and enforced.

(b) A special regulatory program with administrative
enforcement authority over all vehicles hauling coal in West
Virginia is created. This program is designed to address the
economic needs of the state coal industry within the confines of
the ability of the transportation infrastructure to accommodate
these needs and in careful consideration for road safety and
maintenance requirements of these vehicles by providing for
coal truck weight reporting requirements on coal resource
transportation roads and allowing a limited statewide increase
in weights for commercial vehicles and an additional, limited
increase for vehicles hauling coal where the greater increase is
required.

§17C-17A-3. Authority of the division of highways and public
service commission generally.

(a) The division of highways shall establish all legal vehicle
weight limits for all public highways including roads within the
coal resource transportation road system. Public highways shall be designated as coal resource transportation roads by the commissioner of the division of highways pursuant to this article. Only state-maintained roads and public highways found in the following areas: Boone; Fayette; Lincoln; Logan; McDowell; Mercer; Mingo; Raleigh; Wayne and Wyoming counties; in Greenbrier County, routes west of Sam Black Church and southwest to the Summers County line; in Clay County, routes 4 and 16; in Nicholas County, routes 16, 19, 20, 39, 41, 55 abd 82; in Webster County, routes 9, 20 and 82; and all state-maintained roads and public highways found in Washington, Malden, Louden and Cabin Creek districts, Kanawha County, are eligible to qualify as part of the coal resource transportation road system. The division shall post signs on roads informing the public of the designation and shall also list a toll free telephone line for public reporting of poor driving or law violations by special permit operators. The division shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of coal resource transportation roads. The periodic reports shall include the following at a minimum: (1) Citations issued for violations of this chapter; (2) disposition of the violations; (3) road conditions and maintenance; and (4) the amount of undue road damage attributable to coal resource transportation road system permit use.

(b) The public service commission shall administer the coal resource transportation road permitting program and otherwise enforce the provisions of this article. The commission shall establish requirements for vehicle operators holding coal resource transportation road permits pursuant to section five of this article consistent with federal statutory and regulatory requirements.
(1) The commission may, during normal business hours, conduct inspections of all trucking-related records of shippers, vehicle operators, vehicle owners and receivers engaged in the transportation of coal. Copies of records shall be provided to commission employees upon request. This provision may not be construed to authorize the commission to reveal trade secrets or other confidential financial information of those persons inspected; however the commission may use any weight measurement records as evidence of a violation of this article.

(2) The commission shall establish and maintain a toll-free telephone line for public reporting of poor driving or law violations by special permit operators. In addition, the commission shall require all vehicles operating under a permit issued pursuant to the provisions of this article to clearly display on the vehicle the toll-free telephone number.

(3) The commission shall implement a study of commercial vehicle safety-related issues, including using higher education institutions and other research organizations. The commission shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of motor vehicle weight and safety enforcement.

(4) The commission shall establish procedures to use electronic real time reporting of coal vehicle weights on coal resource transportation roads by shippers and receivers. The commission may require daily certified reports from shippers or receivers if electronic reporting methods are not used. The commission may authorize alternative measures of reporting that require same-day reporting of weight measurements by shippers and receivers.

(5) The commission shall impose and collect from shippers of coal on the coal resource transportation road system through
the use of the special permit, issued pursuant to section five of
this article, for the privilege of loading coal in excess of
eighty-eight thousand pounds for transport on a coal resource
transportation road. The fee shall be assessed in the amount of
five cents per ton of coal hauled over the road. Revenue from
the fees shall be deposited in the coal resource transportation
fund created in said section.

(c) Notwithstanding the provisions of section three, article
one, chapter twenty-nine-a of this code, the commission and the
division shall each propose legislative rules for promulgation in
accordance with the provisions of article three of said chapter
to carry out their duties and responsibilities pursuant to the
provisions of this article.

§17C-17A-6. Reporting requirements for shippers, vehicle own­
ers and receivers of coal transported on public
highways.

(a) Every shipper of coal for transport on a coal resource
transportation road in this state that loads vehicles shall be
required to report to the commission weight and other transport­
related data as required in this article. The commission shall by
rule establish special recording and reporting methods for
timely and accurate disclosure of all shipments of coal made
upon any coal resource transportation road of this state. The
rules shall provide for administrative penalties to be imposed
for failure to timely or accurately report weight or other
required data.

(b) Every vehicle owner who transports coal on a coal
resource transportation road of this state is subject to the
provisions of this article and any rules established by the
commission requiring reporting, monitoring or removal from
service of any unsafe vehicle or driver.
(c) Every receiver of coal transported on a coal resource transportation road in this state that unloads or causes to be unloaded any shipment of coal shall report to the commission the weight of the shipment and other data related to the shipment as required by rules promulgated by the commission. The rules shall provide for administrative penalties to be imposed for failure to timely or accurately report the weight or other data. Compliance with the reporting requirements shall cause the receiver to be immune from any and all criminal, civil and administrative liability, damages, costs, fines and penalties based on, arising out of or resulting from the receiver's receipt or acceptance of the shipment.

(d) The commission shall by rule establish special recording and reporting methods for timely and accurate disclosure of all shipments of coal made by commercial motor vehicles upon a coal resource transportation road of this state.

(e) Any receiver receiving any vehicle transporting coal in excess of eighty-eight thousand pounds on any non-coal transportation highways shall file a report with the public service commission, identifying the vehicle and its driver within twenty-four hours of being received. The reports shall be subject to freedom of information requests in accordance with chapter twenty-nine-b of this code. Nothing contained in this subsection shall be construed to restrict application of any other provision of this chapter or any rules promulgated pursuant to this chapter.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

(a) From those counties and districts described in subdivision (a), section two of this article, the commissioner of the division of highways shall identify those public roads, highways and bridges used during the previous twelve-month period
for transportation of quantities of coal in excess of fifty thousand tons or projected to be used for transporting quantities of coal in excess of fifty thousand tons during the ensuing year. The identification process shall include the following as to each discretely identifiable section of the public highway:

(1) The current condition of the public roads, highways and bridges;

(2) The estimated quantities of coal transported;

(3) Any planned or necessary maintenance or improvement;

(4) The number of truck loads of coal transported in an average day;

(5) Any anticipated increase or decrease in the quantity of coal being transported; and

(6) Other information determined by the commissioner to be relevant.

(b) Upon completion of the identification process, but in no event later than the first day of July, two thousand three, the commissioner shall designate by order an interim coal resource transportation road system consisting of those public roads, highways, bridges or segments thereof which may be used as special coal haulage roads consistent with the authority contained in this article. The commissioner shall establish a process for the receipt and evaluation of public comment on the designations contained within the interim coal resource transportation road system, and designate weight limits and other conditions for use of the coal resource transportation road system as public interest so provides. The commissioner shall publish a directory, including supporting maps and other documents, of the interim coal resource transportation road system.
(c) By no later than the first day of January, two thousand four, the commissioner shall designate by order the coal resource transportation road system and shall publish a directory, including supporting maps and other documents, of that road system.

(d) The commissioner shall establish a process for periodic evaluation of the designations contained in the coal resource transportation road system in order to add to or delete from the road system certain additional sections of public highways:

Provided, That the evaluations and modifications of the road system shall be completed at a minimum on an annual basis.

CHAPTER 212

(S. B. 717 — Originating in the Committee on Government Organization)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the code of West Virginia, 1931, as amended, all relating to the West Virginia sunset law; terminating agencies following full performance evaluations; terminating agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates; terminating agencies following preliminary performance reviews; terminating agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates; and terminating boards created to regulate professions and occupations.

Be it enacted by the Legislature of West Virginia:
That §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a full performance evaluation has been conducted upon the agency:

1. On the first day of July, two thousand five: Department of tax and revenue; West Virginia public land corporation; office of insurance commissioner; James “Tiger” Morton catastrophic illness commission; department of health and human resources; department of environmental protection; state police; school building authority; consolidated public retirement board; workers’ compensation; and tourism functions within the development office.

2. On the first day of July, two thousand six: Division of motor vehicles.

3. On the first day of July, two thousand seven: Office of health facilities licensure and certification within the department of health and human resources; development office; parkways, economic development and tourism authority; division of highways; and division of personnel.
(4) On the first day of July, two thousand eight: Purchasing division within the department of administration; division of rehabilitation services; division of corrections; division of labor; investment management board; and division of natural resources.

(5) On the first day of July, two thousand nine: Office of judges in workers' compensation.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on the agency subsequent to the prior completion of a full performance evaluation:

On the first day of July, two thousand five: Division of culture and history.

§4-10-5. Termination of agencies following preliminary performance reviews.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a preliminary performance review has been conducted upon the agency:

(1) On the first day of July, one thousand nine hundred ninety-six: Juvenile facilities review panel.

(2) On the first day of July, one thousand nine hundred ninety-seven: Public employees insurance agency advisory board; cable television advisory board.
(3) On the first day of July, one thousand nine hundred ninety-nine: Tree fruit industry self-improvement assessment program.

(4) On the first day of July, two thousand: Terms of family law master and family law master system.

(5) On the first day of July, two thousand three: Advisory council on public health; governors’ office of fiscal risk analysis and management.

(6) On the first day of July, two thousand four: Workers’ compensation appeal board; and public energy authority and public energy authority board.

(7) On the first day of July, two thousand five: Health care authority; clean coal technology council; manufactured housing construction and safety board; commission for the deaf and hard-of-hearing; oral health program; rural health advisory panel; state board of risk and insurance management; steel advisory commission and steel futures program; public employees insurance agency finance board; public defender services; and emergency medical services advisory council.

(8) On the first day of July, two thousand six: Family protection services board; medical services fund advisory council; West Virginia stream partners program; Ohio River valley water sanitation commission; state lottery commission; whitewater commission within the division of natural resources; unemployment compensation; women’s commission; personal assistance services program; contractor licensing board; state rail authority; office of explosives and blasting; waste tire fund; real estate commission; care home advisory board; capitol building commission; records management and preservation board; public employees insurance agency; and soil conservation committee.
(9) On the first day of July, two thousand seven: Human rights commission; office of coalfield community development; state fire commission; children’s health insurance board; board of banking and financial institutions; lending and credit rate board; governor’s cabinet on children and families; and state geological and economic survey.

(10) On the first day of July, two thousand eight: Ethics commission; public service commission; parks section and parks function of the division of natural resources; office of water resources of the department of environmental protection; and marketing and development division of department of agriculture.

(11) On the first day of July, two thousand nine: Driver’s licensing advisory board; West Virginia commission for national and community service; membership in the southern regional education board; bureau of senior services; oil and gas inspector’s examining board; division of protective services; motorcycle safety awareness board; and commission on holocaust education.

(12) On the first day of July, two thousand ten: Meat inspection program of the department of agriculture; motor vehicle dealers advisory board; interstate commission on uniform state laws; design-build board; center for professional development board; state rail authority; and interstate commission on the Potomac River basin.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

The following agencies terminate on the date indicated, but no agency terminates under this section unless a compliance monitoring and further inquiry update has been completed on
the agency subsequent to the prior completion of a preliminary performance review:

(1) On the first day of July, two thousand: State building commission.

(2) On the first day of July, two thousand five: Bureau for child support enforcement.

(3) On the first day of July, two thousand seven: Office of the environmental advocate; racing commission; and educational broadcasting authority.

(4) On the first day of July, two thousand eight: Environmental quality board.

(5) On the first day of July, two thousand ten: Veterans' council; and oil and gas conservation commission.

§4-10-5b. Termination of boards created to regulate professions and occupations.

(a) The legislative auditor shall evaluate each board created under chapter thirty of this code to regulate professions and occupations, at least once every twelve years. The evaluation shall assess whether the board complies with the policies and provisions of chapter thirty of this code and other applicable laws and rules, whether the board follows a disciplinary procedure which observes due process rights and protects the public interest and whether the public interest requires that the board be continued.

(b) The following boards terminate on the date indicated, but no board terminates under this section unless a regulatory board evaluation has been conducted upon the board:
(1) On the first day of July, two thousand five: Board of accountancy; board of veterinary medicine; acupuncture board; and real estate appraiser licensing and certification board.

(2) On the first day of July, two thousand six: Board of examiners in counseling; board of osteopathy; board of examiners of land surveyors; board of dental examiners; and board of licensed dietitians.

(3) On the first day of July, two thousand seven: Board of registration for sanitarians; board of embalmers and funeral directors; board of optometry; board of social work examiners; and board of respiratory care practitioners.

(4) On the first day of July, two thousand eight: Nursing home administrators board; board of hearing aid dealers; board of pharmacy; board of medicine; and board of barbers and cosmetologists.

(5) On the first day of July, two thousand nine: Board of physical therapy; board of chiropractic examiners; board of landscape architects; and board of occupational therapy.

(6) On the first day of July, two thousand ten: Board of registration for professional engineers; board of examiners for registered professional nurses; board of examiners for licensed practical nurses; board of examiners for speech language pathology and audiology; board of registration for foresters; and radiologic technology board of examiners.

(7) On the first day of July, two thousand twelve: Board of examiners of psychologists.

(8) On the first day of July, two thousand fourteen: Board of architects.
(9) On the first day of July, two thousand fifteen: Massage therapy licensure board.

CHAPTER 213

(H.B. 4531 — By Delegates Beane, Ennis, Manuel and Yeager)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

A N ACT to amend and reenact §5-16-4 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-16-4a, all relating to continuation of the public employees insurance agency finance board.

Be it enacted by the Legislature of West Virginia:

That §5-16-4 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 §5-16-4a, all to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses.

§5-16-4a. Continuation of the public employees insurance agency finance board.

*§5-16-4. Public employees insurance agency finance board continued; qualifications, terms and removal of members; quorum; compensation and expenses.

*CLERK’S NOTE: This section was also amended by H. B. 4008 (Chapter 8), which passed subsequent to this act.
(a) There is hereby continued the public employees insurance agency finance board, which consists of the director and six members appointed by the governor with the advice and consent of the Senate for terms of four years and until the appointment of their successors: Provided, That of the two members added to the board by the amendment of this section, enacted during the regular legislative session, one thousand nine hundred ninety-nine, the at-large member shall be appointed for an initial term of two years and the member representing organized labor shall be appointed for a term of four years. Members may be reappointed for successive terms. No more than four members (including the director) may be of the same political party.

(b) Of the six members appointed by the governor, one member shall represent the interests of education employees, one shall represent the interests of public employees, one shall represent the interests of organized labor and three shall be selected from the public at large. The governor shall appoint the member representing the interests of education employees from a list of three names submitted by the largest organization of education employees in this state. The governor shall appoint the member representing the interests of organized labor from a list of three names submitted by the state's largest organization representing labor affiliates. The three members appointed from the public shall each have experience in the financing, development or management of employee benefit programs. All new appointments made after the first day of July, one thousand nine hundred ninety-four, shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty or other specific responsibility imposed by this article, or gross immorality.
(c) The director shall serve as chairperson of the finance board, which shall meet at times and places specified by the call of the director or upon the written request to the director of at least two members. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Four members constitutes a quorum. The board shall pay each member the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties, as recommended by the citizens legislative compensation commission and authorized by law for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions in this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to the provisions of article three, chapter twenty-nine-a of this code; any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

§5-16-4a. Continuation of the public employees insurance agency finance board.

The public employees insurance agency finance board shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
CHAPTER 214

(H. B. 4304 — By Delegates Beane, Ennis, Hatfield, Yeager, Blair, Frich and Schoen)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16B-4a; and to amend and reenact §5-16B-8 of said code, all relating to continuation of the children's health insurance board.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-4a; and that §5-16B-8 of said code be amended and reenacted, all to read as follows:

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§5-16B-4a. Continuation of children's health insurance board.

The children's health insurance board shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

§5-16B-8. Termination and reauthorization.
(a) The program established in this article abrogates and shall be of no further force and effect, without further action by the Legislature, upon the occurrence of any of the following:

(1) The date of entry of a final judgment or order by a court of competent jurisdiction which disallows the program;

(2) The effective date of any reduction in annual federal funding levels below the amounts allocated and/or projected in Title XXI of the Social Security Act of 1997; or

(3) The effective date of any federal rule or regulation negating the purposes or effect of this article;

(4) For purposes of subdivisions (2) and (3) of this subsection, if a later effective date for such reduction or negation is specified, such date will control.

(b) Upon termination of the board and notwithstanding any provisions to the contrary, the director may change the levels of costs to covered families only in accordance with rules proposed to the Legislature pursuant to the provisions of chapter twenty-nine-a of this code.

CHAPTER 215

(S. B. 578 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor]

AN ACT to amend and reenact §5-22A-15 of the code of West Virginia, 1931, as amended, relating to continuation of the design-build board.
Be it enacted by the Legislature of West Virginia:

That §5-22A-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§5-22A-15. Continuation of board.

1 The design-build board shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished, pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 216

(S. B. 269 — By Senators Bowman, Bailey, Caldwell, Chafin, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley, Minear, Smith and Weeks)

[Passed March 3, 2004; in effect ninety days from passage Approved by the Governor.]

AN ACT to amend and reenact §5A-3-57 of the code of West Virginia, 1931, as amended, relating to continuation of the division of purchasing within the department of administration.

Be it enacted by the Legislature of West Virginia:

That §5A-3-57 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-57. Continuation of the division of purchasing.
The division of purchasing within the department of administration shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 217

(H. B. 4479 — By Delegates Beane, Ennis, Hatfield, Manchin, Talbott, Wright and Blair)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §9-2-la of the code of West Virginia, 1931, as amended, relating to continuation of the department of health and human resources.

Be it enacted by the Legislature of West Virginia:

That §9-2-la of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-la. Continuation of the department of health and human resources.

The department of health and human resources shall be charged with the administration of this chapter. The department of health and human resources shall continue to exist pursuant
AN ACT to amend and reenact §9A-1-2a of the code of West Virginia, 1931, as amended, relating to continuation of the veterans’ council.

Be it enacted by the Legislature of West Virginia:

That §9A-1-2a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF VETERANS’ AFFAIRS.

§9A-1-2a. Continuation of council.

The veterans’ council shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact §15-2-50 of the code of West Virginia, 1931, as amended, relating to continuation of the West Virginia state police.

Be it enacted by the Legislature of West Virginia:

That §15-2-50 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-50. Continuation date.

1 The West Virginia state police shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact §15-2D-6 of the code of West Virginia, 1931, as amended, relating to continuation of the division of protective services.

Be it enacted by the Legislature of West Virginia:

That §15-2D-6 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.

§15-2D-6. Continuation of the division.

The division of protective services shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 221

(S. B. 268 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)

[Passed March 3, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-2-24 of the code of West Virginia, 1931, as amended, relating to continuation of the division of motor vehicles.

Be it enacted by the Legislature of West Virginia:

That §17A-2-24 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 2. DIVISION OF MOTOR VEHICLES.


1 The division of motor vehicles shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 222

(S. B. 575 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §17A-6-18b of the code of West Virginia, 1931, as amended, relating to continuation of the motor vehicle dealers advisory board.

Be it enacted by the Legislature of West Virginia:

That §17A-6-18b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LICENSING OF DEALERS AND WRECKERS OR DISMANTLERS; SPECIAL PLATES; TEMPORARY PLATES OR MARKERS.

§17A-6-18b. Continuation of board.

1 The motor vehicle dealers advisory board shall continue to exist, until the first day of July, two thousand ten unless sooner
terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 223

(S. B. 296 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)

[Passed March 5, 2004, in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-3A-4, relating to continuation of the center for professional development board.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18A-3A-4, to read as follows:

ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-4. Continuation of center for professional development board.

The center for professional development board shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.
CHAPTER 224
(H. B. 4157 — By Delegates Beane, Ennis, Butcher, Hatfield, Perdue, Yeager and Schoen)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §18B-16-6b of the code of West Virginia, 1931, as amended, relating to continuation of the rural health advisory panel.

Be it enacted by the Legislature of West Virginia:

That §18B-16-6b of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-6b. Continuation of advisory panel.

1 The rural health advisory panel shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 225
(H. B. 4530 — By Delegates Beane, Ennis, Perdue, Blair and Frich)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §19-2B-1 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-2B-1a, all relating to continuation of the meat and poultry inspection program.

Be it enacted by the Legislature of West Virginia:

That §19-2B-1 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 §19-2B-1a, all to read as follows:

ARTICLE 2B. INSPECTION OF MEAT AND POULTRY.

§19-2B-1. Purpose and construction.

§19-2B-1a. Continuation of meat and poultry inspection program.

§19-2B-1. Purpose and construction.

1 Subject to the provisions of section seven of this article, the
2 basic purpose of this article is to provide for the inspection,
3 labeling and disposition of animals, poultry, carcasses, meat
4 products and poultry products which are to be sold or offered
5 for sale through commercial outlets for human consumption,
6 the licensing of commercial slaughterers, custom slaughterers
7 and processors, and the inspection of slaughterhouses and
8 processing plants located in the state of West Virginia. This
9 article, being intended to protect the health of the citizens of
10 West Virginia, shall be liberally construed.

§19-2B-1a. Continuation of meat and poultry inspection program.

1 The meat and poultry inspection program shall continue to
2 exist, pursuant to the provisions of article ten, chapter four of
3 this code, until the first day of July, two thousand ten, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.
CHAPTER 226

(S. B. 323 — By Senators Bowman, Bailey, Caldwell, Jenkins, Minard, Rowe, White, Boley and Weeks)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §22-3A-11 of the code of West Virginia, 1931, as amended, relating to continuation of the office of explosives and blasting.

Be it enacted by the Legislature of West Virginia:

That §22-3A-11 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

§22-3A-11. Continuation of office.

1 The office of explosives and blasting shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 227

(H. B. 4248 — By Delegates Beane, Ennis, Hatfield, Spencer, Wright, Azinger and Frich)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §22-20-1 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-20-2, all relating to continuation of the office of environmental advocate.

Be it enacted by the Legislature of West Virginia:

That §22-20-1 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 §22-20-2, all to read as follows:

ARTICLE 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; powers and duties; salary.

The director of the division of environmental protection shall appoint a person to serve as the environmental advocate within the division of environmental protection, and shall adopt and promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing and controlling the qualifications, powers and duties of the person to be appointed to the position of environmental advocate. The environmental advocate shall serve at the will and pleasure of the director, who shall also set the salary of the environmental advocate. All funding for the office of environmental advocate shall be from existing funds of the division of environmental protection. The director shall provide an office and secretarial and support staff as needed.

§22-20-2. Continuation of environmental advocate.

The office of environmental advocate shall continue to exist, pursuant to the provisions of article ten, chapter four of
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3 this code, until the first day of July, two thousand seven, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

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CHAPTER 228

(S. B. 469 — By Senators Bowman, Bailey, Jenkins,
  Kessler, McCabe, Minard, Rowe, Snyder,
  White, Boley and Minear)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-1A-5 of the code of West
Virginia, 1931, as amended, relating to continuation of the
interstate commission on uniform state laws.

Be it enacted by the Legislature of West Virginia:

That §29-1A-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. COMMISSION ON UNIFORM STATE LAWS.

§29-1A-5. Continuation of commission.

1 The interstate commission on uniform state laws shall
2 continue to exist until the first day of July, two thousand ten,
3 unless sooner terminated, continued or reestablished pursuant
4 to the provisions of article ten, chapter four of this code.
AN ACT to amend and reenact §29-3-31 of the code of West Virginia, 1931, as amended, relating to continuation of the state fire commission.

Be it enacted by the Legislature of West Virginia:

That §29-3-31 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-31. Continuation of the state fire commission.

1 The state fire commission shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend and reenact §29-6-5a of the code of West Virginia, 1931, as amended, relating to continuation of the division of personnel.

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

That §29-6-5a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6. CIVIL SERVICE SYSTEM.**

§29-6-5a. Continuation of division.

1 The division of personnel shall continue to exist until the first day of July, two thousand seven, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

**CHAPTER 231**

(S. B. 471 — By Senators Bowman, Bailey, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley and Minear)

[Passed March 5, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-12-12 of the code of West Virginia, 1931, as amended, relating to continuation of the state board of risk and insurance management.

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

That section §29-12-12 of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 12. STATE INSURANCE.

§29-12-12. Continuation of state board of risk and insurance management.

After having conducted a performance and fiscal audit through its joint committee on government operations, pursuant to section nine, article ten, chapter four of this code, the Legislature finds and declares that the state board of insurance should be continued, but shall be known and referred to as the state board of risk and insurance management.

The state board of risk and insurance management shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 232

(S. B. 576 — By Senators Bowman, Bailey, Caldwell, Jenkins, Kessler, Minard, Rowe, Snyder, White, Boley, Minear and Weeks)

[Passed March 11, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §29-18-24 of the code of West Virginia, 1931, as amended, relating to continuation of the West Virginia state rail authority.

Be it enacted by the Legislature of West Virginia:

That §29-18-24 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

1 The West Virginia state rail authority shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 233

(H.B. 4418 — By Delegates Beane, Ennis, Manchin, Talbott, Yost, Caruth and Walters)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §30-12-15 of the code of West Virginia, 1931, as amended, relating to continuation of the board of architects.

Be it enacted by the Legislature of West Virginia:

That §30-12-15 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. ARCHITECTS.

§30-12-15. Continuation of board.

1 The board of architects shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand fourteen, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-19-11, relating to continuation of the board of registration for foresters.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-19-11, to read as follows:

ARTICLE 19. FORESTERS.


1 The board of registration for foresters shall continue to exist until the first day of July, two thousand ten, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 235

(H. B. 4419 — By Delegates Beane, Ennis, Iaquinta, Talbott, Yost, Caruth and Walters)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-22-18, relating to continuation of the board of landscape architects.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-22-18, to read as follows:

ARTICLE 22. LANDSCAPE ARCHITECTS.

§30-22-18. Continuation of board.

1 The board of landscape architects shall continue to exist, pursuant to the provisions of article ten, chapter four of this code, until the first day of July, two thousand nine, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.

CHAPTER 236

(S. B. 470 — By Senators Bowman, Bailey, Jenkins, Kessler, McCabe, Minard, Rowe, Snyder, White, Boley and Minear)

[Passed March 10, 2004; in effect ninety days from passage. Approved by the Governor.]
ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-19. Continuation of board.

The real estate appraiser licensing and certification board shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.

CHAPTER 237

(S. B. 726 — Originating in the Committee on Government Organization)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §31-16-5 of the code of West Virginia, 1931, as amended, relating to continuation of the steel advisory commission and steel futures program.

Be it enacted by the Legislature of West Virginia:

That §31-16-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

§31-16-5. Continuation of commission and program.

The steel advisory commission and the steel futures program shall continue to exist until the first day of July, two thousand five, unless sooner terminated, continued or reestablished pursuant to the provisions of article ten, chapter four of this code.
AN ACT to amend and reenact §7-11B-2, §7-11B-3, §7-11B-4, §7-11B-6, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-10, §7-11B-11, §7-11B-12, §7-11B-13, §7-11B-15, §7-11B-16, §7-11B-17, §7-11B-18, §7-11B-19, §7-11B-20, §7-11B-21, §7-11B-22, §7-11B-23, §7-11B-24 and §7-11B-26 of the code of West Virginia, 1931, as amended, all relating generally to tax increment financing; defining certain terms and phrases; providing additional requirements for development or redevelopment project plans; providing for Class II legal advertisements for public hearings; providing mechanism for more than one development or redevelopment project plan per development or redevelopment district; revising conflict of interest provisions; providing for issuance of parity and subordinate bonds; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §7-11B-2, §7-11B-3, §7-11B-4, §7-11B-6, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-10, §7-11B-11, §7-11B-12, §7-11B-13, §7-11B-15, §7-11B-16, §7-11B-17, §7-11B-18, §7-11B-19, §7-11B-20, §7-11B-21, §7-11B-22, §7-11B-23, §7-11B-24 and §7-11B-26 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11B. WEST VIRGINIA TAX INCREMENT FINANCING ACT.

§7-11B-2. Findings and legislative purpose.
§7-11B-2. Findings and legislative purpose.

(a) It is found and declared to be the policy of this state to promote and facilitate the orderly development and economic stability of its communities. County commissions need the ability to raise revenue to finance capital improvements and facilities that are designed to encourage economic growth and development in geographic areas characterized by high levels of unemployment, stagnant employment, slow income growth, contaminated property or inadequate infrastructure. The construction of necessary capital improvements in accordance with local economic development plans will encourage investing in job-producing private development and expand the public tax base.

(b) It is also found and declared that capital improvements or facilities in any area that result in the increase in the value of
property located in the area or encourage increased employment within the area will serve a public purpose for each taxing unit possessing the authority to impose ad valorem taxes in the area.

(c) It is the purpose of this article:

(1) To encourage local levying bodies to cooperate in the allocation of future tax revenues that are used to finance capital improvements and facilities designed to encourage private development in selected areas; and

(2) To assist local governments that have a competitive disadvantage in their ability to attract business, private investment or commercial development due to their location; to encourage remediation of contaminated property; to prevent or arrest the decay of selected areas due to the inability of existing financing methods to provide capital improvements and facilities; and to encourage private investment designed to promote and facilitate the orderly development or redevelopment of selected areas.

§7-11B-3. Definitions.

(a) General. — When used in this article, words and phrases defined in this section shall have the meanings ascribed to them in this section unless a different meaning is clearly required either by the context in which the word or phrase is used or by specific definition in this article.

(b) Words and phrases defined. —

(1) “Agency” includes a municipality, a county or municipal development agency established pursuant to authority granted in section one, article twelve of this chapter, a port authority, an airport authority or any other entity created by this state or an agency or instrumentality of this state that engages in economic development activity.
(2) "Base assessed value" means the taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbooks and personal property books of the assessor on the first day of July of the calendar year preceding the effective date of the order or ordinance creating and establishing the development or redevelopment district.

(3) "Blighted area" means an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. "Blighted area" includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.
(4) "Conservation area" means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or welfare and may become a blighted area because of any one or more of the following factors: Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

(5) "County commission" means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I or II municipality in this state.

(6) "Current assessed value" means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor.

(7) "Development office" means the West Virginia development office created in section one, article two, chapter five-b of this code.

(8) "Development project" or "redevelopment project" means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for
discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or

(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing, or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment district designed to increase or enhance the development of commerce, industry or housing within the development project area; or
Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

(9) "Development or redevelopment district" means an area proposed by one or more agencies as a development or redevelopment district, which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the municipality when the development or redevelopment district is located both within and without a municipality.

(10) "Economic development area" means any area or portion of an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county that does not meet the requirements of subdivisions (3) and (4) of this subsection and for which the county commission finds that development or redevelopment will not be solely used for development of commercial businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will:

(A) Discourage commerce, industry or manufacturing from moving their operations to another state;

(B) Result in increased employment in the municipality or county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base of the county or municipality.
(11) "Governing body of a municipality" means the city council of a Class I or Class II municipality in this state.

(12) "Incremental value", for any development or redevelopment district, means the difference between the base assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value and the incremental value will be negative if the current value is less than the base assessed value.

(13) "Includes" and "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(14) "Local levying body" means the county board of education, and the county commission, and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

(15) "Obligations" or "tax increment financing obligations" means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

(16) "Order" means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

(17) "Ordinance" means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in chapter eight of this code.

(18) "Payment in lieu of taxes" means those estimated revenues from real property and tangible personal property
having a tax situs in the area selected for a development or
redevelopment project, which revenues according to the
development or redevelopment project or plan are to be used for
a private use, which levying bodies would have received had a
county or municipality not adopted one or more tax increment
financing plans and which would result from levies made after
the date of adoption of a tax increment financing plan during
the time the current assessed value of all taxable real and
tangible personal property in the area selected for the develop-
ment or redevelopment project exceeds the total base assessed
value of all taxable real and tangible personal property in the
development or redevelopment district until the designation is
terminated as provided in this article.

(19) “Person” means any natural person, and any corpora-
tion, association, partnership, limited partnership, limited
liability company or other entity, regardless of its form,
structure or nature, other than a government agency or instru-
mentality.

(20) “Private project” means any project that is subject to
ad valorem property taxation in this state or to a payment in lieu
of tax agreement that is undertaken by a project developer in
accordance with a tax increment financing plan in a develop-
ment or redevelopment district.

(21) “Project” means any capital improvement, facility or
both, as specifically set forth and defined in the project plan,
requiring an investment of capital, including, but not limited to,
extensions, additions or improvements to existing facilities,
including water or wastewater facilities, and the remediation of
contaminated property as provided for in article twenty-two,
chapter twenty-two of this code, but does not include perfor-
manence of any governmental service by a county or municipal
government.
(22) "Project area" means an area within the boundaries of a development or redevelopment district in which a development or redevelopment project is undertaken, as specifically set forth and defined in the project plan.

(23) "Project costs" means expenditures made in preparation of the development or redevelopment project plan and made, or estimated to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a development or redevelopment district, plus any costs incidental thereto. "Project costs" include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the county commission of real or personal property having a tax situs within a development or redevelopment district for consideration that is less than its cost to the county commission;

(D) Professional service costs, including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;
(E) Imputed administrative costs, including, but not limited to, reasonable charges for time spent by county employees or municipal employees in connection with the implementation of a project plan;

(F) Relocation costs, including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(G) Organizational costs, including, but not limited to, the costs of conducting environmental impact and other studies, and the costs of informing the public with respect to the creation of a development or redevelopment district and the implementation of project plans;

(H) Payments made, in the discretion of the county commission or the governing body of a municipality, which are found to be necessary or convenient to creation of development or redevelopment districts or the implementation of project plans; and

(I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

(24) "Project developer" means any person who engages in the development of projects in the state.

(25) "Project plan" means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the
requirements of this article and this chapter or chapter eight of this code.

(26) "Real property" means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

(27) "Redevelopment area" means an area designated by a county commission, or the governing body of a municipality, in respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefitted by the proposed redevelopment project located within the development or redevelopment district or land contiguous thereto.

(28) "Redevelopment plan" means the comprehensive program under this article of a county or municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment area as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment area. Each redevelopment plan shall conform to the requirements of this article.

(29) "Tax increment" means the amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment district exceeds the base assessed value of the property.
(30) "Tax increment financing fund" means a separate fund for a development or redevelopment district established by the county commission, or governing body of the municipality, into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

(31) "This code" means the code of West Virginia, one thousand nine hundred thirty-one, as amended by the Legislature.

(32) "Total ad valorem property tax regular levy rate" means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

§7-11B-4. Powers generally.

In addition to any other powers conferred by law, a county commission or governing body of a Class I or II municipality may exercise any powers necessary and convenient to carry out the purpose of this article, including the power to:

1. Create development and redevelopment areas or districts and to define the boundaries of those areas or districts;

2. Cause project plans to be prepared, to approve the project plans, and to implement the provisions and effectuate the purposes of the project plans;

3. Establish tax increment financing funds for each development or redevelopment district;

4. Issue tax increment financing obligations and pledge tax increments and other revenues for repayment of the obligations;
(5) Deposit moneys into the tax increment financing fund for any development or redevelopment district;

(6) Enter into any contracts or agreements, including, but not limited to, agreements with project developers, consultants, professionals, financing institutions, trustees and bondholders determined by the county commission to be necessary or convenient to implement the provisions and effectuate the purposes of project plans;

(7) Receive from the federal government or the state loans and grants for, or in aid of, a development or redevelopment project and to receive contributions from any other source to defray project costs;

(8) Exercise the right of eminent domain to condemn property for the purposes of implementing the project plan. The rules and procedures set forth in chapter fifty-four of this code shall govern all condemnation proceedings authorized in this article;

(9) Make relocation payments to those persons, businesses, or organizations that are displaced as a result of carrying out the development or redevelopment project;

(10) Clear and improve property acquired by the county commission pursuant to the project plan and construct public facilities on it or contract for the construction, development, redevelopment, rehabilitation, remodeling, alteration or repair of the property;

(11) Cause parks, playgrounds or water, sewer or drainage facilities or any other public improvements, including, but not limited to, fire stations, community centers and other public buildings, which the county commission is otherwise authorized to undertake to be laid out, constructed or furnished in connection with the development or redevelopment project. When the
public improvement of the county commission is to be located, in whole or in part, within the corporate limits of a municipality, the county commission shall consult with the mayor and the governing body of the municipality regarding the public improvement and shall pay for the cost of the public improvement from the tax increment financing fund;

(12) Lay out and construct, alter, relocate, change the grade of, make specific repairs upon or discontinue public ways and construct sidewalks in, or adjacent to, the project area: Provided, That when the public way or sidewalk is located within a municipality, the governing body of the municipality shall consent to the same and if the public way is a state road, the consent of the commissioner of highways shall be necessary;

(13) Cause private ways, sidewalks, ways for vehicular travel, playgrounds or water, sewer or drainage facilities and similar improvements to be constructed within the project area for the particular use of the development or redevelopment district or those dwelling or working in it;

(14) Construct any capital improvements of a public nature;

(15) Construct capital improvements to be leased or sold to private entities in connection with the goals of the development or redevelopment project;

(16) Cause capital improvements owned by one or more private entities to be constructed within the development or redevelopment district;

(17) Designate one or more official or employee of the county commission to make decisions and handle the affairs of development and redevelopment project areas or districts created by the county commission pursuant to this article;

(18) Adopt orders, ordinances or bylaws or repeal or modify such ordinances or bylaws or establish exceptions to
existing ordinances and bylaws regulating the design, construction and use of buildings within the development or redevelopment district created by a county commission or governing body of a municipality under this article;

(19) Enter orders, adopt bylaws or repeal or modify such orders or bylaws or establish exceptions to existing orders and bylaws regulating the design, construction and use of buildings within the development or redevelopment district created by a county commission or governing body of a municipality under this article;

(20) Sell, mortgage, lease, transfer or dispose of any property or interest therein, by contract or auction, acquired by it pursuant to the project plan for development, redevelopment or rehabilitation in accordance with the project plan;

(21) Expend project revenues as provided in this article; and

(22) Do all things necessary or convenient to carry out the powers granted in this article.

§7-11B-6. Application for development or redevelopment plan.

(a) An agency or a project developer may apply to a county commission or the governing body of a municipality for adoption of a development or redevelopment project plan. The application shall state the project's economic impact, viability, estimated revenues and potential for job creation and such other information as the county commission or the governing body of the municipality may require.

(b) Copies of the application shall be made available to the public in the county clerk's office or the municipal recorder's office when the application is filed with the governing body of a municipality.
§7-11B-7. Creation of a development or redevelopment or district.

(a) County commissions and the governing bodies of Class I and II municipalities, upon their own initiative or upon application of an agency or a developer, may propose creation of a development or redevelopment district and designate the boundaries of the district: Provided, That a district may not include noncontiguous land.

(b) The county commission or municipality proposing creation of a development or redevelopment district shall then hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment district and its proposed boundaries.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with section two, article three, chapter fifty-nine of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment district and, when a development or redevelopment project plan is being proposed, the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the director of the development office and to the chief executive officer of all other local levying bodies having the power to levy taxes on real and tangible personal property located within the proposed development or redevelopment district.
(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to create the development or redevelopment district and, if applicable, the development or redevelopment project plan and proposed tax increment financing obligations.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the boundaries of the development or redevelopment district, the development or redevelopment project plan, or both, and submit the same to the director of the development office for his or her review and approval. The director, within sixty days after receipt of the application, shall approve the application as submitted, reject the application or return the application to the county commission or governing body of the municipality for further development or review in accordance with instructions of the director of the development office. A development or redevelopment district or development or redevelopment project plan may not be adopted by the county commission or the governing body of a municipality until after it has been approved by the executive director of the development office.

(d) Upon approval of the application by the development office, the county commission may enter an order and the governing body of the municipality proposing the district or development or redevelopment project plan may adopt an ordinance, that:

(1) Describes the boundaries of a development or redevelopment district sufficiently to identify with ordinary and reasonable certainty the territory included in the district, which boundaries shall create a contiguous district;

(2) Creates the development or redevelopment district as of a date provided in the order or ordinance;
(3) Assigns a name to the development or redevelopment district for identification purposes.

(A) The name may include a geographic or other designation, shall identify the county or municipality authorizing the district and shall be assigned a number, beginning with the number one.

(B) Each subsequently created district in the county or municipality shall be assigned the next consecutive number;

(4) Contains findings that the real property within the development or redevelopment district will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment or any combination thereof;

(5) Approves the development or redevelopment project plan, if applicable;

(6) Establishes a tax increment financing fund as a separate fund into which all tax increment revenues and other revenues designated by the county commission, or governing body of the municipality, for the benefit of the development or redevelopment district shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the county commission or the governing body of the municipality; and

(7) Provides that ad valorem property taxes on real and tangible personal property having a tax situs in the development or redevelopment district shall be assessed, collected and allocated in the following manner, commencing upon the date of adoption of such order or ordinance and continuing for so long as any tax increment financing obligations are payable
from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

(A) For each tax year, the county assessor shall record in the land and personal property books both the base assessed value and the current assessed value of the real and tangible personal property having a tax situs in the development or redevelopment district;

(B) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the district that are attributable to the lower of the base assessed value or the current assessed value of real and tangible personal property located in the development project area shall be allocated to the levying bodies in the same manner as applicable to the tax year in which the development or redevelopment project plan is adopted by order of the county commission or by ordinance adopted by the governing body of the municipality;

(C) The tax increment with respect to real and tangible personal property in the development or redevelopment district shall be allocated and paid into the tax increment financing fund and shall be used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of the development or redevelopment projects in the development or redevelopment district. Any levying body having a development or redevelopment district within its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in this article; and

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in article eight, chapter eleven of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of
development and redevelopment projects to foster economic
development in the development or redevelopment district or
land contiguous thereto.

(f) Notwithstanding subsection (e) of this section, a county
commission may not enter an order approving a development
or redevelopment project plan unless the county commission
expressly finds and states in the order that the development or
redevelopment project is not reasonably expected to occur
without the use of tax increment financing.

(g) Notwithstanding subsection (e) of this section, the
governing body of a municipality may not adopt an ordinance
approving a development or redevelopment project plan unless
the governing body expressly finds and states in the ordinance
that the development or redevelopment project is not reasonably
expected to occur without the use of tax increment financing.

(h) No county commission shall establish a development or
redevelopment district any portion of which is within the
boundaries of a Class I, II, III or IV municipality without the
formal consent of the governing body of such municipality.

(i) A tax increment financing plan that has been approved
by a county commission or the governing body of a municipali-
ity may be amended by following the procedures set forth in
this article for adoption of a new development or redevelop-
ment project plan.

(j) The county commission may modify the boundaries of
the development or redevelopment district, from time to time,
by entry of an order modifying the order creating the develop-
ment or redevelopment district.

(k) The governing body of a municipality may modify the
boundaries of the development or redevelopment district, from
time to time, by amending the ordinance establishing the boundaries of the district.

(l) Before a county commission or the governing body of a municipality may amend such an order or ordinance, the county commission or municipality shall give the public notice, hold a public hearing and obtain the approval of the director of the development office, following the procedures for establishing a new development or redevelopment district. In the event any tax increment financing obligations are outstanding with respect to the development or redevelopment district, any change in the boundaries shall not reduce the amount of tax increment available to secure the outstanding tax increment financing obligations.

§7-11B-8. Project plan – approval.

(a) The county commission or municipality creating the district shall cause the preparation of a project plan for each development or redevelopment district and the project plan shall be adopted by order of the county commission, or ordinance adopted by the governing body of the municipality, after it is approved by the executive director of the development office. This process shall conform to the procedures set forth in this section.

(b) Each project plan shall include:

(1) A statement listing the kind, number and location of all proposed public works or other improvements within the district and on land outside but contiguous to the district;

(2) A cost-benefit analysis showing the economic impact of the plan on each levying body that is at least partially within the boundaries of the development or redevelopment district. This analysis shall show the impact on the economy if the project is not built and is built pursuant to the development or redevelop-
ment plan under consideration. The cost-benefit analysis shall include a fiscal impact study on every affected levying body and sufficient information from the developer for the agency, if any proposing the plan, the county commission be asked to approve the project and the development office to evaluate whether the project as proposed is financially feasible;

(3) An economic feasibility study;

(4) A detailed list of estimated project costs;

(5) A description of the methods of financing all estimated project costs, including the issuance of tax increment obligations and the time when the costs or monetary obligations related thereto are to be incurred;

(6) A certification by the county assessor of the base assessed value of real and tangible personal property having a tax situs in a development or redevelopment district: Provided, That if such certification is made during the months of January or February of each year, the county assessor may certify an estimated base assessed value of real and tangible personal property having a tax situs in a development or redevelopment district: Provided, however, That prior to issuance of tax increment obligations, the county assessor shall certify a final base assessed value for the estimated base assessed value permitted by this section;

(7) The type and amount of any other revenues that are expected to be deposited to the tax increment financing fund of the development or redevelopment district;

(8) A map showing existing uses and conditions of real property in the development or redevelopment district;

(9) A map of proposed improvements and uses in the district;
(10) Proposed changes of zoning ordinances, if any;

(11) Appropriate cross-references to any master plan, map, building codes and municipal ordinances or county commission orders affected by the project plan;

(12) A list of estimated nonproject costs;

(13) A statement of the proposed method for the relocation of any persons, businesses or organizations to be displaced;

(14) A certificate from the executive director of the workers' compensation commission, the commissioner of the bureau of employment programs and the state tax commissioner that the project developer is in good standing with the workers' compensation commission, the bureau of employment programs and the state tax division; and

(15) A certificate from the sheriff of the county or counties in which the development or redevelopment district is located that the project developer is not delinquent on payment of any real and personal property taxes in such county.

(c) If the project plan is to include tax increment financing, the tax increment financing portion of the plan shall set forth:

(1) The amount of indebtedness to be incurred pursuant to this article;

(2) An estimate of the tax increment to be generated as a result of the project;

(3) The method for calculating the tax increment, which shall be in conformance with the provisions of this article, together with any provision for adjustment of the method of calculation;
(4) Any other revenues, such as payment in lieu of tax revenues, to be used to secure the tax increment financing; and

(5) Any other provisions as may be deemed necessary in order to carry out any tax increment financing to be used for the development or redevelopment project.

(d) If less than all of the tax increment is to be used to fund a development or redevelopment project or to pay project costs or retire tax increment financing, the project plan shall set forth the portion of the tax increment to be deposited in the tax increment financing fund of the development or redevelopment district and provide for the distribution of the remaining portion of the tax increment to the levying bodies in whose jurisdiction the district lies.

(e) The county commission or governing body of the municipality that established the tax increment financing fund shall hold a public hearing at which interested parties shall be afforded a reasonable opportunity to express their views on the proposed project plan being considered by the county commission or the governing body of the municipality.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with section two, article three, chapter fifty-nine of this code.

(2) Prior to this publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other levying bodies having the power to levy taxes on property located within the proposed development or redevelopment district.

(f) Approval by the county commission or the governing body of a municipality of an initial development or redevelopment project plan must be within one year after the date of the county assessor’s certification required by subdivision (6),
subsection (b) of this section: Provided, That additional
development or redevelopment project plans may be approved
by the county commission or the governing body of a munici-
pality in subsequent years, so long as the development or
redevelopment district continues to exist. The approval shall be
by order of the county commission or ordinance of the munici-
pality, which shall contain a finding that the plan is economi-
cally feasible.


(a) The county commission may by order, or the governing
body of a municipality by ordinance, adopt an amendment to a
project plan.

(b) Adoption of an amendment to a project plan shall be
preceded by a public hearing held by the county commission,
or governing body of the municipality, at which interested
parties shall be afforded a reasonable opportunity to express
their views on the amendment.

(1) Notice of the hearing shall be published as a Class II
legal advertisement in accordance with section two, article
three, chapter fifty-nine of this code.

(2) Prior to publication, a copy of the notice shall be sent by
first-class mail to the chief executive officer of all other local
levying bodies having the power to levy taxes on property
within the development or redevelopment district.

(3) Copies of the proposed plan amendments shall be made
available to the public at the county clerk’s office or municipal
clerk’s office at least fifteen days prior to the hearing.

(c) One or more existing development or redevelopment
districts may be combined pursuant to lawfully adopted
amendments to the original plans for each district: Provided,
That the county commission, or governing body of the municipality, finds that the combination of the districts will not impair the security for any tax increment financing obligations previously issued pursuant to this article.

§7-11B-10. Termination of development or redevelopment district.

(a) No development or redevelopment district may be in existence for a period longer than thirty years and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district.

(b) The county commission or governing body of the municipality creating the development or redevelopment district may set a shorter period for the existence of the district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the district.

(c) Upon termination of the district, no further ad valorem tax revenues shall be distributed to the tax increment financing fund of the district.

(d) The county commission shall adopt, upon the expiration of the time periods set forth in this section, an order terminating the development or redevelopment district created by the county commission: Provided, That no district shall be terminated so long as bonds with respect to the district remain outstanding.

(e) The governing body of the county commission shall repeal, upon the expiration of the time periods set forth in this section, the ordinance establishing the development or redevelopment district: Provided, That no district shall be terminated so long as bonds with respect to the district remain outstanding.
§7-11B-11. Costs of formation of development or redevelopment district.

(a) The county commission, or the governing body of a municipality, may pay, but shall have no obligation to pay, the costs of preparing the project plan or forming the development or redevelopment district created by them.

(b) If the county commission, or the governing body of the municipality, elects not to incur those costs, they shall be made project costs of the district and reimbursed from bond proceeds or other financing or may be paid by developers, property owners or other persons interested in the success of the development or redevelopment project.

§7-11B-12. Overlapping districts prohibited.

The boundaries of any development and redevelopment districts shall not overlap with any other development or redevelopment district.

§7-11B-13. Conflicts of interest; required disclosures and absten­tion.

(a) If any member of the governing body of an agency applying for a development or redevelopment district or a development or redevelopment project plan, a member of the county commission considering the application or a member of the governing body of a municipality considering the application owns or controls an interest, direct or indirect, in any property included in the development or redevelopment district, or proposed development or redevelopment district, he or she shall refrain from any further official involvement in regard to such application, shall abstain from voting on any matter pertaining to such application, and shall abstain from communicating with other members concerning any matter pertaining to such application.
(b) With respect to development or redevelopment projects, the provisions of subsection (a), section fifteen, article ten, chapter sixty-one of this code do not apply to any person who, or person whose spouse, is a salaried employee of a project developer under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

1. Is not a party to the contract;
2. Is not an owner, a shareholder, a director or an officer of a private entity under the contract;
3. Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;
4. Does not participate in the deliberations or awarding of the contract; and
5. Does not approve, vote for or otherwise authorize the payment of public funds, including, but not limited to, tax increment revenues, pursuant to or as a result of the contract.

(c) Additionally, no member of the county commission or governing body of a municipality considering a development or redevelopment district or project plan, no member of the governing body of an agency proposing a development or redevelopment district or project plan, or any employee of the county, municipality or agency shall acquire any interest, direct or indirect, in any property in a development or redevelopment district or project area, or a proposed development or redevelopment district or project area, during the period of time between when the individual first obtains personal knowledge of the development or redevelopment district or project plan and the completion of the public hearing regarding the development or redevelopment district or project plan or on a date which the county commission or governing body of a munici-
pality publicly announces that the development or redevelopment district or project plan is no longer under consideration.

§7-11B-15. Reports by county commissions and municipalities, contents, and publication; procedure to determine progress of project; reports by development office, content of reports; rule-making authority; development office to provide manual and assistance.

(a) Each year, the county commission, or its designee, and the governing body of a municipality, or its designee, that has approved a development or redevelopment project plan shall prepare a report giving the status of each plan and each development and redevelopment project included in the plan and file it with the executive director of the development office by the first day of October each year. The report shall include the following information:

(1) The aggregate amount and the amount by source of revenue in the tax increment financing fund;

(2) The amount and purpose of expenditures from the tax increment financing fund;

(3) The amount of any pledge of revenues, including principal and interest on any outstanding tax increment financing indebtedness;

(4) The base assessed value of the development or redevelopment project or the development or redevelopment district, as appropriate;

(5) The assessed value for the current tax year of the development or redevelopment project property or of the taxable property having a tax situs in the development or redevelopment district, as appropriate;
(6) The assessed value added to base assessed value of the development or redevelopment project or the taxable property having a tax situs in the development or redevelopment district, as the case may be;

(7) Payments made in lieu of taxes received and expended;

(8) Reports on contracts made incidental to the implementation and furtherance of a development or redevelopment plan or project;

(9) A copy of any development or redevelopment plan, which shall include the required findings and cost-benefit analysis;

(10) The cost of any property acquired, disposed of, rehabilitated, reconstructed, repaired or remodeled;

(11) The number of parcels of land acquired by or through initiation of eminent domain proceedings;

(12) The number and types of jobs projected by the project developer to be created, if any, and the estimated annualized wages and benefits paid or to be paid to persons filling those jobs;

(13) The number, type and duration of the jobs created, if any, and the annualized wages and benefits paid;

(14) The amount of disbursements from the tax increment financing fund during the most recently completed fiscal year, in the aggregate and in such detail as the executive director of the development office may require;

(15) An annual statement showing payments made in lieu of taxes received and expended during the fiscal year;
(16) The status of the development or redevelopment plan and projects therein;

(17) The amount of outstanding tax increment financing obligations; and

(18) Any additional information the county commission or the municipality preparing the report deems necessary or that the executive director of the development office may by procedural rule require.

(b) Data contained in the report required by subsection (a) of this section shall be deemed a public record as defined in article one, chapter twenty-nine-b of this code.

(1) The county commission’s annual report shall be published on its web site, if it has a web site. If the county does not have a web site, the annual report shall be published on the web site of the development office.

(2) The municipality’s annual report shall be published on its web site, if it has a web site. If the municipality does not have a web site, the annual report shall be published on the web site of the development office.

(c) After the close of the fiscal year, but on or before the first day of October each year, the county commission and the governing body of a municipality that approved a development or redevelopment plan shall publish in a newspaper of general circulation in the county or municipality, as appropriate, an annual statement showing for each development or redevelopment project or plan for which tax increment financing obligations have been issued:

(1) A summary of receipts and disbursements, by major category, of moneys in the tax increment financing fund during that fiscal year;
(2) A summary of the status of the development or redevelopment plan and each project therein;

(3) The amount of tax increment financing principal outstanding as of the close of the fiscal year; and

(4) Any additional information the county commission or municipality deems necessary or appropriate to publish.

(d) Five years after the establishment of a development or redevelopment plan, and every five years thereafter, the county commission or municipality that approved the plan shall hold a public hearing regarding that development or redevelopment plan and the projects created or to be created in the development or redevelopment district pursuant to this article.

(1) The purpose of the public hearing is to determine if the development or redevelopment plan and the proposed project or projects are making satisfactory progress under the proposed time schedule contained within the approved plans for completion of the projects.

(2) Notice of this public hearing shall be given in a newspaper of general circulation in the county, or in the municipality for a municipal plan, once each week for four successive weeks immediately prior to the hearing.

(3) Public hearings on development and redevelopment plans and projects may be held as part of a regular or special meeting of the county commission, or governing body of the municipality, that adopted the plan.

(e) The executive director of the development office shall submit a report to the governor, the speaker of the House of Delegates and the president of the Senate no later than February first of each year. The report shall contain a summary of all
information received by the executive director pursuant to this section.

(f) For the purpose of facilitating and coordinating the reports required by this section, the executive director of the development office may promulgate procedural rules in the manner provided in article three, chapter twenty-nine-a of this code to ensure compliance with this section.

(g) The executive director of the development office shall provide information and technical assistance, as requested by a county commission or the governing body of a municipality, on the requirements of this article. The information and technical assistance shall be provided in the form of a manual, written in an easy-to-follow manner, and through consultations with staff of the development office.

(h) By the first day of October each year, each agency that proposed a development or redevelopment plan that was approved by a county commission, or the governing body of a municipality, and each county commission, or governing body of a municipality, that approved a development or redevelopment plan that was not proposed by an agency shall report to the executive director of the development office the name, address, phone number and primary line of business of any business that relocates to the development or redevelopment district during the immediately preceding fiscal year of the state. The executive director shall compile and report the same to the governor, the speaker of the House of Delegates and the president of the Senate by the first day of February of the next calendar year.

§7-11B-16. Valuation of real property.

(a) Upon and after the effective date of the creation of a development or redevelopment district, the county assessor of the county in which the district is located shall transmit to the
county clerk a certified statement of the base assessed value, total ad valorem regular levy rate, total general obligation bond debt service ad valorem rate and total excess levy rate applicable for the development or redevelopment district.

(1) The assessor shall undertake, upon request of the county commission, or the governing body of the municipality, creating the development or redevelopment district, an investigation, examination and inspection of the taxable real and tangible personal property having a tax situs in the district and shall reaffirm or revalue the base value for assessment of the property in accordance with the findings of the investigation, examination and inspection.

(2) The county assessor shall determine, according to his or her best judgment from all sources available to him or her, the full aggregate assessed value of the taxable property in the district, which aggregate assessed valuation, upon certification thereof by the assessor to the clerk, constitutes the base value of the development or redevelopment district.

(b) The county assessor shall give notice annually to the designated finance officer of each levying body having the power to levy taxes on property within each district of the current value and the incremental value of the property in the development or redevelopment district.

(c) The assessor shall also determine the tax increment by applying the applicable ad valorem regular levy rates to the incremental value.

(d) The notice shall also explain that the entire amount of the tax increment allocable to property within the development or redevelopment district will be paid to the tax increment financing fund of the development or redevelopment district until it is terminated.
(e) The assessor shall identify upon the landbooks those parcels of property that are within each existing development or redevelopment district, specifying on landbooks the name of each district.

§7-11B-17. Division of ad valorem real property tax revenue.

(a) For so long as the development or redevelopment district exists, the county sheriff shall divide the ad valorem tax revenue collected, with respect to taxable property in the district, as follows:

1. (1) The assessor shall determine for each tax year:

   (A) The amount of ad valorem property tax revenue that should be generated by multiplying the assessed value of the property for the then current tax year by the aggregate of applicable levy rates for the tax year;

   (B) The amount of ad valorem tax revenue that should be generated by multiplying the base assessed value of the property by the applicable regular ad valorem levy rates for the tax year;

   (C) The amount of ad valorem tax revenue that should be generated by multiplying the assessed value of the property for the current tax year by the applicable levy rates for general obligation bond debt service for the tax year;

   (D) The amount of ad valorem property tax revenue that should be generated by multiplying the assessed value of the property for the current tax year by the applicable excess levy rates for the tax year; and

   (E) The amount of ad valorem property tax revenue that should be generated by multiplying the incremental value by the applicable regular levy rates for the tax year.
(2) The sheriff shall determine from the calculations set forth in subdivision (1) of this subsection the percentage share of total ad valorem revenue for each levying body according to paragraphs (B) through (D), inclusive, of said subdivision by dividing each of such amounts by the total ad valorem revenue figure determined by the calculation in paragraph (A) of said subdivision; and

(3) On each date on which ad valorem tax revenue is to be distributed to the levying bodies, such revenue shall be distributed by:

(A) Applying the percentage share determined according to paragraph (B), subdivision (1) of this subsection to the revenues received and distributing such share to the levying bodies entitled to such distribution pursuant to current law;

(B) Applying the percentage share determined according to paragraph (C), subdivision (1) of this subsection to the revenues received and distributing such share to the levying bodies entitled to such distribution by reason of having general obligation bonds outstanding;

(C) Applying the percentage share determined according to paragraph (D), subdivision (1) of this subsection to the revenues received and distributing such share to the levying bodies entitled to such distribution by reason of having excess levies in effect for the tax year; and

(D) Applying the percentage share determined according to paragraph (E), subdivision (1) of this subsection to the revenues received and distributing such share to the tax increment financing fund of the development or redevelopment district.

(b) In each year for which there is a positive tax increment, the county sheriff shall remit to the tax increment financing fund of the development or redevelopment district that portion
of the ad valorem property taxes collected that consists of the tax increment.

(c) Any additional moneys appropriated to the development or redevelopment district pursuant to an appropriation by the county commission that created the district and any additional moneys dedicated to the fund from other sources shall be deposited to the tax increment financing fund for the development or redevelopment district by the sheriff.

(d) Any funds deposited into the tax increment financing fund of the development or redevelopment district may be used to pay project costs, principal and interest on bonds and the cost of any other improvements in the development or redevelopment district deemed proper by the county commission.

(e) Unless otherwise directed pursuant to any agreement with the holders of tax increment financing obligations, moneys in the tax increment financing fund may be temporarily invested in the same manner as other funds of the county commission, or the municipality, that established the fund.

(f) If less than all of the tax increment is to be used for project costs or pledged to secure tax increment financing as provided in the plan for the development or redevelopment district, the sheriff shall account for that fact in distributing the ad valorem property tax revenues.

§7-11B-18. Payments in lieu of taxes and other revenues.

(a) The county commission or municipality that created the development or redevelopment district shall deposit in the tax increment financing fund of the development or redevelopment district all payments in lieu of taxes received pursuant to any agreement entered into on or subsequent to the date of creation of a development or redevelopment district on tax exempt
property located within the development or redevelopment district.

(b) The lessee of property that is exempt from property taxes because it is owned by this state, a political subdivision of this state or an agency or instrumentality thereof, which is the lessee of any facilities financed, in whole or in part, with tax increment financing obligations, shall execute a payment in lieu of tax agreement that shall remain in effect until the tax increment financing obligations are paid, during which period of time the lessee agrees to pay to the county sheriff an amount equal to the amount of ad valorem property taxes that would have been levied against the assessed value of the property were it owned by the lessee rather than a tax exempt entity. The portion of the payment in lieu of taxes attributable to the incremental value shall be deposited in the tax increment financing fund. The remaining portion of the in lieu payment shall be distributed among the levying bodies as follows:

(1) The portion of the in lieu tax payment attributable to the base value of the property shall be distributed to the levying bodies in the same manner as taxes attributable to the base value of other property in the district are distributed; and

(2) The portions of the in lieu tax payment attributable to levies for bonded indebtedness and excess levies shall be distributed in the same manner as those levies on other property in the district are distributed.

(c) Other revenues to be derived from the development or redevelopment district may also be deposited in the tax increment financing fund at the direction of the county commission.


(a) Tax increment obligations may be issued by a county commission, or the governing body of the municipality, to pay
project costs for projects included in the development or
redevelopment plan approved by the development office and
adopted by the county commission, or the governing body of
the municipality, that are located in a development or redevel-
opment district or on land not in the district that is contiguous
to the district and which contain infrastructure or other facilities
which serve the district.

(1) Tax increment financing obligations may be issued for
project costs, as defined in section three of this article, which
may include interest prior to and during the acquisition,
construction and equipping of a project and for a reasonable
time thereafter, with such reserves as may be required by any
agreement securing the obligations and all other expenses
incidental to planning, carrying out and financing the project.

(2) The proceeds of tax increment financing obligations
may also be used to reimburse the costs of any interim financ-
ing or cash expenditures entered on behalf of projects in the
development or redevelopment district.

(b) Tax increment financing obligations issued under this
article shall be payable solely from the tax increment or other
revenues deposited to the credit of the tax increment financing
fund of the development or redevelopment district.

(c) Under no event shall tax increment financing obliga-
tions be secured or be deemed to be secured by the full faith
and credit of the county commission or the municipality issuing
the tax increment financing obligations.

(d) Every tax increment financing bond, note or other
obligation issued under this article shall recite on its face that
it is a special obligation payable solely from the tax increment
and other revenues pledged for its repayment.
§7-11B-20. Tax increment financing obligations — authority to issue.

For the purpose of paying project costs, or for the purpose of refunding notes issued under this article for the purpose of paying project costs, the county commission or municipality creating the development or redevelopment district may issue tax increment financing obligations payable out of tax increments and other revenues deposited to the tax increment financing fund of the development or redevelopment district.


(a) Issuance of tax increment financing obligations shall be authorized by order of the county commission, or resolution of the municipality, that created the development or redevelopment district.

(b) The order, or resolution, shall state the name of the development or redevelopment district, the amount of tax increment financing obligations authorized, the type of obligation authorized and the interest rate or rates to be borne by the bonds, notes or other tax increment financing obligations.

(c) The order or ordinance may prescribe the terms, form and content of the tax increment financing obligations and other particulars or information the county commission, or governing body of the municipality, issuing the obligations deems useful or it may include by reference the terms and conditions set forth in a trust indenture or other document securing the development or redevelopment project tax increment financing obligations.

§7-11B-22. Tax increment financing obligations — terms, conditions.
(a) Tax increment financing obligations may not be issued in an amount exceeding the estimated aggregate project costs, including all costs of issuance of the tax increment financing obligations.

(b) Tax increment financing obligations shall not be included in the computation of the constitutional debt limitation of the county commission or municipality issuing the tax increment financing obligations.

(c) Tax increment financing obligations shall mature over a period not exceeding thirty years from the date of entry of the county commission’s order, or the effective date of the municipal ordinance, creating the development or redevelopment district and approving the development or redevelopment plan, or a period terminating with the date of termination of the development or redevelopment district, whichever period terminates earlier.

(d) Tax increment financing obligations may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the county commission or municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting the tax increment financing obligations to be redeemed.

(e) The principal and interest on tax increment financing obligations may be payable at any place set forth in the resolution, trust indenture or other document governing the obligations.

(f) Bonds or notes shall be issued in registered form.

(g) Bonds or notes may be issued in any denomination.

(h) Each tax increment financing obligation issued under this article is declared to be a negotiable instrument.
(i) The tax increment financing obligations may be sold at public or private sale.

(j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the procedures for issuance, form, contents, execution, negotiation and registration of county and municipal industrial or commercial revenue bonds set forth in article two-c, chapter thirteen of this code are incorporated by reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: Provided, That the last maturity of the refunding bonds shall not be later than the last maturity of the bonds being refunded.

§7-11B-23. Tax increment financing obligations — security — marketability.

To increase the security and marketability of tax increment financing obligations, the county commission or municipality issuing the obligations may:

(1) Create a lien for the benefit of the holders of the obligations upon any capital improvements, facilities or both financed by the obligations; or

(2) Make such covenants and do any and all such actions, not inconsistent with the constitution of this state, which may be necessary, convenient or desirable in order to additionally secure the obligations or which tend to make the obligations more marketable according to the best judgment of the county commission or municipality issuing the tax increment financing obligations.

§7-11B-24. Tax increment financing obligations — special fund for repayment.

(a) Tax increment financing obligations issued by a county commission or municipality are payable out of the tax incre-
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(b) The county commission or municipality issuing the tax increment financing obligations shall irrevocably pledge all or part of the tax increment financing fund to the payment of the obligations. The tax increment financing fund, or the designated part thereof, may thereafter be used only for the payment of the obligations and their interest until they have been fully paid.

(c) A holder of the tax increment financing obligations shall have a lien against the tax increment financing fund for payment of the obligations and interest on them and may bring suit to enforce the lien.

(d) A county commission or municipality may issue and secure additional bonds payable out of the tax increment fund created for each development or redevelopment district created under this article, which bonds may rank on a parity with, or be subordinate or superior to, other bonds issued by the county commission or municipality from each such tax increment fund.


(a) Moneys received in the tax increment financing fund of the development or redevelopment district in excess of amounts needed to pay project costs and debt service may be used by the county commission or municipality that created the development or redevelopment district for other projects within the district or distributed to the levying bodies as provided in this article.

(b) Upon termination of the district, all amounts in the tax increment financing fund of the district shall be paid over to the levying bodies in the same proportion that ad valorem property taxes on the base value was paid over to those levying bodies for the tax year in which the district is terminated.
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pliance by secretaries and spending officers with requirements to provide certain budget and budget-related information; identifying agencies, boards, commissions, division and offices comprising department of revenue; specifying powers and duties of secretary; requiring periodic reports; authorizing delegations of authority; providing rules for safeguarding confidential information; providing right of appeal from interference with functioning of an agency; transferring budget section of finance division of department of administration to department of revenue and making secretary of revenue state budget director; providing rules to effectuate transfer of budget section and transition; moving language pertaining to work of budget section and preparation of budget to new chapter of the code; and making other technical or conforming changes to implement or effectuate these various changes.

Be it enacted by the Legislature of West Virginia:

Chapter
5A. Department of Administration.
11B. Department of Revenue.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

Article
1. Department of Administration.
2. Finance Division.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; division directors.
§5A-1-5. Reports by secretary.

*§5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; division directors.

1 (a) The department of administration and the office of secretary of administration are hereby continued in the executive branch of state government. The secretary shall be the chief executive officer of the department and shall be appointed by the governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the governor. The department of administration is hereby authorized to receive federal funds.

9 (b) The secretary shall serve at the will and pleasure of the governor. The annual compensation of the secretary shall be as specified in section two-a, article seven, chapter six of this code.

13 (c) There shall be in the department of administration a finance division, a general services division, an information

* CLERK'S NOTE: This section was also amended by H. B. 4008 (Chapter 8), which passed subsequent to this act.
services and communications division, an insurance and retirement division, a personnel division and a purchasing division. The insurance and retirement division shall be comprised of the public employees retirement system and board of trustees, the public employees insurance agency and public employees advisory board, the teachers retirement system and teachers retirement board, and the board of risk and insurance management. Each division shall be headed by a director who may also head any and all sections within that division and who shall be appointed by the secretary. In addition to the divisions enumerated above, there shall also be in the department of administration those agencies, boards, commissions and councils specified in section one, article two, chapter five-f of this code.


(a) The council of finance and administration is hereby created and shall be composed of eleven members, five of whom shall serve ex officio and six of whom shall be appointed as herein provided. The ex officio members shall be the secretary of the department of administration, the secretary of revenue, the attorney general or his or her designee, the state treasurer or his or her designee and the state auditor or his or her designee; such designees being authorized voting ones. From the membership of the Legislature, the president of the Senate shall appoint three senators as members of the council, not more than two of whom shall be members of the same political party, and the speaker of the House of Delegates shall appoint three delegates as members of the council, not more than two of whom shall be members of the same political party. Members of the council appointed by the president of the Senate and the speaker of the House of Delegates shall serve at the will and pleasure of the officer making their appointment. The secretary of administration shall serve as chairman of the council. Meetings of the council shall be upon call of the
chairman or a majority of the members thereof. It shall be the duty of the chairman to call no less than four meetings in each fiscal year, one in each quarter, or more often as necessary, and all meetings shall be open to the public. All meetings of the council shall be held at the capitol building in a suitable committee room which shall be made available by the Legislature for such purpose: Provided, That the second quarterly meeting in each fiscal year shall be held in November and shall be a joint meeting with the joint committee on government and finance of the Legislature called jointly by the president of the Senate, speaker of the House of Delegates and secretary of administration.

(b) The council shall serve the department of administration and the director of the budget in an advisory capacity for purposes of reviewing the performance of the administrative and fiscal procedures of the state, including the oversight of all federal funds, and shall have the following duties:

(1) To advise with the director of the budget in respect to matters of budgetary intent and efficiency, including the budget bill and budget document detail and format;

(2) To advise with the secretary and the director of the budget concerning studies of government and administration concerning fiscal policy as it considers appropriate;

(3) To advise with the secretary and the director of the budget in the preparation of studies designed to provide long-term capital planning and finance for state institutions and agencies; and

(4) To advise with the secretary and the director of the budget in respect to the application for, and receipt and expenditure of, anticipated or unanticipated federal funds.
(c) The appointed, non ex officio members of the council shall be entitled to receive compensation and reimbursement for expenses in connection with performance of their duties, during interim periods, if not otherwise receiving the same for identical periods, as is authorized by the applicable sections of article two-a, chapter four of the code in respect to performance of duties either within the state or, if necessary, out of state. Compensation and expenses shall be incurred and paid only after approval by the joint committee on government and finance.

§5A-1-5. Reports by secretary.

The secretary shall make an annual report to the governor concerning the conduct of the department and the administration of the state finances as they pertain to programs administered by the department of administration. The secretary shall also make other reports as the governor may require.

ARTICLE 2. FINANCE DIVISION.

§5A-2-1. Finance division created; director; sections; powers and duties.
§5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor; misdemeanor penalty for noncompliance.

§5A-2-1. Finance division created; director; sections; powers and duties.

(a) The finance division of the department of administration is hereby continued except that the budget section is transferred to and shall become a part of the department of revenue on the effective date of this section as amended in the year two thousand four. The finance division shall be under the supervision and control of a director, who shall be appointed by the secretary. There shall be in the finance division an accounting section and a financial accounting and reporting section.
(b) The accounting section shall have the duties conferred upon it by this article and by the secretary, including, but not limited to, general financial accounting, payroll, accounts payable and accounts receivable for the department of administration.

(c) The financial accounting and reporting section shall establish and maintain the centralized accounting system required by section twenty-four of this article and issue annual general purpose financial statements in accordance with generally accepted accounting principles and with this article.


(a) It is the intent of this section to establish a centralized accounting system for the offices of the auditor, treasurer, board of investments, secretary of administration and each spending unit of state government to provide more accurate and timely financial data and increase public accountability.

(b) Notwithstanding any provision of this code to the contrary, the secretary of administration shall develop and implement a new centralized accounting system for the planning, reporting and control of state expenditures in accordance with generally accepted accounting principles to be used by the auditor, treasurer, board of investments, secretary and all spending units. The accounting system shall provide for adequate internal controls, accounting procedures, recording income collections, systems operation procedures and manuals, and periodic and annual general purpose financial statements, as well as provide for the daily exchange of needed information among users.

(c) The financial statements shall be audited annually by outside independent certified public accountants, who shall also issue an annual report on federal funds in compliance with federal requirements.
(d) The secretary shall implement the centralized accounting system no later than the thirty-first day of December, one thousand nine hundred ninety-three, and, after approval of the system by the governor, shall require its use by all spending units. The auditor, treasurer, board of investments, secretary and every spending unit shall maintain their computer systems and data files in a standard format in conformity with the requirements of the centralized accounting system. Any system changes must be approved in advance of the change by the secretary. The auditor, treasurer, board of investments, budget director and secretary of administration shall provide on-line interactive access to the daily records maintained by their offices.

§5A-2-32. Submission of requests, amendments, reports, etc., to legislative auditor; misdemeanor penalty for non-compliance.

(a) The provisions of section twenty-five of this article requiring the secretary to supply copies of the documents specified therein to the legislative auditor shall be strictly adhered to by the secretary.

(b) Any failure by a secretary to comply with the provisions of subsection (a) of this section shall be a misdemeanor and, upon conviction thereof, the secretary shall be fined the sum of one thousand dollars. This penalty shall be in addition to other penalties provided elsewhere in this article and other remedies provided by law.

CHAPTER 11B. DEPARTMENT OF REVENUE.

Article
1. Department of Revenue.
2. State Budget Office.

ARTICLE 1. DEPARTMENT OF REVENUE.
§11B-1-1. Department of tax and revenue renamed department of revenue; office of secretary of tax and revenue renamed office of secretary of revenue.

§11B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of finance and revenue.

§11B-1-3. Powers and duties of secretary, administrators, division heads and employees.

§11B-1-4. Reports by secretary.

§11B-1-5. Delegation of powers and duties by secretary.

§11B-1-6. Confidentiality of information.

§11B-1-7. Right of appeal from interference with functioning of agency.

§11B-1-1. Department of tax and revenue renamed department of revenue; office of secretary of tax and revenue renamed office of secretary of revenue.

(a) The department of tax and revenue and the office of secretary of tax and revenue are hereby renamed, respectively, the department of revenue and the office of secretary of revenue and continued in the executive branch of state government. Wherever in this code the words “office of secretary of tax and revenue” or “secretary of tax and revenue” are used, such words shall now mean the office of secretary of revenue or the secretary of revenue.

(b) The secretary of revenue shall be the chief executive officer of the department and director of the budget. The secretary shall be appointed by the governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the governor.

(c) The department of revenue is hereby authorized to receive federal funds.

(d) The secretary shall serve at the will and pleasure of the governor. The annual compensation of the secretary shall be as specified in section two-a, article seven, chapter six of this code.
§11B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of finance and revenue.

(a) There shall be in the department of revenue the following agencies, boards, commissions, divisions and offices, including all of the allied, advisory, affiliated or related entities which are incorporated in and shall be administered as part of the department of revenue:

(1) The alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article one, chapter sixty of this code;

(2) The division of banking provided for in article two, chapter thirty-one-a of this code;

(3) The board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(4) The state budget office, heretofore known as the budget section of the finance division, department of administration, previously provided for in article two, chapter five-a of this code and now provided for in article two of this chapter;

(5) The agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(6) The lending and credit rate board provided for in chapter forty-seven-a of this code;

(7) The lottery commission and the position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(8) The municipal bond commission provided for in article three, chapter thirteen of this code;
(9) The office of tax appeals provided for in article ten-a, chapter eleven of this code;

(10) The state athletic commission provided for in article five-a, chapter twenty-nine of this code;

(11) The tax division provided for in article one, chapter eleven of this code; and

(12) The West Virginia racing commission provided for in article twenty-three, chapter nineteen of this code.

(b) The department shall also include any other agency, board, commission, division, office or unit subsequently incorporated in the department by the Legislature.

§11B-1-3. Powers and duties of secretary, administrators, division heads and employees.

(a) The secretary shall have control and supervision of the department of revenue and shall be responsible for the work of each of its employees.

(b) The secretary shall have the power and authority specified in this article and article two, chapter five-f of this code and as specified elsewhere in this code, whether heretofore or hereinafter enacted by the Legislature and whether the code provision refers to the secretary of revenue or to the secretary of tax and revenue.

(c) The secretary has authority to assess agencies, boards, commissions, divisions and offices in the department of revenue for the payment of expenses of the office of the secretary.

(d) The secretary shall have plenary power and authority within and for the department to employ professional staff, including, but not limited to, certified public accountants,
economists and attorneys, assistants and other employees as necessary for the efficient operation of the department.

(e) The secretary and administrators, division heads and other employees of the department shall perform the duties specified in this code for their respective offices or positions and shall also perform other duties as the governor prescribes.

§11B-1-4. Reports by secretary.

The secretary shall make an annual report to the governor concerning the conduct of the department and the administration of the budget. The secretary shall also make other reports as the governor may require.

§11B-1-5. Delegation of powers and duties by secretary.

The secretary may delegate powers and duties vested in the secretary to his or her assistants and employees, but the secretary shall be responsible for all official acts of the department.

§11B-1-6. Confidentiality of information.

(a) Information provided to secretary under expectation of confidentiality. -- Information that would be confidential under the laws of this state when provided to a division, agency, board, commission or office within the department of revenue shall be confidential when that information is provided to the secretary of the department of revenue or to an employee in the office of the secretary. The confidential information may be disclosed only: (1) To the applicable agency, board, commission or division of the department to which the information relates; or (2) in the manner authorized by provisions of this code applicable to that agency, board, commission or division. This confidentiality rule is a specific exemption from disclosure under article one, chapter twenty-nine-b of this code.
(b) **Interdepartmental communication of confidential information.** — Notwithstanding any provision of this code to the contrary, information that by statute is confidential in the possession of any division, agency, board, commission or office of the department of revenue may be disclosed to the secretary, or an employee in the office of the secretary, who must safeguard the information and may not further disclose the information except under the same conditions, restrictions and limitations applicable to the administrator of the agency, board, commission, division or office of the department in whose hands the information is confidential: *Provided,* That nothing contained in this section shall be construed to require the disclosure to the secretary or to an employee in the office of the secretary of individually identifiable health care or other information that, under federal law, may not be disclosed by the administrator without subjecting the administrator or the agency, board, commission, division or office to sanctions or other penalties by the United States or any agency thereof. This confidentiality rule is a specific exemption from disclosure under article one, chapter twenty-nine-b of this code.

§11B-1-7. Right of appeal from interference with functioning of agency.

Upon occasion of a showing that the application of the authority vested under the provisions of this article may interfere with the successful functioning of any department, institution or agency of the government, that department, institution or agency has the right of appeal to the governor for review of the case and the decision or conclusion of the governor shall control in appeals.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-1. Budget office.
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§11B-2-3. Requests for appropriations; copies to legislative auditor.
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§ 11B-2-22. Reduction of appropriations -- Reduction of appropriations from other funds.
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§ 11B-2-25. Expenditure of appropriations -- Other than for purchases of commodities.
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§ 11B-2-30. Submission of requests, amendments, reports, etc., to legislative auditor; misdemeanor penalty for noncompliance.
§ 11B-2-31. Effectuation of transfer of budget section and transition.
§11B-2-1. Budget office.

The budget section of the department of administration is hereby transferred to the department of revenue and continued as the budget office. The budget office shall act as staff agency for the governor in the exercise of his powers and duties under section fifty-one, article VI of the Constitution of West Virginia and shall exercise and perform the other powers and duties of the budget office set forth in this article or previously conferred upon the budget section of the finance division, department of administration, prior to the effective date of this section in calendar year two thousand four, and set forth whether in article two, chapter five-a of this code, prior to the effective date of this section in calendar year two thousand four, this article or elsewhere in this code.

§11B-2-2. General powers and duties of secretary as director of budget.

The secretary of revenue, under the immediate supervision of the governor, shall have the power and duty to:

1. Exercise general supervision of, and make rules and regulations for, the government of this division;
2. Administer the budget in accordance with this article;
3. Serve the governor in the consideration of requests for appropriations and the preparation of the budget document;
4. Make investigations and submit reports as the governor requires;
5. Make a continuous study of state expenditures and eligibility for federal matching dollars and make recommendations to the governor for the more economical use of state funds as he or she shall find practicable;
(6) Render assistance to spending officers with respect to the fiscal affairs of spending units; and

(7) Exercise other powers as are vested in the secretary by this article, or which may be appropriate to the discharge of the secretary's duties under this article.

§11B-2-3. Requests for appropriations; copies to legislative auditor.

(a) The spending officer of each spending unit, other than the legislative and the judicial branches of state government, shall, on or before the first day of September of each year, submit to the secretary a request for appropriations for the fiscal year next ensuing. On or before the same date, the spending officer shall also transmit two copies of the request to the legislative auditor for the use of the finance committees of the Legislature.

(b) If the spending officer of any spending unit fails to transmit to the legislative auditor two copies of the request for appropriations within the time specified in this section, the legislative auditor or the state budget office shall notify the secretary, auditor and treasurer of the failure. Upon notification, no funds appropriated to that spending unit shall be encumbered or expended until the spending officer thereof has transmitted two copies of the request for appropriation to the legislative auditor.

(c) If a spending officer submits to the secretary an amendment to the request for appropriations, two copies of the amendment shall forthwith be transmitted to the legislative auditor.

(d) Notwithstanding any provision in this section to the contrary, the state superintendent of schools shall, on or before the fifteenth day of December of each year, submit to the
secretary a request for appropriations for the fiscal year next ensuing for state aid to schools and submit two copies of the request to the legislative auditor for the use of the finance committees of the Legislature. The request for appropriation shall be accompanied with copies of certified enrollment and employee lists from all county superintendents for the current school year. If certified enrollment and employee lists are not available to the state superintendent from any of the county school boards, the state superintendent shall notify those school boards and no funds shall be expended for salary or compensation to their county superintendent until the certified lists of enrollment and employees are submitted.


A request for an appropriation for a spending unit shall specify and itemize in written form:

1. A statement showing the amount and kinds of revenue and receipts collected for use of the spending agency during the next preceding fiscal year and anticipated collections for the fiscal year next ensuing;

2. A statement by purposes and objects of the amount of appropriations requested for the spending unit without deducting the amount of anticipated collections of special revenue, federal funds or other receipts;

3. A statement showing the actual expenditures of the spending unit for the preceding year and estimated expenditures for the current fiscal year itemized by purposes and objects, including those from regular and supplementary appropriations, federal funds, private contributions, transfers, allotments from an emergency or contingency fund and any other expenditures made by or for the spending unit;

4. A statement showing the number, classification and compensation of persons employed by the spending unit.
distinguishing between regular, special and casual employees
during the preceding fiscal year and during the current fiscal
taxation year. The statement shall show the personnel requirements in
similar form for the ensuing fiscal year for which appropri-
tions are requested;

(5) A statement showing in detail the purposes for which
increased amounts of appropriations, if any, are requested and
giving a justification statement for the expenditure of the
increased amount. A construction or other improvement
request shall show in detail the kind and scope of construction
or improvement requested;

(6) A statement of money claims against the state arising
out of the activities of the spending unit; and

(7) Any other information as the secretary requests.

§11B-2-5. Form of requests.

The secretary shall specify the form and detail of itemiza-
tion of requests for appropriations and statements to be submit-
ted by a spending unit: Provided, That a request for approppria-
tions must include at a minimum the information required by
section four of this article. The secretary shall furnish blank
forms for this purpose.

§11B-2-6. Information concerning state finances.

The secretary shall ascertain for the preceding year and as
estimated for the current fiscal year:

(1) The condition of each of the funds of the state;

(2) A statement of all revenue collections both general and
special; and
(3) Any other information relating to the finances of the state as the governor requests.


The governor shall transmit to the secretary the appropriations required by law for the judiciary for the fiscal year next ensuing and which have been certified to the governor by the auditor. The auditor shall certify the appropriations to the governor in accordance with section fifty-one, article VI of the Constitution of West Virginia on or before the first day of September of each year.

§11B-2-8. Examination of requests for appropriations.

(a) The secretary shall examine the requests of a spending unit with respect to requested appropriations, itemization, sufficiency of justification statements and accuracy and completeness of all other information which the spending officer is required to submit.

(b) If the secretary finds a request, report or statement of a spending unit inaccurate, incomplete or inadequate, he or she shall consult with the spending officer of the unit and require the submission of the requests in proper form and content. The secretary shall assist spending officers in the preparation of their requests.

§11B-2-9. Appropriation requests by other than spending units.

A person or organization, other than a spending officer, who desires to request a general appropriation in the state budget, shall submit his or her request to the secretary on or before the first day of September of each year. The request shall be in the form prescribed by the secretary and shall be accompanied by a justification statement.

(a) The secretary shall supervise and control the expenditure of appropriations made by the Legislature excluding those made to the Legislature and those made to the judicial branch of the state government.

(b) The expenditure of an appropriation made by the Legislature, except made for the Legislature itself and the judicial branch of state government, shall be conditioned upon compliance by the spending unit with the provisions of this article.

(c) An appropriation made by the Legislature, except made for the Legislature itself and the judicial branch of state government, shall be expended only in accordance with this article.

§11B-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.

(a) Prior to the beginning of each fiscal year, the secretary shall estimate the revenue to be collected month by month by each classification of tax for that fiscal year as it relates to the official estimate of revenue for each tax for that fiscal year and the secretary shall certify this estimate to the governor and the legislative auditor and the West Virginia investment management board by the first day of July for that fiscal year.

(1) The secretary shall ascertain the collection of the revenue of the state and shall determine for each month of the fiscal year the proportion which the amount actually collected during a month bears to the collection estimated by him or her for that month. The secretary shall certify to the governor, the legislative auditor and the investment management board, as soon as possible after the close of each month, and not later
than the fifteenth day of each month, and at other times as the governor, the legislative auditor or the investment management board may request, the condition of the state revenues and of the several funds of the state and the proportion which the amount actually collected during the preceding month bears to the collection estimated by him or her for that month. The secretary shall include in this certification the same information previously certified for prior months in each fiscal year. For the purposes of this section, the secretary shall have the authority to require all necessary estimates and reports from any spending unit of the state government.

(2) If the secretary fails to certify to the governor, the legislative auditor and the investment management board the information required by this subsection within the time specified herein, the legislative auditor shall notify the auditor and treasurer of the failure and thereafter no funds appropriated to the department of revenue may be expended until the secretary has certified the information required by this subsection.

(b) Prior to the first day of July of each fiscal year, the secretary shall estimate daily revenue flows for the general revenue fund for the next fiscal year as it relates to the official estimate of revenue. Subsequent to the end of each fiscal year, the secretary shall compare the projected daily revenue flows with the actual daily revenue flows from the previous year. The secretary may for any month or months, at his or her discretion, revise the annual projections of the daily revenue flows. The secretary shall certify to the governor, the legislative auditor and the investment management board, as soon as possible after the close of each month and not later than the fifteenth day of each month, and at other times as the governor, the legislative auditor or the investment management board may request, the condition of the general revenue fund and the comparison of the projected daily revenue flows with the actual daily revenue flows. If the secretary fails to certify to the governor, the
legislative auditor and the investment management board the
information required by this subsection within the time speci-
ified herein, the legislative auditor shall notify the auditor and
treasurer of the failure and thereafter no funds appropriated to
the department of revenue may be expended until the secretary
has certified the information required by this subsection.

§11B-2-12. Submission of expenditure schedules; contents;
submission of information on unpaid obligations;
copies to legislative auditor.

(a) Prior to the beginning of each fiscal year, the spending
officer of a spending unit shall submit to the secretary a detailed
expenditure schedule for the ensuing fiscal year. The schedule
shall be submitted in such form and at such time as the secre-
tary may require. The schedule shall show:

(1) A proposed monthly rate of expenditure for amounts
appropriated for personal services;

(2) Each and every position budgeted under personal
services for the next ensuing fiscal year, with the monthly
salary or compensation of each position;

(3) A proposed quarterly rate of expenditure for amounts
appropriated for employee benefits, current expenses, equip-
ment and repairs and alterations classified by a uniform system
of accounting as called for in section twenty-five of this article
for each item of every appropriation;

(4) A proposed yearly plan of expenditure for amounts
appropriated for buildings and lands; and

(5) A proposed quarterly plan of receipts itemized by type
of revenue.
(b) The secretary may accept a differently itemized expenditure schedule from a spending unit to which the above itemizations are not applicable.

(c) The secretary shall consult with and assist spending officers in the preparation of expenditure schedules.

(d) Within fifteen days after the end of each month of the fiscal year, the head of every spending unit shall certify to the legislative auditor the status of obligations and payments of the spending unit for amounts of employee benefits, including, but not limited to, obligations and payments for social security withholding and employer matching, public employees insurance premiums and public employees retirement and teachers retirement systems.

(e) In the event the legislative auditor determines from certified reports or from other sources that any spending unit is not making all payments and transfers for employee benefits from funds appropriated for that purpose, the legislative auditor shall notify the secretary of administration, auditor and treasurer of the determination and thereafter no funds appropriated to the spending unit shall be encumbered or expended for the salary or compensation to the head of the spending unit until the legislative auditor determines that the payments or transfers are being made on a timely basis.

(f) When a spending officer submits an expenditure schedule to the secretary as required by this section, the spending officer shall at the same time transmit a copy thereof to the legislative auditor and the joint committee on government and finance or its designee. If a spending officer of a spending unit fails to transmit a copy to the legislative auditor on or before the beginning of the fiscal year, the legislative auditor shall notify the secretary, auditor and treasurer of the failure and thereafter no funds appropriated to the spending unit shall
be encumbered or expended until the spending officer thereof 
has transmitted a copy to the legislative auditor.

§11B-2-13. Examination and approval of expenditure schedules; 
amendments; copies to legislative auditor.

(a) The secretary shall examine the expenditure schedule of 
each spending unit and if it conforms to the appropriations 
made by the Legislature, the requirements of this article and is 
in accordance with sound fiscal policy, the secretary shall 
approve the schedule. In addition, the secretary shall give 
special consideration in the approval of expenditure schedules 
to accounts in which the appropriations consist predominantly 
of personal services funds so that the quarterly allotments of 
funds to the various spending units are sufficient to pay 
personnel costs in the quarter in which they are due.

(b) The expenditure of the appropriations made to a 
spending unit shall be only in accordance with the approved 
expenditure schedule unless the schedule is amended with the 
consent of the secretary, or unless appropriations are reduced in 
accordance with the provisions of sections twenty to twenty-
two, inclusive, of this article. The spending officer of a 
spending unit shall transmit to the legislative auditor a copy of 
each and every requested amendment to the schedule at the 
same time that the requested amendment is submitted to the 
secretary. The secretary shall send to the legislative auditor 
copies of any schedule amended with the secretary’s approval.


The secretary, with the approval of the governor, may 
require that an expenditure schedule provide for a reserve for 
emergencies out of the total amount appropriated to the 
spending unit. The amount of the reserve shall be determined 
by the secretary in consultation with the spending officer.
§11B-2-15. Reserves for public employees insurance program.

(a) There is hereby continued a special revenue account in the state treasury, designated the "Public Employees Insurance Reserve Fund", which is an interest-bearing account and may be invested in accordance with the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund.

(b) The fund shall consist of moneys appropriated by the Legislature and moneys transferred annually pursuant to the provisions of subsection (c) of this section. These moneys shall be held in reserve and appropriated by the Legislature only for the support of the programs provided by the public employees insurance agency: Provided, That in only the fiscal year beginning the first day of July, two thousand two, and in each of the next two fiscal years thereafter, and ending on the thirtieth day of June, two thousand five, the moneys held in the fund may be appropriated to the bureau of medical services of the department of health and human resources.

(c) Annually each state agency, except for the higher education central office created in article four, chapter eighteen-b of this code; the higher education governing boards as defined in articles two and three of said chapter; and the state institutions of higher education as defined in section two, article one of said chapter shall transfer one percent of its annualized expenditures from state funds, excluding federal funds based on filled full-time equivalents as determined by the state budget office as of the first day of April for that fiscal year, to the public employees insurance reserve fund. The secretary may exempt that transfer only upon a showing by the requesting agency that the continued operation of that agency is dependent upon receipt of the exemption.

(d) Annually the secretary shall provide a report to the governor and the Legislature on the amount of reserves estab-
lished pursuant to the provisions of this section, the number of
exemptions granted and the agencies receiving those exemp-
tions.

§11B-2-16. Limitation on expenditures.

The expenditures of a spending unit during a quarter of the
fiscal year shall not exceed the amount of the approved allot-
ment, unless the governor approves the expenditure of a larger
amount. Any amounts remaining unexpended at the close of
the quarter shall be available for reallocation and expenditure
during any succeeding quarter of the same fiscal year.

§11B-2-17. Transfers between items of appropriation of execu-
tive, legislative and judicial branches.

Notwithstanding any other provision of law to the contrary,
there shall be no transfer of amounts between items of appropri-
ations nor shall moneys appropriated for any particular purpose
be expended for any other purpose by any spending unit of the
executive, legislative or judicial branch except as hereinafter
provided:

(1) Any transfer of amounts between items of appropria-
tions for the executive branch of state government shall be
made only as authorized by the Legislature.

(2) Any transfer of amounts between items of appropria-
tions for the legislative branch of state government shall be
made only pursuant to the joint rules adopted by the body and
any amendments thereto, as certified to the state auditor, the
state treasurer and the legislative auditor.

(3) Any transfer of amounts between items of appropria-
tions for the judicial branch of state government shall be made
only pursuant to rules adopted by the supreme court of appeals
and any amendments thereto, as certified to the state auditor,
the state treasurer and the legislative auditor.
§11B-2-18. Expenditure of excess in collections; notices to auditor and treasurer.

(a) If the amount actually collected by a spending unit exceeds the amount which it is authorized to expend from collections, the excess in collections shall be set aside in a special surplus fund for the spending unit. Expenditures from this fund shall be made only in accordance with the following procedure:

(1) The spending officer shall submit to the secretary:

(A) A plan of expenditure showing the purposes for which the excess is to be expended; and

(B) A justification statement showing the reasons why the expenditure is necessary and desirable.

(2) The secretary shall submit the request to the governor with his or her recommendation.

(3) If the governor approves the plan of expenditure and justification statement and is satisfied that the expenditure is required to defray the additional cost of the service or activity of the spending unit and that the expenditure is in accordance with sound fiscal policy, he or she may authorize the use of the excess during the current fiscal year. Notices of the authorization shall be sent to the state auditor, the state treasurer and the legislative auditor.

(b) An expenditure from a special surplus fund without the authorization of the governor, or other than in accordance with this section, shall be an unlawful use of public funds.

§11B-2-19. Reports by spending units; copies to legislative auditor.
A spending unit shall submit to the secretary reports with respect to the work and expenditures of the unit as the secretary may request for the purposes of this article. Upon receipt thereof, the secretary shall immediately send a copy of each report to the legislative auditor.

§11B-2-20. Reduction of appropriations; powers of governor; revenue shortfall reserve fund and permissible expenditures therefrom.

(a) Notwithstanding any provision of this section, the governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the revenue shortfall reserve fund established in this section.

(b) A revenue shortfall reserve fund is hereby continued within the state treasury. The revenue shortfall reserve fund shall be funded as set forth in this subsection from surplus revenues, if any, in the state fund, general revenue, as the surplus revenues may accrue from time to time. Within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the revenue shortfall reserve fund the first fifty percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended. The revenue shortfall reserve fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed five percent of the total appropriations from the state fund, general revenue, for the fiscal year just ended. If at the end of any fiscal year the revenue shortfall reserve fund is funded at an amount equal to or exceeding five percent of the state’s general revenue fund budget for the fiscal year just ended, then there shall be no further obligation of the secretary under the provisions of this section to apply any surplus revenues as set forth in this subsection until that time the revenue shortfall reserve fund balance is less than five
percent of the total appropriations from the state fund, general revenue.

(c) Not earlier than the first day of November of each calendar year, if the state’s fiscal circumstances are such as to otherwise trigger the authority of the governor to reduce appropriations under this section or section twenty-one or section twenty-two of this article, then in that event the governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section nineteen, article VI of the Constitution of West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus revenue shortfall reserve fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the revenue shortfall reserve fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the governor may proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article. Should any amount drawn from the revenue shortfall reserve fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the revenue shortfall reserve fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to the thirty-first day of October, in any fiscal year in which revenues are inadequate to make timely payments of
the state’s obligations, the governor may by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the revenue shortfall reserve fund. The amount of funds borrowed under this subsection shall not exceed one and one-half percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the governor determines is necessary to make timely payment of the state’s obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the revenue shortfall reserve fund within ninety days of their withdrawal.


If the governor determines that the amounts, or parts thereof, appropriated from the general revenue cannot be expended without creating an overdraft or deficit in the general fund, he or she may instruct the secretary to reduce all appropriations out of general revenue in a degree as necessary to prevent an overdraft or a deficit in the general fund.

§11B-2-22. Reduction of appropriations -- Reduction of appropriations from other funds.

(a) The governor, in the manner set forth in section twenty-one of this article, may reduce appropriations from:

(1) Funds supported by designated taxes or fees; and

(2) Fees or other collections set aside for the support of designated activities or services.

(b) Each fund and each fee or collection account shall be treated separately.

§11B-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state
agencies; copies or sufficient summary information to be furnished to secretary; and consolidated report of federal funds.

(a) Every agency of the state government when making requests or preparing budgets to be submitted to the federal government for funds, equipment, material or services, the grant or allocation of which is conditioned upon the use of state matching funds, shall have the request or budget approved in writing by the secretary before submitting it to the proper federal authority. When the federal authority has approved the request or budget, the agency of the state government shall resubmit it to the secretary for recording before any allotment or encumbrance of the federal funds can be made. Whenever any agency of the state government receives from any agency of the federal government a grant or allocation of funds which do not require state matching, the state agency shall report to the secretary the amount of the federal funds granted or allocated.

(b) Unless contrary to federal law, any agency of state government, when making requests or preparing budgets to be submitted to the federal government for funds for personal services, shall include in the request or budget the amount of funds necessary to pay for the costs of any fringe benefits related to the personal service. For the purposes of this section, “fringe benefits” means any employment benefit granted by the state which involves state funds, including, but not limited to, contributions to insurance, retirement and social security and which does not affect the basic rate of pay of an employee.

(c) In addition to the other requirements of this section, the secretary shall, as soon as possible after the end of each fiscal year but no later than the thirty-first day of December of each year, submit to the governor a consolidated report which shall contain a detailed itemization of all federal funds received by the state during the preceding and current fiscal years, as well
as those scheduled or anticipated to be received during the next ensuing fiscal year. The itemization shall show:

(1) Each spending unit which has received or is scheduled or expected to receive federal funds in either of the fiscal years;

(2) The amount of each separate grant or distribution received or to be received; and

(3) A brief description of the purpose of every grant or other distribution, with the name of the federal agency, bureau or department making the grant or distribution: Provided, That it is not necessary to include in the report an itemization of federal revenue sharing funds deposited in and appropriated from the revenue sharing trust fund, or federal funds received for the benefit of the division of highways of the department of transportation.

(d) The secretary may obtain from the spending units any and all information necessary to prepare a report.

(e) Notwithstanding the other provisions of this section and in supplementation of the provisions of this section, the Legislature hereby determines that the department of revenue and its secretary need to be the single and central agency for receipt of information and documents in respect of applications for, and changes, receipt and expenditure of, federal funds by state agencies. Every agency of state government, when making application for federal funds in the nature of a grant, allocation or otherwise; when amending the applications or requests; when in receipt of federal funds; or when undertaking any expenditure of federal funds, in all respective instances, shall provide to the secretary of revenue document copies or sufficient summary information in respect of the federal funds to enable the secretary to provide approval in writing for any activity in respect to the federal funds.

The expenditure of an appropriation made by the Legislature shall be conditioned upon compliance by the spending unit with sections twenty-five, twenty-six, twenty-seven, twenty-eight and twenty-nine of this article.

§11B-2-25. Expenditure of appropriations -- Other than for purchases of commodities.

A requisition for expenditure, other than an order for the purchase of commodities, shall be submitted as follows:

(1) The spending officer shall prepare and submit to the director a requisition showing the amount, purpose and appropriation from which the expenditure is requested;

(2) The director of the budget shall examine the requisition and determine whether the amount is within the quarterly allotment, is in accordance with the approved expenditure schedule and otherwise conforms to the provisions of this article;

(3) If the director approves the requisition, he or she shall encumber the proper account in the amount of the requisition and shall transmit the requisition to the auditor for disbursement in accordance with law; and

(4) If the director disapproves the requisition, he or she shall return it to the spending unit with a statement of his or her reasons.


If a requisition is a request for a purchase of commodities, the spending unit shall transmit the requisition to the state budget office for the purpose of ascertaining whether it con-
forms to the expenditure schedule. If it does not conform, the
requisition shall be returned by the state budget office to the
spending unit. If it conforms, the state budget office shall
transmit the requisition to the purchasing division of the
department of administration for purchase in accordance with
article three, chapter five-a of this code. When a copy of the
purchase order issued pursuant thereto is received from the
purchasing division by the director in accordance with the
provisions of section fourteen, article three, chapter five-a of
this code, the director shall ascertain whether the unencumbered
balance in the appropriation concerned, in excess of all unpaid
obligations, is sufficient to defray the cost of the order and, if
so, shall encumber the proper account and certify the fact to the
purchasing division and, if not, shall notify the purchasing
division which, upon receipt of notification, shall return the
requisition to the spending unit.

§11B-2-27. Expenditure of appropriations -- Payment of personal services.

A requisition for the payment of personal services shall
upon receipt by the director of the budget be checked against
the personnel schedule of the spending unit making the requisition. The director shall approve a requisition for personal
services only if the amounts requested are in accordance with
the personnel schedule of the spending unit.


(a) The provisions of sections twenty-six and twenty-seven
of this article shall not apply to the expenditure of amounts
appropriated for the use of the Legislature or for the judiciary.

(b) In the case of appropriations made for the Legislature,
the clerk of the House of Delegates or the clerk of the Senate
shall present his or her requisition directly to the auditor.
(c) In the case of appropriations made for the judiciary, the clerk of the court shall present his or her requisition or claim directly to the auditor.

(d) In the case of appropriations made for criminal charges, the clerk or the proper officer shall present his or her claim directly to the auditor.

§11B-2-29. Appropriations for officers, commissions, boards or institutions without office at capitol.

All appropriations now or hereafter made for officers, commissions, boards or institutions, public or private, other than state institutions of higher education, state charitable institutions, state hospitals and sanitariums and state penal and correctional institutions, not having an office at the state capitol, shall, unless otherwise provided by law, be expended on requisitions of the officer, commission, board or institution, after approval by the secretary of the department of revenue.

§11B-2-30. Submission of requests, amendments, reports, etc., to legislative auditor; misdemeanor penalty for noncompliance.

(a) The provisions of sections three, eleven, twelve, thirteen, nineteen and twenty-three of this article and section twenty-five, article two, chapter five-a of this code requiring the secretary or the spending officer of the spending units to supply copies of the documents specified therein to the legislative auditor shall be strictly adhered to by all persons.

(b) Any failure by any person to comply with the provisions of subsection (a) of this section shall be a misdemeanor and, upon conviction thereof, the person shall be fined the sum of one thousand dollars. This penalty shall be in addition to other penalties provided elsewhere in this article and other remedies provided by law.
§11B-2-31. Effectuation of transfer of budget section and transition.

To effectuate the transfer of the budget section of the finance division, department of administration to the department of revenue upon the effective date of this section in the year two thousand four:

(1) All employees, records, responsibilities, obligations, assets and property, of whatever kind and character, of the budget section, finance division of the department of administration are hereby transferred to the state budget office of the department of revenue beginning the effective date of this section in the year two thousand four.

(2) The unencumbered balances of all funds allocated to the budget section of the division of finance for fiscal years ending the thirtieth day of June, two thousand four, and the fiscal year ending the thirtieth day of June, two thousand five, are hereby transferred to the state budget office of the department of revenue on the effective date of this section in the year two thousand four.

(3) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges which have been issued, made, granted or allowed to become effective by the governor, any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which have been transferred to the secretary of the department of revenue or to the department of revenue, and were in effect on the date the transfer occurred continue in effect, for the benefit of the department, according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the governor, the secretary of revenue, or other authorized official, a court of competent jurisdiction or by operation of law.
(4) Any proceedings, including, but not limited to, notices of proposed rulemaking, in which the budget section, finance division of the department of administration was an initiating or responding party are not affected by the transfer of the budget section to the department of revenue. Orders issued in any proceedings continue in effect until modified, terminated, superseded or revoked by the governor, the secretary of revenue, by a court of competent jurisdiction or by operation of law. Nothing in this subdivision prohibits the discontinuance or modification of any proceeding under the same terms and conditions and to the same extent that a proceeding could have been discontinued or modified if the division had not been transferred to the department of revenue. Transfer of the budget section of the finance division does not affect suits commenced prior to the effective date of the transfer and all such suits and proceedings shall be had, appeals taken and judgments rendered in the same manner and with like effect as if the transfer had not occurred, except that the secretary of the department of revenue or other officer may, in an appropriate case, be substituted or added as a party.

CHAPTER 240

(S. B. 148 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-10D-1, §11-10D-2, §11-10D-3, §11-10D-4, §11-10D-5, §11-10D-6, §11-10D-7, §11-10D-8, §11-10D-9, §11-10D-10, §11-10D-11, §11-10D-12 and
§11-10D-13; to amend and reenact §11-12-5 of said code; to amend and reenact §11A-1-7 of said code; and to amend and reenact §11A-2-11 of said code, all relating generally to the collection of delinquent taxes; granting persons who owe but have not paid one or more taxes administered under West Virginia tax procedure and administration act an amnesty period during which past-due taxes may be paid or payment agreements acceptable to tax commissioner executed; providing for waiver of additions to tax, money penalties and fifty percent of accrued interest on past-due taxes; prohibiting criminal prosecution for default for which tax amnesty is granted; providing a penalty of ten percent for failure to take advantage of this amnesty program; setting forth legislative findings and declarations; establishing requirements of and exceptions and limitations to tax amnesty program; defining certain terms; authorizing tax commissioner to do all things necessary to implement two-month tax amnesty program during current calendar year; requiring tax commissioner to report certain information to Legislature and governor after conclusion of tax amnesty program; authorizing tax commissioner to suspend a business registration certificate for failure to pay delinquent personal property taxes; requiring the tax commissioner to refuse to issue or renew a business registration certificate upon certain notice from the sheriff that the registrant has not paid delinquent personal property taxes; requiring tax commissioner to propose legislative rules establishing ancillary procedures for the tax commissioner’s suspension of business registration certificates; requiring sheriff to decline to receive current taxes due on any personal property where a prior year’s taxes are unpaid; and providing language for inclusion in publication giving notice of that license to do business in state will be suspended for failure to pay delinquent personal property taxes.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-10D-1, §11-10D-2,
§11-10D-1. Short title.

This article may be cited as the “West Virginia Tax Amnesty Program of 2004”.

§11-10D-2. Legislative intent and findings.

(a) Intent. — It is the intent of the Legislature in enacting the tax amnesty program provided by this article to improve
compliance with this state’s tax laws and to accelerate and
increase collections of certain taxes currently owed to this state.

(b) Findings. — The Legislature finds and declares that a
public purpose is served by the waiver of tax penalties, addi-
tions to tax, a portion of accrued interest, and criminal prosecu-
tion in return for the immediate reporting and payment of
previously underreported, unreported, unpaid or underpaid tax
liabilities that are due and owing and are delinquent as of the
first day of January, two thousand four. Benefits gained by this
program include, among other things, accelerated receipt of
certain currently owed taxes, permanently bringing into the tax
system taxpayers who have been evading tax and providing an
opportunity for taxpayers to clear their records and satisfy tax
obligations. It is further the intent of the Legislature in enacting
this article that the tax amnesty program be a one-time occur-
rence which shall not be repeated in the future, since taxpayers’
expectations of future amnesty programs could have a counter-
productive effect on compliance today.

§11-10D-3. Definitions.

(a) General rule. — Terms used in this article shall have
the meaning ascribed to them in section four, article ten of this
chapter, unless the context in which the term is used in this
article clearly requires a different meaning, or the term is
defined in subsection (b) of this section.

(b) Terms defined. — For purposes of this article, the term:

(1) “Additions to tax” means that amount imposed by
section eighteen or eighteen-a, article ten of this chapter, for
failure to file a return or pay tax due, or for negligence or
intentional disregard of rules and regulations of the tax commis-
ioner, for filing a false or fraudulent return, or for failure to
pay estimated tax, and includes “additions to tax” imposed by
any other article of chapter eleven of the code administered under article ten of this chapter;

(2) “Applicant” means any person who timely files an application for amnesty under this article;

(3) “Interest” means interest imposed pursuant to sections seventeen and seventeen-a, article ten of this chapter;

(4) “Penalty” means civil money penalties imposed by section nineteen, article ten of this chapter and any other civil money penalty imposed by any article of this chapter administered under article ten;

(5) “Specified tax” shall mean the tax or taxes and the periods thereof for which the taxpayer applies for amnesty under this article.

§11-10D-4. Development and administration of tax amnesty program, implementation of article.

(a) General. — The tax commissioner shall develop and administer the tax amnesty program provided in this article, notwithstanding any provision of this article to the contrary. The tax commissioner shall develop and issue the forms, instructions and guidelines as the commissioner believes to be necessary, and take any other action needed to implement this article.

(b) Rules. — The tax commissioner may promulgate rules, including emergency rules, that implement, clarify or explain the tax amnesty program, in the manner provided in article three, chapter twenty-nine-a of this code.

§11-10D-5. Duration and application of program.

The tax commissioner shall establish a two-month tax amnesty program to be conducted during the calendar year, two
thousand four. The program shall apply to payments and
returns required pursuant to any tax administered under article
ten of this chapter, but only if the obligation for payment or
filing of a return, or both, arose after the first day of January,
one thousand nine hundred eighty-six, and prior to the first day
of January, two thousand four, provided: (1) The tax return was
due before the first day of January, two thousand four; (2) the
amount of tax shown to be due on the tax return was due and
payable to the tax commissioner before the first day of January,
two thousand four; or (3) if no tax return was required by law
to be filed, the tax was due and payable to the tax commissioner
before the first day of January, two thousand four.

§11-10D-6. Waiver of penalties; criminal immunity; exceptions
and limitations.

(a) Waiver of penalty, addition to tax and interest. — For
any taxpayer who meets the requirements of section seven of
this article and except as otherwise specifically provided in this
article:

(1) Waiver. — The tax commissioner shall waive all
penalties and additions to tax and fifty percent of the interest
imposed on the late filing of a return or the late payment of any
tax for which tax amnesty is granted, which is owed as a result
of nonpayment, underpayment, nonreporting or underreporting
of tax liabilities; and

(2) Criminal penalties. — No criminal action may be
brought against the taxpayer for the default for which tax
amnesty is granted under this article.

(b) Exceptions. — This section does not apply to nonpay-
ment or underpayment of tax liabilities, or to nonreported,
misreported or underreported tax liabilities for which amnesty
is sought if, as of the date the taxpayer’s application for
amnesty is filed:
(1) The taxpayer is the subject of a criminal investigation by any agency of this state; or

(2) An administrative proceeding or a civil or criminal court proceeding has been initiated or is pending in any administrative agency or court of this state or of the United States for nonpayment, delinquency, fraud or other event of noncompliance in relation to any of the taxes administered under article ten of this chapter. An administrative or civil proceeding shall not be deemed to be pending if the taxpayer withdraws with prejudice from the proceeding prior to the granting of amnesty, pays in full the outstanding tax liability plus fifty percent of the accrued interest thereon and otherwise cures any default which is the subject of the proceeding.

(c) No refund or credit. — No refund or credit may be granted for any penalty, addition to tax or interest paid prior to the date the taxpayer files his or her application for tax amnesty pursuant to section seven of this article. Additionally, no refund or credit shall be granted for any tax or interest paid under this program unless the tax commissioner, on his or her own motion, redetermines the amount of tax or accrued interest thereon.

(d) Bar to amnesty. — A taxpayer shall not be eligible for amnesty for any tax liability if the taxpayer has other liabilities outstanding for any tax administered under article ten of this chapter, for which the taxpayer has not applied for amnesty. This includes tax deficiencies pending before the office of tax appeals or a court in this state.

§11-10D-7. Application for amnesty; requirements; deficiency assessment.

(a) Timely application required. — The provisions of this article apply to any taxpayer who, on or after the date of commencement of the tax amnesty program and on or before
the termination date of the program designated by the tax commissioner, files an application for tax amnesty on or before the last day of the second calendar month of the amnesty program and does the following:

(1) Voluntarily completes, signs and files amended tax returns to report transactions and other material matters not included on original returns and pays in full all additional taxes shown to be due on the amended return or returns and fifty percent of the interest imposed on the additional taxes by article ten of this chapter;

(2) Voluntarily completes, signs and files all delinquent tax returns and pays in full all taxes shown to be due on the return or returns and fifty percent of the interest imposed on the taxes by article ten of this chapter;

(3) Voluntarily completes, signs and files amended tax returns to correct all incorrect, deficient or incomplete original returns and pays in full all taxes shown to be due on the amended return or returns and fifty percent of the interest imposed on the tax or taxes by article ten of this chapter; and

(4) Voluntarily pays in full all previously assessed tax liabilities and other taxes legally collectible under section eleven, article ten of this chapter and fifty percent of the interest due thereon imposed by article ten of this chapter.

(b) Due date of tax for which amnesty granted. — Except as provided in subsection (d) of this section, all taxes for which tax amnesty is sought plus fifty percent of interest accrued to the date of payment shall be paid not later than the last day of the month next succeeding the termination of the amnesty program. Interest on the amount of tax due shall be calculated as prescribed in article ten of this chapter and shall continue to accrue until the tax liability is paid.
(c) Payments. — Payments made by the taxpayer under this tax amnesty program shall be in United States currency or by certified check, cashier’s check or post office money order, payable to the tax commissioner of this state.

(d) Installment payment agreements. — The tax commissioner may, at his or her discretion and upon such terms and conditions as the commissioner may prescribe, enter into an installment payment agreement with the taxpayer, which installment payment agreement shall be in lieu of the full immediate payment required by subsection (b) of this section: Provided, That the length of the installment payment may not exceed twelve months.

(1) Each installment payment agreement shall provide for payment of the tax due and fifty percent of the statutory interest on the outstanding amount of tax due, computed to the date the installment payment agreement is executed by the taxpayer. The amount of tax and interest due from the taxpayer shall be stated in the installment payment agreement and constitute the installment payment agreement amount.

(2) Down payment. — The installment payment agreement shall require payment of twenty-five percent of the installment payment agreement amount or one thousand dollars, whichever amount is the greater, at the time the installment payment agreement is submitted to the tax commissioner for acceptance and signature.

(3) Interest. — Interest on the installment payment agreement amount shall be calculated at the rates determined under sections seventeen and seventeen-a, article ten of this chapter, as applicable to the installment payment period, and shall accrue on the declining balance of the installment payment agreement amount from the date the installment payment agreement is signed by the taxpayer to the date the last installment payment is made by the taxpayer.
(4) Lien securing payment. — When payments are made under an installment payment agreement, the amount due shall be secured by recordation of a tax lien against the property of the taxpayer and recordation of a tax lien against the property of any person guaranteeing payment of the installment payment agreement amount, should there be a guarantor, unless the tax commissioner determines that existing recorded tax liens are adequate to secure the payment. Liens required by this subdivision shall be recorded in each county of this state in which the taxpayer and the guarantor, if any, owns an interest in property and shall be released by the tax commissioner upon full payment of the amount stated in the installment payment agreement plus applicable interest.

(5) Failure to comply with installment payment agreement. — Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties, additions to tax and interest under this amnesty program null and void, unless the tax commissioner determines that the failure was due to reasonable cause. In the event of an unexcused noncompliance with the terms of the installment payment agreement, the taxpayer shall immediately pay the unpaid balance of the installment payment agreement amount plus the interest and all additions to tax and penalties waived under section six of this article.

(6) Late payment of installment payment. — Notwithstanding the provisions of subdivision (5) of this subsection, payment of an installment payment after the date the installment payment is due under the installment payment agreement shall not void the agreement provided the amount of the installment payment, plus a late payment fee of ten dollars or one half of one percent of the amount of the late installment payment, whichever is the greater amount, is paid within twenty days after the installment payment was due under the installment payment agreement.
(7) Failure to timely pay current taxes. — If a taxpayer with an installment payment agreement fails to timely file returns and remit current tax liabilities by their statutory due date or dates, the installment payment agreement shall be rendered null and void, unless the tax commissioner determines that the failure was due to reasonable cause. In the event an installment payment agreement becomes null and void, taxpayer shall immediately pay the unpaid balance of the installment payment agreement plus interest and all additions to tax and penalties waived when the tax commissioner accepted the installment payment agreement.

(e) Understatement of tax due. — If, subsequent to termination of this tax amnesty program, the tax commissioner determines there was a defect in the amnesty application or in the materials submitted in support of the amnesty application and subsequently issues a deficiency assessment upon the application or a return or amended return filed pursuant to this article, the tax commissioner has the authority to collect the additional tax due, impose applicable penalties, additions to tax and interest and to pursue any criminal prosecution as may ordinarily be brought with respect to the defect as if no amnesty had been granted the taxpayer.

(f) Mistake or misrepresentation of material fact. — The tax commissioner may review all cases in which amnesty has been granted and may on the basis of a mistake or misrepresentation of a material fact, rescind the grant of amnesty, or in lieu thereof, appropriate review of the grant of amnesty may be obtained by proceeding under article nine or ten, or both, of this chapter. The taxpayer may appeal the tax commissioner’s order rescinding the grant of amnesty by filing a petition for appeal with the office of tax appeals, established in article ten-a of this chapter, within thirty days after receipt of the tax commissioner’s order, which shall be served by personal service or by certified mail.
(g) False or fraudulent amnesty return. — Any taxpayer who files an amnesty tax return or amended return that is false or fraudulent shall be subject to applicable civil penalties and be referred for criminal prosecution.

(h) Attempt to evade or defeat tax. — Any taxpayer who files a false amnesty application or attempts in any manner to defeat or evade payment of tax or interest under this amnesty program, shall be subject to applicable civil penalties and be referred for criminal prosecution.

§11-10D-8. Publicity efforts.

The tax commissioner shall cause the tax amnesty program to be adequately publicized so as to maximize public awareness of and participation in the program.

§11-10D-9. Examination of amnesty returns and taxpayer books and records.

Nothing in this article shall prevent the tax commissioner or any authorized employee or agent of the commissioner from examining the books, paper, records and equipment of any taxpayer or other person in order to verify the accuracy and completeness of the application for amnesty or of any tax return filed or payment made under this article, as provided in article ten of this chapter, and to ascertain and assess any tax or other liability owed to the state for any tax administered under article ten of this chapter.

§11-10D-10. Disposition of revenue collected.

There is hereby created in the state treasury a special fund to be known as the “tax amnesty fund” into which shall be deposited all payments received under the tax amnesty program. On a monthly basis, the tax amnesty fund shall be distributed as follows:
(1) *Dedicated taxes.* — A dedicated tax and applicable interest collected under the tax amnesty program shall be deposited in the fund or account in which the tax would have been deposited had the tax been timely paid; and

(2) *Other taxes.* — After complying with subdivision (1) of this section, all other funds collected under the tax amnesty program shall be deposited into the general revenue fund.

§11-10D-11. **Penalty on liabilities eligible for amnesty for which taxpayer did not apply for amnesty.**

(a) If a taxpayer has a liability that would be eligible for amnesty under this article but the taxpayer fails to apply for amnesty within the designated amnesty period as determined in this article, or, after applying for amnesty, fails to satisfy all of the requirements for amnesty, then a penalty in the amount of ten percent of the unpaid liability shall be added to the amount of any unpaid taxes eligible for amnesty.

(b) The tax commissioner shall assess the penalty provided in subsection (a) of this section unless:

(1) Taxpayer provides evidence satisfactory to the commissioner which demonstrates that taxpayer’s failure to apply for amnesty or his or her failure to satisfy all of the requirements for amnesty was not an intentional attempt to avoid the payment of taxes and was based on the taxpayer’s mistaken belief that he or she did not have any liability eligible for amnesty; or

(2) Taxpayer’s failure to apply for amnesty, in the case of an assessment issued before the start of or during the amnesty period, is due to taxpayer contesting in an administrative or judicial forum the disputed liability.

§11-10D-12. **Report to Legislature and governor.**
On or before the first day of July, two thousand five, the tax commissioner shall issue a report to the Legislature and the governor detailing the implementation and results of the tax amnesty program provided in this article. This report shall include, but not be limited to, the following information:

1 A detailed breakdown of the tax commissioner’s administrative costs in implementing the program;

2 The total number of tax amnesty returns filed, by tax and by whether the returns are new returns or amended returns;

3 The gross tax amnesty revenues collected by tax, which shall also be broken down into the following categories:

   A Amounts represented by assessments made, but not finalized, and by liens filed by the tax commissioner before the first day of the amnesty period; and

   B All other amounts;

4 The total dollar amount of revenue collected by the program to a date no earlier than thirty days before the date of the report required by this section, which shall be further allocated by type of tax, interest on the tax to which the payment relates;

5 The total amount of interest forgiven under the program;

6 The total amount of additions to tax forgiven under the program;

7 The total amount of penalties (not including additions to tax or interest) collected under the program; and

8 Any other statistical information that the tax commissioner determines to be necessary to measure the net impact of this tax amnesty program.

All provisions of article ten, chapter eleven of this code and all provisions of tax statutes administered under article ten of this chapter that are inconsistent with the provisions of this article are suspended to the extent necessary to carry out the provisions of this article.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-5. Time for which registration certificate granted; power of tax commissioner to suspend or cancel certificate; refusal to renew.

(a) Registration period. — All business registration certificates issued under the provisions of section four of this article are for the period of one year beginning the first day of July and ending the thirtieth day of the following June: Provided, That beginning on or after the first day of July, one thousand nine hundred ninety-nine, all business registration certificates issued under the provisions of section four of this article shall be issued for two fiscal years of this state, subject to the following transition rule. If the first year for which a business was issued a business registration certificate under this article began on the first day of July of an even-numbered calendar year, then the tax commissioner may issue a renewal certificate to that business for the period beginning the first day of July, one thousand nine hundred ninety-nine, and ending the thirtieth day of June, two thousand, upon receipt of fifteen dollars for each such one-year certificate. Thereafter, only certificates covering two fiscal years of this state shall be issued.

(b) Revocation or suspension of certificate. —

(1) The tax commissioner may cancel or suspend a business registration certificate at any time during a registration period if:
(A) The registrant filed an application for a business registration certificate, or an application for renewal thereof, for the registration period that was false or fraudulent.

(B) The registrant willfully refused or neglected to file a tax return or to report information required by the tax commissioner for any tax imposed by or pursuant to this chapter.

(C) The registrant willfully refused or neglected to pay any tax, additions to tax, penalties or interest, or any part thereof, when they became due and payable under this chapter, determined with regard to any authorized extension of time for payment.

(D) The registrant neglected to pay over to the tax commissioner on or before its due date, determined with regard to any authorized extension of time for payment, any tax imposed by this chapter which the registrant collects from any person and holds in trust for this state.

(E) The registrant abused the privilege afforded to it by article fifteen or fifteen-a of this chapter to be exempt from payment of the taxes imposed by such articles on some or all of the registrant’s purchases for use in business upon issuing to the vendor a properly executed exemption certificate, by failing to timely pay use tax on taxable purchase for use in business, or by failing to either pay the tax or give a properly executed exemption certificate to the vendor.

(F) The registrant has failed to pay in full delinquent personal property taxes owing for the calendar year immediately preceding the calendar year in which the application is made.

(2) Before canceling or suspending any business registration certificate, the tax commissioner shall give written notice of his or her intent to suspend or cancel the business registration
certificate of the taxpayer, the reason for the suspension or
cancellation, the effective date of the cancellation or suspension
and the date, time and place where the taxpayer may appear and
show cause why such business registration certificate should
not be canceled or suspended. This written notice shall be
served on the taxpayer in the same manner as a notice of
assessment is served under article ten of this chapter, not less
than twenty days prior to the date of the show cause informal
hearing. The taxpayer may appeal cancellation or suspension
of its business registration certificate in the same manner as a
notice of assessment is appealed under article ten-a of this
chapter: Provided, That the filing of a petition for appeal does
not stay the effective date of the suspension or cancellation. A
stay may be granted only after a hearing is held on a motion to
stay filed by the registrant, upon finding that state revenues will
not be jeopardized by the granting of the stay. The tax commis-
sioner may, in his or her discretion and upon such terms as he
or she may specify, agree to stay the effective date of the
cancellation or suspension until another date certain.

(3) On or before the first day of July, two thousand five, the
tax commissioner shall propose for promulgation legislative
rules establishing ancillary procedures for the tax commis-
sioner’s suspension of business registration certificates for
failure to pay delinquent personal property taxes pursuant to
paragraph (F), subdivision (1) of this section. The rules shall at
a minimum establish any additional requirements for the
provision of notice deemed necessary by the tax commissioner
to meet requirements of law; establish protocols for the
communication and verification of information exchanged
between the tax commissioner, sheriffs and others; and estab-
lish fees to be assessed against delinquent taxpayers that shall
be deposited into a special fund which is hereby created and
expended for general tax administration by the tax division of
the department of tax and revenue and for operation of the tax
division. Upon authorization of the Legislature, the rules shall
have the same force and effect as if set forth herein. No provision of this subdivision may be construed to restrict in any manner the authority of the tax commissioner to suspend such certificates for failure to pay delinquent personal property taxes under paragraph (C) or (F), subdivision (1) of this section or under any other provision of this code prior to the authorization of the rules.

(c) *Refusal to renew.* — The tax commissioner may refuse to issue or renew a business registration certificate if the registrant is delinquent in the payment of any tax administered by the tax commissioner under article ten of this chapter or the corporate license tax imposed by article twelve-c of this chapter, until the registrant pays in full all the delinquent taxes including interest and applicable additions to tax and penalties. In his or her discretion and upon such terms as he or she may specify, the tax commissioner may enter into an installment payment agreement with the taxpayer in lieu of the complete payment. Failure of the taxpayer to fully comply with the terms of the installment payment agreement shall render the amount remaining due thereunder immediately due and payable and the tax commissioner may suspend or cancel the business registration certificate in the manner provided in this section.

(d) *Refusal to renew due to delinquent personal property tax.* — The tax commissioner shall refuse to issue or renew a business registration certificate when informed in writing, signed by the county sheriff, that personal property owned by the applicant and used in conjunction with the business activity of the applicant is subject to delinquent property taxes. The tax commissioner shall forthwith notify the applicant that the commissioner will not act upon the application until information is provided evidencing that the taxes due are either exonerated or paid.
CHAPTER 11A. COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

Article
1. Accrual and Collection of Taxes.
2. Delinquency and Methods of Enforcing Payment.

ARTICLE 1. ACCRUAL AND COLLECTION OF TAXES.

§11A-1-7. No collection of current taxes until delinquent taxes are paid.

The sheriff, in preparing his or her tax receipts for any current year shall examine and compare them with the delinquent list for the preceding year in his or her hands, and if any tract or personal property is found to be delinquent for the preceding year, he or she shall note the fact on his or her current receipts and shall decline to receive current taxes on any land or personal property where it appears to his or her office that a prior year's taxes are unpaid. Acceptance of current taxes through oversight shall not relieve the owner of any land or personal property, of the liability to pay prior taxes and penalties imposed for nonpayment.

ARTICLE 2. DELINQUENCY AND METHODS OF ENFORCING PAYMENT.


The sheriff, after ascertaining which of the taxes assessed in his or her county are delinquent, shall, on or before the first day of May next succeeding the year for which the taxes were assessed, prepare the following delinquent lists, arranged by districts and alphabetically by name of the person charged, and showing in respect to each the amount of taxes remaining delinquent on April thirtieth: (1) A list of property in the land book improperly entered or not ascertainable; (2) a list of other delinquent real estate; and (3) a list of all other delinquent taxes: Provided, That the list shall conclude with a notice,
substantially as follows: “Any person holding a West Virginia business registration certificate under the authority of article twelve, chapter eleven of this code who does not pay all delinquent personal property taxes shall have his or her license to do business in this state suspended until the delinquency is cured.”

The sheriff on returning each list shall, at the foot thereof, subscribe an oath, which shall be subscribed before and certified by some person duly authorized to administer oaths, in form or effect as follows:

I, ........, sheriff (or deputy sheriff or collector) of the County of ........, do swear that the foregoing list is, to the best of my knowledge and belief, complete and accurate, and that I have received none of the taxes listed therein.

Except for the oath, the auditor shall prescribe the form of the delinquent lists.

CHAPTER 241

(Com. Sub. for S. B. 404 — By Senator Helmick)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-13A-2 of the code of West Virginia, 1931, as amended, relating to severance taxes; clarifying the term “behavioral health services”; and removing the term “community care services”.

Be it enacted by the Legislature of West Virginia:
That §11-13A-2 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. SEVERANCE TAXES.


1 (a) General rule. — When used in this article, or in the administration of this article, the terms defined in subsection (b), (c) or (d) of this section shall have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used or by specific definition.

(b) General terms defined. — Definitions in this subsection apply to all persons subject to the taxes imposed by this article.

(1) “Business” includes all activities engaged in, or caused to be engaged in, with the object of gain or economic benefit, direct or indirect, and whether engaged in for profit, or not for profit, or by a governmental entity: Provided, That “business” does not include services rendered by an employee within the scope of his or her contract of employment. Employee services, services by a partner on behalf of his or her partnership and services by a member of any other business entity on behalf of that entity are the business of the employer or partnership, or other business entity as the case may be, and reportable as such for purposes of the taxes imposed by this article.

(2) “Corporation” includes associations, joint-stock companies and insurance companies. It also includes governmental entities when and to the extent such governmental entities engage in activities taxable under this article.

(3) “Delegate” in the phrase “or his delegate”, when used in reference to the tax commissioner, means any officer or employee of the state tax division of the department of tax and
revenue duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the function mentioned or described in this article or regulations promulgated thereunder.

(4) "Fiduciary" means and includes a guardian, trustee, executor, administrator, receiver, conservator or any person acting in any fiduciary capacity for any person.

(5) "Gross proceeds" means the value, whether in money or other property, actually proceeding from the sale or lease of tangible personal property, or from the rendering of services, without any deduction for the cost of property sold or leased or expenses of any kind.

(6) "Includes" and "including", when used in a definition contained in this article, shall not be deemed to exclude other things otherwise within the meaning of the term being defined.

(7) "Partner" includes a member of a syndicate, group, pool, joint venture or other organization which is a "partnership" as defined in this section.

(8) "Partnership" includes a syndicate, group, pool, joint venture or other unincorporated organization through or by means of which any privilege taxable under this article is exercised and which is not within the meaning of this article a trust or estate or corporation. "Partnership" includes a limited liability company which is treated as a partnership for federal income tax purposes.

(9) "Person" or "company" are herein used interchangeably and include any individual, firm, partnership, mining partnership, joint venture, association, corporation, trust or other entity, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is declared by the context.
(10) “Sale” includes any transfer of the ownership or title to property, whether for money or in exchange for other property or services, or any combination thereof. “Sale” includes a lease of property, whether the transaction be characterized as a rental, lease, hire, bailment or license to use. “Sale” also includes rendering services for a consideration, whether direct or indirect.

(11) “Service” includes all activities engaged in by a person for a consideration which involve the rendering of a service as distinguished from the sale of tangible personal property: Provided, That “service” does not include: (A) Services rendered by an employee to his or her employer under a contract of employment; (B) contracting; or (C) severing or processing natural resources.

(12) “Tax” means any tax imposed by this article and, for purposes of administration and collection of such tax, it includes any interest, additions to tax or penalties imposed with respect thereto under article ten of this chapter.

(13) “Tax commissioner” or “commissioner” means the tax commissioner of the state of West Virginia or his or her delegate.

(14) “Taxable year” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which a tax liability is computed under this article. In the case of a return made under this article, or regulations of the tax commissioner, for a fractional part of a year, the term “taxable year” means the period for which such return is made.

(15) “Taxpayer” means any person subject to any tax imposed by this article.

(16) “This code” means the code of West Virginia, one thousand nine hundred thirty-one, as amended.
(17) "This state" means the state of West Virginia.

(18) "Withholding agent" means any person required by law to deduct and withhold any tax imposed by this article or under regulations promulgated by the tax commissioner.

(c) Specific definitions for producers of natural resources. —

(1) "Barrel of oil" means forty-two U.S. gallons of two hundred thirty-one cubic inches of liquid at a standard temperature of sixty degrees Fahrenheit.

(2) "Coal" means and includes any material composed predominantly of hydrocarbons in a solid state.

(3) "Cubic foot of gas" means the volume of gas contained in one cubic foot at a standard pressure base of fourteen point seventy-three pounds per square inch (absolute) and a standard temperature of sixty degrees Fahrenheit.

(4) "Economic interest" for the purpose of this article is synonymous with the economic interest ownership required by Section 611 of the Internal Revenue Code in effect on the thirty-first day of December, one thousand nine hundred eighty-five, entitling the taxpayer to a depletion deduction for income tax purposes: Provided, That a person who only receives an arm's length royalty shall not be considered as having an economic interest.

(5) "Extraction of ores or minerals from the ground" includes extraction by mine owners or operators of ores or minerals from the waste or residue of prior mining only when such extraction is sold.

(6) "Gross value" in the case of natural resources means the market value of the natural resource product, in the immediate vicinity where severed, determined after application of post
production processing generally applied by the industry to obtain commercially marketable or usable natural resource products. For all natural resources, “gross value” is to be reported as follows:

(A) For natural resources severed or processed (or both severed and processed) and sold during a reporting period, gross value is the gross proceeds received or receivable by the taxpayer.

(B) In a transaction involving related parties, gross value shall not be less than the fair market value for natural resources of similar grade and quality.

(C) In the absence of a sale, gross value shall be the fair market value for natural resources of similar grade and quality.

(D) If severed natural resources are purchased for the purpose of processing and resale, the gross value is the amount received or receivable during the reporting period reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for the purpose of processing and sale, the gross value is the amount received or receivable during the reporting period reduced by the fair market value of natural resources of similar grade and quality and in the same condition immediately preceding the processing of the natural resources in this state.

(E) If severed natural resources are purchased for the purpose of processing and consumption, the gross value is the fair market value of processed natural resources of similar grade and quality reduced by the amount paid or payable to the taxpayer actually severing the natural resource. If severed natural resources are severed outside the state of West Virginia and brought into the state of West Virginia by the taxpayer for
the purpose of processing and consumption, the gross value is
the fair market value of processed natural resources of similar
grade and quality reduced by the fair market value of natural
resources of similar grade and quality and in the same condition
immediately preceding the processing of the natural resources.

(F) In all instances, the gross value shall be reduced by the
amount of any federal energy tax imposed upon the taxpayer
after the first day of June, one thousand nine hundred ninety-
three, but shall not be reduced by any state or federal taxes,
royalties, sales commissions or any other expense.

(G) For natural gas, gross value is the value of the natural
gas at the wellhead immediately preceding transportation and
transmission.

(H) For limestone or sandstone quarried or mined, gross
value is the value of such stone immediately upon severance
from the earth.

(7) “Mining” includes not merely the extraction of ores or
minerals from the ground, but also those treatment processes
necessary or incidental thereto.

(8) “Natural resources” means all forms of minerals
including, but not limited to, rock, stone, limestone, coal, shale,
gravel, sand, clay, natural gas, oil and natural gas liquids which
are contained in or on the soils or waters of this state and
includes standing timber.

(9) “Processed” or “processing” as applied to:

(A) Oil and natural gas shall not include any conversion or
refining process; and

(B) Limestone or sandstone quarried or mined shall not
include any treatment process or transportation after the
limestone or sandstone is severed from the earth.
180 (10) "Related parties" means two or more persons, organizations or businesses owned or controlled directly or indirectly by the same interests. Control exists if a contract or lease, either written or oral, is entered into whereby one party mines or processes natural resources owned or held by another party and the owner or lessor participates in the severing, processing or marketing of the natural resources or receives any value other than an arm's length passive royalty interest. In the case of related parties, the tax commissioner may apportion or allocate the receipts between or among such persons, organizations or businesses if he determines that such apportionment or allocation is necessary to more clearly reflect gross value.

192 (11) "Severing" or "severed" means the physical removal of the natural resources from the earth or waters of this state by any means: Provided, That "severing" or "severed" shall not include the removal of natural gas from underground storage facilities into which the natural gas has been mechanically injected following its initial removal from earth: Provided, however, That "severing" or "severed" oil and natural gas shall not include any separation process of oil or natural gas commonly employed to obtain marketable natural resource products.

202 (12) "Stock" includes shares in an association, joint-stock company or corporation.

204 (13) "Taxpayer" means and includes any individual, partnership, joint venture, association, corporation, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind engaged in the business of severing or processing (or both severing and processing) natural resources in this state for sale or use. In instances where contracts (either oral or written) are entered into whereby persons, organizations or businesses are engaged in the business of severing or processing (or both severing and processing) a natural resource but do not obtain title to or do not have an economic interest
therein, the party who owns the natural resource immediately after its severance or has an economic interest therein is the taxpayer.

(d) Specific definitions for persons providing health care items or services. —

“Behavioral health services” means services provided for the care and treatment of persons with mental illness, mental retardation, 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: Provided, That gross receipts derived from providing behavioral health services that are included in the provider’s measure of tax under article twenty-seventy of this chapter shall not be included in that provider’s measure of tax under this article. The amendment to this definition in the year two thousand four is intended to clarify the intent of the Legislature as to the activities that qualify as behavioral health services, and this clarification shall be applied retrospectively to the effective date of the amendment to this section in which the definition of “behavioral health services” was originally provided as enacted during the first extraordinary session of the Legislature in the year one thousand nine hundred ninety-three.
AN ACT to amend and reenact §11-13R-6, §11-13R-11 and §11-13R-12 of the code of West Virginia, 1931, as amended, all relating to the strategic research and development tax credit; providing that the credit may be refundable for small qualified research and development companies; specifying limitations on credit; requiring certain reporting; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That §11-13R-6, §11-13R-11 and §11-13R-12 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13R. STRATEGIC RESEARCH AND DEVELOPMENT TAX CREDIT.

§11-13R-6. Application of credit.

§11-13R-11. Tax credit review and accountability.

§11-13R-12. Effective date.

§11-13R-6. Application of credit.

(a) Credit allowed. — Beginning in the year that the annual combined qualified research and development expenditure is paid or incurred, eligible taxpayers and owners of eligible taxpayers described in subsections (d) and (f) of this section are allowed a credit against the taxes imposed by articles twenty-three, twenty-four and twenty-one of this chapter, in that order, as specified in this section.

(b) Business franchise tax. — The credit is first applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year, determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax.

(c) Corporation net income taxes. — After application of subsection (b) of this section, any unused credit is next applied
to reduce the taxes imposed by article twenty-four of this chapter for the taxable year, determined before application of allowable credits against tax.

(d) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit after application of subsections (b) and (c) of this section is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(e) Personal income tax taxes. — After application of subsections (b), (c) and (d) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-one of this chapter for the taxable year determined before application of allowable credits against tax of the eligible taxpayer.

(f) If the eligible taxpayer is a limited liability company, small business corporation or a partnership, then any unused credit after application of subsections (b), (c), (d) and (e) of this section is allowed as a credit against the taxes imposed by article twenty-one of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the
eligible taxpayer by its owners. Only those portions of the tax
imposed by article twenty-one of this chapter that are imposed
on income directly derived by the owner from the eligible
taxpayer are subject to offset by this credit.

(1) Small business corporations, limited liability compa-
nies, partnerships and other unincorporated organizations shall
allocate the credit allowed by this article among their members
in the same manner as profits and losses are allocated for the
taxable year.

(2) No credit is allowed under this article against any
withholding tax imposed by, or payable under, article twenty-
one of this chapter.

(g) The total amount of tax credit that may be used in any
taxable year by any eligible taxpayer in combination with the
owners of the eligible taxpayer under subsections (d) and (f) of
this section, and including any refundable credit claimed under
subsection (i) of this section, may not exceed two million
dollars.

(h) *Unused credit carry forward.* — Except to the extent
excess credit is refunded as provided in subsection (i) of this
section, if the credit allowed under this article in any taxable
year exceeds the sum of the taxes enumerated in subsections
(b), (c), (d), (e) and (f) of this section for that taxable year, the
eligible taxpayer and owners of eligible taxpayers described in
subsections (d) and (f) of this section may apply the excess as
a credit against those taxes, in the order and manner stated in
this section, for succeeding taxable years until the earlier of the
following:

(1) The full amount of the excess credit is used; or

(2) The expiration of the tenth taxable year after the taxable
year in which the annual combined qualified research and
development expenditure was paid or incurred. Credit remaining thereafter is forfeited.

(i) Refundable credit for “small qualified research and development company”. — If the eligible taxpayer, including the controlled group, if a member of a controlled group, has gross revenues of not more than twenty million dollars and a payroll of not more than two million five hundred thousand dollars, and the credit allowed under this article in any taxable year exceeds the sum of taxes enumerated in subsections (b), (c), (d), (e) and (f) of this section for that taxable year, the eligible taxpayer and owners of the eligible taxpayers described in subsections (d) and (f) of this section may claim for that year the excess amount as a refundable credit, not to exceed one hundred thousand dollars per taxpayer, including owners and the controlled group, if applicable: Provided, That not more than one million dollars of the unused credits described in this subsection may be approved for refundable credit by the tax commissioner during any fiscal year. Priority for approval of refundable credit is determined based on the filing date of the claim for refund with earlier claims having priority over later claims.

(j) Application for certification. — No credit is allowed or may be applied under this article until the person seeking to claim the credit has filed a written application for certification of the proposed research and development program or project with the tax commissioner and has received certification of the research and development program or project from the tax commissioner pursuant to that written application. The certification of the program or project must be received by the eligible taxpayer from the tax commissioner prior to any credit being claimed or allowed for any annual combined qualified research and development expenditure for any research activity or project. This application shall be filed, in the form pre-
scribed by the tax commissioner, no later than the last day for filing the tax returns, determined by including any authorized extension of time for filing the return, required under article twenty-one or twenty-four of this chapter for the taxable year in which the property to which the credit relates is placed in service or use, or the qualified research and development expenses to which the credit relates are incurred by the taxpayer, and all information required by the form shall be provided by the taxpayer.

(1) In the case of owners of eligible taxpayers described in subsection (d) or (f) of this section, the application for certification filed under this section by the limited liability company, small business corporation or partnership owned by the person is considered to be filed on behalf of the owner and no separate filing of the application is required of the owner.

(2) Form of application. — The application for certification must be filed in the form as the tax commissioner prescribes and shall contain the information as the tax commissioner requires to determine whether the project should be certified as eligible for credit under this article.

(3) Time period covered by certification. — The application may request certification of the research and development program for one taxable year or multiple taxable years, as applicable, based on the nature and character of the program or project plan for the particular research and development project or activity.

(4) Requirements for application. — The application shall specifically set forth a written research and development program plan generally describing the nature of the research and development to be undertaken, the number and types of jobs, if any, created by the applicant as a direct result of the research and development program and the average wages and
benefits paid to those employees, the projected time period over which the research and development shall be carried out, the period of time for which the applicant seeks certification of the program or project and other information as the tax commissioner requires.

(5) Certification. — The tax commissioner may issue certification of a research and development program or project if it appears to the tax commissioner that the applicant intends to engage in a bona fide research and development activity, as described in this article, and will otherwise comply with the requirements of this article and all rules and requirements applicable thereto.

(6) Time period covered by certification. — The tax commissioner may issue certification for the period of time for which the eligible taxpayer seeks certification or a different period of time, within the discretion of the tax commissioner. In his or her discretion, the tax commissioner may require that a separate application be filed for each tax year in which qualified research and development activity is to be undertaken or in which qualified research and development property is to be placed in service or use.

(7) Failure to file. — The failure to timely file the application for certification of a research and development program or project under this section results in forfeiture of one hundred percent of the annual credit otherwise allowable under this article. This penalty applies annually until the application is filed.

(8) Research and development undertaken without certification. — If a person has filed an application for certification of a research and development program or project and has failed to receive certification of the plan or program from the tax commissioner, no credit is allowed under this article for the
175 research and development activity or investment relating
176 thereto.

177 (9) Failure to comply with terms of certification. — If a
178 person has filed an application for certification of a research
179 and development program or project and has received certifica-
180 tion of the plan or program from the tax commissioner, but
181 fails to conform to the terms of the certification, no credit is
182 allowed under this article for the research and development
183 activity or for investment in the research and development
184 activity by the eligible taxpayer. This restriction may be
185 waived by the tax commissioner upon a finding that the
186 research and development undertaken was within the require-
187 ments of this article and that there was no intent to defraud the
188 state or willful neglect in the applicant’s failure to conform to
189 the terms of the certification.

190 (10) Failure to comply with certification time restrictions.
191 — If a person has filed an application for certification of a
192 research and development program or project and has received
193 certification of the plan or program from the tax commissioner,
194 but fails to conform to the time periods specified therein for the
195 certified research and development program or project, or fails
196 to renew the certification so as to cover ongoing or subsequent
197 research and development activity, the research and develop-
198 ment activity is out of compliance with the terms of the
199 certification and no credit is allowed under this article for, or
200 relating to, the research and development activity by any
201 person or taxpayer. This restriction may be waived by the tax
202 commissioner upon a finding that the research and develop-
203 ment thus undertaken was within the requirements of this
204 article and that there was no intent to defraud the state or
205 willful neglect in the applicant’s failure to conform to the terms
206 of the certification.

§11-13R-11. Tax credit review and accountability.
(a) Beginning on the first day of February, two thousand six, and on the first day of February every third year thereafter, the commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the credit allowed under this article during the most recent three-year period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

1. The numbers of taxpayers claiming the credit;
2. The net number, type and duration of new jobs created by all taxpayers claiming the credit and wages and benefits paid;
3. The cost of the credit;
4. The cost of the credit per new job created;
5. Comparison of employment trends for the industry and for taxpayers within the industry that claim the credit; and
6. The amount of excess credit refunded to small qualified research and development companies pursuant to subsection (i), section six of this article.

(b) Taxpayers claiming the credit shall provide information as the tax commissioner requires to prepare the report: Provided, That the information shall be subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.

§11-13R-12. Effective date.

The provisions of this article become effective on the first day of January, two thousand three, and apply only to qualified
investment made on or after that date, except that the amendments to this article enacted in two thousand four shall become effective for taxable years beginning on or after the first day of July, two thousand four, and apply only to unused credit attributable to qualified investment made on or after that date and prior to the first day of January, two thousand eight.

CHAPTER 243

(Com. Sub. for H. B. 4047 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]


Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13U-1, §11-13U-2, §11-13U-3, §11-13U-4, §11-13U-5, §11-13U-6, §11-13U-7, §11-13U-8, §11-13U-9 and §11-13U-10, all to read as follows:

ARTICLE 13U. HIGH-GROWTH BUSINESS INVESTMENT TAX CREDIT.

§11-13U-1. Short title.
§11-13U-2. Legislative finding and purpose.
§11-13U-1. Short title.

This article may be cited as the “High-Growth Business Investment Tax Credit”.

§11-13U-2. Legislative finding and purpose.

The Legislature finds the encouragement of investment in potentially high-growth research and development businesses in this state is in the public interest and promotes economic growth and development for the people of this state. In order to encourage investment in start-up, growth-oriented, research and development businesses in this state and thereby increase employment and economic development, there is hereby provided a high-growth business investment tax credit.


As used in this article, the following terms have the meanings ascribed to them in this section, unless the context in which the term is used clearly requires another meaning or a specific different definition is provided:

(1) “Alter ego” means a qualified research and development company where one or more of the following criteria are satisfied in relation to the eligible taxpayer:

(A) The ownership of the business is “substantially related” to the ownership of the eligible taxpayer. “Substantially related” means a five percent or more common ownership interest; or
(B) The board of directors of the qualified research and development company is controlled by the eligible taxpayer: Provided, That an eligible taxpayer is deemed to have control of the board of directors of a qualified research and development company if it controls a simple majority of the board of directors.

(2) “Corporate headquarters” means the place at which the corporation has its commercial domicile and from which the business of the corporation is primarily conducted.

(3) “Eligible taxpayer” means a person that has received certification from the economic development authority that a portion of the annual available high growth business investment credit has been allocated to it, that is subject to the tax imposed by either article twenty-three, article twenty-four or article twenty-one of this chapter, and that has made a qualified investment in a qualified research and development credit company.

(4) “Person” includes any natural person, corporation, limited liability company, or partnership.

(5) “Qualified investment” means an equity financing of a West Virginia qualified strategic research and development company. The investment must be in cash or cash equivalents and may not be an exchange of in-kind property.

(6) “Qualified research and development company” for purposes of the high growth business investment tax credit means an entity that has been certified by the state tax commissioner as eligible for the West Virginia research and development tax credit set forth in article thirteen-r, chapter eleven of this code, that has annual gross receipts of less than twenty million dollars and has annual payroll of less then two million five hundred thousand dollars.
(7) "Tax credit" means the high-growth business development tax credit authorized by this article.

(8) "Taxable year" means the tax year of the eligible taxpayer.


(a) Credit allowed. — There shall be allowed to each eligible taxpayer in a qualified research and development company that maintains its corporate headquarters in West Virginia a tax credit for the taxable year in which the investment was made. The total tax credit that may be used by an eligible taxpayer shall be equal to fifty percent of the total value of the qualified investment in the taxable year the qualified investment was actually made.

(b) No more than one million dollars of the tax credits allowed under subsection (a) of this section shall be allocated by the economic development authority during any fiscal year. The economic development authority shall allocate the tax credits in the order the applications therefor are received.

(c) Business franchise tax. — The tax credit is first applied to reduce the taxes imposed upon the eligible taxpayer by article twenty-three of this chapter for the taxable year (determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax).

(d) Corporation net income taxes. — After application of subsection (c) of this section, any unused tax credit is next applied to reduce the taxes imposed upon the eligible taxpayer by article twenty-four of this chapter for the taxable year (determined before application of allowable credits against tax).
(e) If the eligible taxpayer is a limited liability company, an electing small business corporation (as defined in section 1361 of the United States Internal Revenue Code of 1986, as amended), or a partnership, any unused tax credit remaining after application of subsections (c) and (d) of this section is allowed as a tax credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer.

(1) Electing small business corporations (as defined above in subsection (e)), limited liability companies, and partnerships shall allocate the tax credit allowed by this article among their members in the same manner as profits and losses are allocated for the taxable year.

(2) No tax credit is allowed under this article against any withholding tax imposed by, or payable under, article twenty-one of this chapter.

(f) Personal income tax taxes. — After application of subsections (c), (d) and (e) of this section, any unused tax credit is next applied to reduce the taxes imposed by article twenty-one of this chapter for the taxable year (determined before application of allowable credits against tax) of the eligible taxpayer.

(g) If the eligible taxpayer is a limited liability company, an electing small business corporation (as defined in subsection (e) of this section) or a partnership, any unused tax credit remaining after application of subsections (c), (d), (e) and (f) of this section is allowed as a tax credit against the taxes imposed by article twenty-one of this chapter on owners of the eligible taxpayer.

(1) Electing small business corporations (as defined in subsection (e) of this section), limited liability companies, and partnerships shall allocate the tax credit allowed by this article...
among their members in the same manner as profits and losses
are allocated for the taxable year.

(2) No tax credit is allowed under this article against any
withholding tax imposed by, or payable under, article twenty-
one of this chapter.

(h) The total amount of tax credit that may be used in any
taxable year by any eligible taxpayer in combination with the
owners of the eligible taxpayer under subsections (e) and (g) of
this section may not exceed fifty thousand dollars. The total
amount of qualified investment that a qualified research and
development company may accept from all eligible taxpayers
in any taxable year is one million dollars.

(i) Unused credit carry forward. — If the tax credit allowed
under this article in any taxable year exceeds the sum of the
taxes enumerated in subsections (c), (d), (e), (f) and (g) of this
section for that taxable year, the eligible taxpayer and owners
of eligible taxpayers described in subsections (e) and (g) of this
section may apply the excess as a tax credit against those taxes,
in the order and manner stated in this section, for succeeding
taxable years until the earlier of the following:

(1) The full amount of the excess tax credit is used; or

(2) The expiration of the fourth taxable year after the
taxable year in which the investment was made. The tax credit
remaining thereafter is forfeited.

(j) No tax credit is allowed or may be applied under this
article until the taxpayer seeking to claim the tax credit has:

(1) Filed with the economic development authority a
written application for the tax credit;

(2) Filed with the economic development authority the
research and development program or project certification
issued pursuant to section six, article thirteen-r of this chapter for the qualified research and development company that will benefit from the investment;

(3) Filed with the economic development authority the certificate of incorporation for the qualified research and development company that will benefit from the investment; and

(4) Received from the economic development authority certification of the amount of tax credit to be allocated to the eligible taxpayer.

§11-130-5. Restrictions on investment.

(a) No qualified investment may be made in a qualified research and development company that is the alter ego of the eligible taxpayer.

(b) The eligible taxpayer shall maintain its qualified investment for a minimum period of five years: Provided, That an eligible taxpayer receiving repayment or return of a qualified investment (exclusive of interest, dividends or other earnings on the investment) shall within three calendar months from the date of repayment or return reinvest the repaid or returned amount of the initial investment in another qualified research and development company for a period of time at least equal to the remainder of the initial five-year term.

§11-130-6. Penalty.

An eligible taxpayer that fails to maintain a qualified investment for the required period of time stated in section five of this article shall pay to the state tax commissioner a penalty equal to all of the tax credits asserted under this article by the eligible taxpayer with interest, calculated at the rate set forth in section seventeen-a, article ten of this chapter, from the date the
The tax commissioner shall give notice to the eligible taxpayer of any penalties imposed under this section. The penalty shall be assessed and collected in the same manner as tax. The tax commissioner shall deposit any amounts received under this subsection in the general revenue fund.


Notwithstanding any provision in this code to the contrary, the tax commissioner shall annually publish in the state register the name and address of every eligible taxpayer and the amount of any tax credit asserted under this article.

§11-130-8. Tax credit review and accountability.

(a) Beginning on the first day of February, two thousand six, and on the first day of February every third year thereafter, the tax commissioner shall submit to the governor, the president of the Senate and the speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the tax credit allowed under this article during the most recent three-year period for which information is available: Provided, That the requirement to file the credit review and accountability report terminates the thirtieth day of June, two thousand eleven, unless the termination of entitlement to the tax credit as stated in section ten of this article terminates. The criteria to be evaluated includes, but is not limited to, for each year of the three-year period:

(1) The numbers of eligible taxpayers claiming the tax credit;

(2) The net number, type, and duration of new jobs created by all qualified research and development companies in which taxpayers claiming the credit made investment in and the wages and benefits paid by such companies;
(3) The cost of the tax credit;

(4) The cost of the tax credit per new job created; and

(5) Comparison of employment trends for the industry and for taxpayers within the industry that claim the tax credit.

(b) Eligible taxpayers claiming the tax credit shall provide any information required by the tax commissioner for the purpose of preparing the report: Provided, That such information shall be subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter.


The state tax department and the economic development authority may promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article and to efficiently provide for the general administration of this article.

§11-13U-10. Effective date; expiration of credit.

The provisions of this article become effective on the first day of July, two thousand five, and apply only to qualified investment made on or after that date: Provided, That no entitlement to the tax credit shall result from any qualified investment made after the thirtieth day of June, two thousand eight: Provided, however, That unless sooner terminated by law, the high growth business investment tax credit act will terminate on the first day of July, two thousand eight. Taxpayers who have gained entitlement to the tax credit pursuant to qualified investment prior to the earlier of the first day of July, two thousand eight, or termination of the tax credit prior to that date shall retain that entitlement and apply the credit in due
CHAPTER 244

(H. B. 4567 — By Delegates Craig, Morgan, Leach, Kominar, Amores, H. White and R. M. Thompson)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-14A-2, §11-14A-3a, §11-14A-4, §11-14A-5, §11-14A-6, §11-14A-7, §11-14A-9, §11-14A-11, §11-14A-13, §11-14A-16, §11-14A-27 and §11-14A-28 of the code of West Virginia, 1931, as amended; and to further amend and reenact §11-14B-1, §11-14B-2, §11-14B-3, §11-14B-5, §11-14B-6, §11-14B-10 and §11-14B-14 of said code, all relating to the motor carrier road tax and international fuel tax agreement; defining certain motor carrier road tax terms; applying motor carrier road tax to household goods carriers and independent contractors; establishing liability for tax between lessors and lessees; restating method of computing tax; revising time for payment of taxes and filing reports; providing penalty for failure to maintain certain records; authorizing tax commissioner to issue assessment for erroneously calculated tax; requiring identification markers and providing for the revocation and removal thereof; prohibiting trip permits for certain motor carriers; providing civil penalty of revocation when taxpayer acts contrary to law; establishing new crimes and providing criminal penalties therefor; providing for administration of certain credits against motor carrier road tax; eliminating requirement for surety bond conditioned on compliance with law; authorizing disposition of taxes collected under article fourteen-b, chapter eleven of this code;
increasing penalty for failure to file return when no tax due; authorizing interest rate on delinquent motor carrier road tax to be one percent per month; establishing effective date of amendments; defining certain international fuel tax agreement terms; establishing identification marker requirements; reserving authority of state to determine applicability of state law; establishing application of article fourteen-a, chapter eleven of this code; specifying those subject to the provisions of article fourteen-a, chapter eleven of this code; authorizing audits by the tax commissioner; and providing that state law controls in the event of inconsistency with the international fuel tax agreement.

Be it enacted by the Legislature of West Virginia:


ARTICLE 14A. MOTOR CARRIER ROAD TAX.

§11-14A-3a. Leased motor carriers, household goods carriers, and independent contractors.
§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.
§11-14A-6. Payment of tax.
§11-14A-7. Identification markers; fees; civil penalties; criminal penalties.
§11-14A-9. Credits against tax.
§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.
§11-14A-16. Civil penalty for failure to file required return when no tax due.

For purposes of this article:

(1) "Average fuel consumption factor" means the miles driven by the fleet of motor carriers for each gallon of motor fuel consumed in that activity (miles per gallon), and is calculated by dividing the total distance driven in all jurisdictions during the reporting period by the total quantity of motor fuel consumed in the operation of the motor carrier in all jurisdictions during the same reporting period.

(2) "Commissioner" or "tax commissioner" means the tax commissioner of the state of West Virginia or his or her duly authorized agent.

(3) "Fleet" means, for purposes of administering the tax imposed by this article, one or more motor carriers operated by the same person.

(4) "Gallon" means two hundred thirty-one cubic inches of liquid measurement, by volume: Provided, That the commissioner may by rule prescribe other measurement or definition of gallon.

(5) "Gasoline" means any product commonly or commercially known as gasoline, regardless of classification, suitable for use as fuel in an internal combustion engine, except special fuel as hereinafter defined: Provided, That in the event there is a question as to the proper classification of any product, "gasoline" has the same meaning as in article fourteen-c of this chapter.

(6) "Highway" means every way or place of whatever nature open to the use of the public as a matter of right for the
(7) “Household goods carrier” means a person that uses a motor carrier for the movement of another’s household goods.

(8) “Identification marker” means the decal issued by the commissioner for display upon a particular motor carrier and authorizing a person to operate or cause to be operated a motor carrier upon any highway of the state: Provided, That an identification marker shall include decals issued under the authority of article fourteen-b of this chapter to persons licensed thereunder: Provided, however, That said decals shall comply with the international fuel tax agreement requirements referenced under the said article fourteen-b.

(9) “Independent contractor” means a person that uses its motor carrier or motor carriers in its own or another person’s business for the purpose of transporting passengers or the goods of a third party.

(10) “Lease” means any oral or written contract for valuable consideration granting the use of a motor carrier.

(11) “Motor carrier” means any vehicle used, designed or maintained for the transportation of persons or property and having two axles and a gross vehicle weight exceeding twenty-six thousand pounds or eleven thousand seven hundred ninety-seven kilograms, or having three or more axles regardless of weight, or is used in combination when the weight of the combination exceeds twenty-six thousand pounds or eleven thousand seven hundred ninety-seven kilograms gross vehicle weight or registered gross vehicle weight. The term motor carrier does not include any type of recreational vehicle.
(12) "Motor fuel" means motor fuel as defined in article fourteen-c of this chapter effective the first day of January, two thousand four.

(13) "Operation" means any operation of any motor carrier, whether loaded or empty, whether for compensation or not, and whether owned by or leased to the person who operates or causes to be operated any motor carrier.

(14) "Person" means and includes any individual, firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, and includes the officers, directors, trustees or members of any firm, partnership, limited partnership, joint venture, association, company, corporation, organization, syndicate, receiver, trust or any other group or combination acting as a unit, in the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(15) "Pool operation" means any operation whereby two or more taxpayers combine to operate or cause to be operated a motor carrier or motor carriers upon any highway in this state.

(16) "Purchase" means and includes any acquisition of ownership of property or of a security interest for a consideration.

(17) "Recreational vehicles" means vehicles such as motor homes, pickup trucks with attached campers and buses, when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

(18) "Road tractor" means every motor carrier designed and used for drawing other vehicles and not constructed as to carry
any load thereon either independently or any part of the weight
of a vehicle or load so drawn.

(19) "Sale" means any transfer, exchange, gift, barter or
other disposition of any property or security interest for a
consideration.

(20) "Special fuel" means any gas or liquid, other than
gasoline, used or suitable for use as fuel in an internal combus-
tion engine. The term "special fuel" includes products com-
monly known as natural or casing-head gasoline but shall not
include any petroleum product or chemical compound such as
alcohol, industrial solvent, heavy furnace oil, lubricant, etc., not
commonly used nor practically suited for use as fuel in an
internal combustion engine: Provided, That in the event there
is a question as to the proper classification of any gas or liquid,
"special fuel" has the same meaning as in article fourteen-c of
this chapter.

(21) "Tax" includes, within its meaning, interest, additions
to tax and penalties, unless the intention to give it a more
limited meaning is disclosed by the context.

(22) "Taxpayer" means any person liable for any tax,
interest, additions to tax or penalty under the provisions of this
article.

(23) "Tractor truck" means every motor carrier designed
and used primarily for drawing other vehicles and not con-
structed as to carry a load other than a part of the weight of the
vehicle and load so drawn.

(24) "Truck" means every motor carrier designed, used or
maintained primarily for the transportation of property and
having more than two axles.

§11-14A-3a. Leased motor carriers, household goods carriers,
and independent contractors.
(a) Motor carriers.

(1) Motor carriers leased for less than thirty days. — A lessor of motor carriers who is regularly engaged in the business of leasing or renting motor carriers with or without drivers to licensees or other lessees for a period of less than thirty days is primarily liable for payment of the taxes and fees imposed by this article unless:

(A) The lessor has a written lease contract that designates the lessee as the party liable for reporting and paying the tax imposed by this article; and

(B) If the lessee is subject to article fourteen-b of this chapter, the lessor has a copy of the lessee’s license issued thereunder and the license is valid for the term of the lease.

(2) Motor carriers leased for thirty days or more. — A licensee or other lessee who leases or rents a motor carrier with or without drivers for a period of thirty days or more is primarily liable for payment of the taxes and fees imposed by this article.

(b) Household goods carriers.

(1) Each household goods carrier operating only in West Virginia that uses its own motor carriers or that leases a motor carrier or motor carriers, with or without drivers, from independent contractors or others under intermittent leases for periods of thirty days or more is liable for the tax imposed by this article: Provided, That the lessor is liable for the tax imposed by this article when the lease periods are for less than thirty days.

(2) Each household goods carrier subject to article fourteen-b of this chapter that uses its own motor carriers or that leases a motor carrier or motor carriers, with or without drivers, from
independent contractors or others under intermittent leases is liable for the tax imposed by this article when the motor carrier is operated under the lessee's jurisdictional operating authority: Provided, That when the motor carrier is operated under the lessors jurisdictional operating authority, the lessor is liable for the tax imposed by this article.

(c) Independent contractors.

(1) An independent contractor operating only in West Virginia, when leased to a person also operating only in West Virginia, and the lease is for a period of less than thirty days is liable for the tax imposed by this article: Provided, That if the lease is for a period of thirty days or more, the lessee is responsible for the tax imposed by this article.

(2) A person subject to article fourteen-b of this chapter that leases an independent contractor for thirty days or more is responsible for the tax imposed by this article unless there is a written contract stating that the lessor is liable for the tax imposed by this article.

(d) The provision of subsections (a), (b) and (c) of this section shall govern the primary liability of lessors and licensees or other lessees of motor carriers. If a lessor or licensee or other lessee primarily liable fails, in whole or in part, to discharge his or her liability, the failing party and other party to the transaction, whether denominated as a lessor, licensee or other lessee, is jointly and severally responsible and liable for compliance with the provisions of this article and for payment of any tax or fees due under this article: Provided, That the aggregate of taxes and fees collected by the commissioner shall not exceed the total amount or amounts of taxes and fees due under this article on account of the transactions in question plus interest, additions to tax, other penalties and costs, if any, that may be imposed: Provided, however, That no person, other than
the person primarily responsible for the taxes and fees under this article, may be assessed penalties or additions to tax resulting from the failure of the party primarily liable for taxes and fees to pay: Provided further, That once the other party to the transaction who is not primarily liable for the taxes under this article but who is made jointly and severally liable under this subsection for taxes is assessed for those taxes and fees and fails to discharge the assessment within the time prescribed therefor, or within thirty days after receiving the assessment if no time is so prescribed, nothing herein shall prohibit the commissioner from imposing additions to tax or penalties upon that person for failing to pay the assessment issued in his or her name.


Computation of the tax is based upon the amount of gallons of motor fuel used in the operation of any motor carrier within this state and shall be calculated by dividing the total number of taxable miles traveled in this state during the reporting period by the average fuel consumption factor calculated for that same reporting period.

§11-14A-5. Reports of carriers; joint reports; records; examination of records; subpoenas and witnesses.

(a) Every taxpayer subject to the tax imposed by this article, or by article fourteen-c of this chapter, except as provided, in subsections (b) and (c) of this section, shall on or before the last day of January, April, July and October of every calendar year make to the commissioner reports of its operations during the quarter ending the last day of the preceding month as the commissioner requires and other reports from time to time as the commissioner considers necessary. For good cause shown, the commissioner may extend the time for filing the reports for a period not exceeding thirty days.
(b) Every motor carrier which operates exclusively in this state during a fiscal year that begins on the first day of July of one calendar year and ends on the thirtieth day of June of the next succeeding calendar year and during the fiscal year consumes in its operation only motor fuel upon which the tax imposed by article fourteen of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a) of this section, file an annual report for the fiscal year on or before the last day of July each calendar year: Provided, That effective the first day of January, two thousand four, every motor carrier which operates exclusively in this state during a fiscal year that begins on the first day of July of one calendar year and ends on the thirtieth day of June of the next succeeding calendar year and during the fiscal year consumes in its operation only motor fuel upon which the tax imposed by article fourteen-c of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a) of this section, file an annual report for the fiscal year on or before the last day of July each calendar year: Provided, however, That effective the first day of January, two thousand five, every motor carrier which operates exclusively in this state and during the calendar year consumes in its operation only motor fuel upon which the tax imposed by article fourteen-c of this chapter has been paid shall, in lieu of filing the quarterly reports required by subsection (a) of this section, file an annual report for the calendar year ending on the last day of the immediately preceding December. For good cause shown, the commissioner may extend the time for filing the report for a period of thirty days.

(c) Two or more taxpayers regularly engaged in the transportation of passengers on through buses on through tickets in pool operation may, at their option and upon proper notice to the commissioner, make joint reports of their entire operations in this state in lieu of the separate reports required by subsection (a) of this section. The taxes imposed by this article
are calculated on the basis of the joint reports as though the taxpayers were a single taxpayer; and the taxpayers making the reports are jointly and severally liable for the taxes shown to be due. The joint reports shall show the total number of miles traveled in this state and the total number of gallons of motor fuel purchased in this state by the reporting taxpayers. Credits to which the taxpayers making a joint return are entitled are not allowed as credits to any other taxpayer; but taxpayers filing joint reports shall permit all taxpayers engaged in this state in pool operations with them to join in filing joint reports.

(d)(1) A taxpayer shall keep records necessary to verify the total miles traveled within and without the state of West Virginia, the number of gallons of motor fuel used and purchased within and without West Virginia and any other records which the commissioner by regulation may prescribe. A finding by the tax commissioner on the basis of the best information available that the taxpayer has failed to maintain records prescribed by the tax commissioner, or that the taxpayer refused to make available upon written request the records prescribed by the tax commissioner, is sufficient cause for the commissioner of motor vehicles to revoke the identification markers issued to the taxpayer: Provided, That upon request of the taxpayer, a hearing shall be provided, under the authority of articles ten and ten-a of this chapter prior to the revocation becoming final.

(2) If the tax commissioner determines that a taxpayer used an incorrect average fuel consumption factor resulting in the filing of incorrect returns, the tax commissioner shall determine the correct average fuel consumption factor, calculate the correct amount of tax due under this article, and under the authority of article ten of this chapter issue an assessment for the amount of tax, interest, penalties and additions due and owing: Provided, That absent adequate information to the contrary, the average fuel consumption factor is four miles per gallon (one and seven tenths kilometers per liter).
(e) In addition to the tax commissioner’s powers set forth in sections five-a and five-b, article ten of this chapter, the commissioner may inspect or examine the records, books, papers, storage tanks, meters and any equipment records or records of highway miles traveled within and without West Virginia and the records of any other person to verify the truth and accuracy of any statement or report to ascertain whether the tax imposed by this article has been properly paid.

(f) In addition to the tax commissioner’s powers set forth in sections five-a and five-b, article ten of this chapter, and as a further means of obtaining the records, books and papers of a taxpayer or any other person and ascertaining the amount of taxes and reports due under this article, the commissioner has the power to examine witnesses under oath; and if any witness shall fail or refuse at the request of the commissioner to grant access to the books, records and papers, the commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and the court shall thereupon issue a subpoena duces tecum to the party to appear before the commissioner, at a place designated within the jurisdiction of the court, on a day fixed.

§11-14A-6. Payment of tax.

The tax hereby imposed by this article shall be paid by each taxpayer annually to the tax commissioner on or before the last day of January of each calendar year, and calculated upon the amount of motor fuel used as fuel in the operation of each motor carrier operated or caused to be operated by the taxpayer during the year ending with the last day of the preceding month: Provided, That each person subject to the provisions of article fourteen-b of this chapter shall pay quarterly to the tax commissioner on or before the last day of January, April, July and October of each calendar year, the correct amount of motor fuel use taxes imposed by each state on motor carriers using the
highways of those states during the quarter ending with the last day of the preceding month, the taxes to be calculated in accordance with the instructions provided by those respective states.

§11-14A-7. Identification markers; fees; civil penalties; criminal penalties.

(a) Registration of motor carriers. — No person may operate, or cause to be operated, in this state any motor carrier subject to this article without first securing from the commissioner of motor vehicles an identification marker for each motor carrier, except as provided in subsection (b) or (c) of this section. A person who operates, or causes to be operated, in this state more than one motor carrier may obtain an identification marker for each motor carrier: Provided, That such person may also obtain an additional number of identification markers equal to twenty-five percent of the total number of motor carriers in the person’s fleet of motor carriers that require identification markers.

(1) Each identification marker for a particular motor carrier shall bear a number. This identification marker shall be displayed on the driver’s side of the motor carrier as required by the commissioner of motor vehicles: Provided, That the identification markers issued under the authority of article fourteen-b of this chapter shall be displayed on the exterior portion of both sides of the motor carrier.

(2) The tax commissioner, after issuance of any identification marker to a motor carrier, shall cause an internal cross-check to be made in his or her office as to any state tax which he or she administers, to aid in determination of any noncompliance in respect to failure to file returns or payment of tax liabilities. If the tax commissioner determines the motor carrier is not in compliance with the requirement to file any tax return
or pay any tax liability required by any tax governed by article
ten of this chapter, the identification markers issued to that
motor carrier by the commissioner of motor vehicles shall be
revoked until all the returns are filed and payments made.

(3) The identification markers provided for in this section
are valid for a period of one year, ending the thirty-first day of
December each year. A fee of five dollars shall be paid to the
commissioner of motor vehicles for issuing each identification
marker which is reasonably related to the commissioner of
motor vehicles' costs of issuing each identification marker.

(4) All tax or returns due under this article shall be paid or
returns filed before the issuance of a new identification marker.
If the tax commissioner determines that a person subject to the
requirements of this article has failed to file any return or pay
the taxes imposed by this article, the commissioner of motor
vehicles shall revoke each identification marker previously
issued to that person and shall refuse to issue a new identifica-
tion marker to that person until all returns are filed and all taxes
imposed by this article paid.

(5) Each identification marker shall be removed from a
motor carrier:

(A) Prior to the motor carrier being sold or traded in for a
different motor carrier;

(B) When a motor carrier registered under subsection (a) of
this section ceases doing business in this state, or requests
cancellation of the account authorized under article fourteen-b
of this chapter; or

(C) When the identification marker issued under subsection
(a) of this section is revoked.

(6) Each identification marker so removed and any addi-
tional identification markers issued under the authority of
subsection (a) of this section shall within thirty days of removal be returned to the commissioner of motor vehicles.

(b) *Trip permit.* — A motor carrier that does not have a motor carrier identification marker issued under subsection (a) of this section may obtain a trip permit which authorizes the motor carrier specified therein to be operated in this state without an identification marker for a period of not more than ten consecutive days beginning and ending on the dates specified on the face of the permit: *Provided,* That if a motor carrier's identification marker, whether issued by this state or another jurisdiction, has been revoked, the motor carrier may not be issued a trip permit. The fee for this permit is twenty-four dollars.

(1) Fees for trip permits shall be in lieu of the tax otherwise due under this article on account of the vehicles specified in the permit operating in this state during the period of the permit, and no reports of mileage shall be required with respect to that vehicle.

(2) A trip permit shall be carried in the cab of the motor vehicle for which it was issued at all times while it is in this state.

(3) A trip permit may be obtained from the commissioner of motor vehicles or from wire services authorized by the commissioner to issue trip permits. The cost of the telegram or similar transmissions is the responsibility of the motor carrier requesting the trip permit.

(c) *Transportation permit.* — The commissioner of motor vehicles is hereby authorized to grant, in his or her discretion, a special permit to a new motor vehicle dealer for use on new motor vehicles driven under their own power from the factory or distributing place of a manufacturer, or other dealer, to a
place of business of the new vehicle dealer, or from the place of business of a new vehicle dealer to a place of business of another dealer, or when delivered from the place of business of the new vehicle dealer to the place of business of a purchaser to whom title passes on delivery. A transporter's permit must be carried in the cab of the motor vehicle being transported. A person to whom a transporter's permit is issued shall file the reports required by section five of this article and pay any tax due. The fee for a transporter's permit is fifteen dollars and a transporter's permit is valid for the fiscal year for which it is issued unless surrendered or revoked by the tax commissioner.

(d) Civil penalties. — Upon a finding by the tax commissioner based upon the best evidence available that a taxpayer, whether the owner, licensee or lessee, or the employee, servant or agent thereof, has performed any of the following acts, the commissioner of motor vehicles shall revoke and refuse to renew the taxpayer's identification marker or trip permit until the cause for the revocation is corrected:

(1) Maintains inaccurate or incomplete records;

(2) Fails to respond to written requests for information;

(3) Fails to make records available upon request;

(4) Falsified application for identification markers or trip permit;

(5) Has a prior revocation of identification markers in another jurisdiction without reinstatement in that jurisdiction;

(6) Is delinquent in payment of taxes, but only after the assessment of those taxes is finalized;

(7) Transfers or sells an identification marker or trip permit; or
(8) Receives or purchases from any person not the commissioner of motor vehicles an identification marker or trip permit.

Upon request of the taxpayer, a hearing shall be provided, under the authority of articles ten and ten-a of this chapter prior to the revocation becoming final.

(e) Criminal penalties. –

(1) Any person, whether the person be the owner, licensee or lessee, or the employee, servant or agent thereof, who operates or causes to be operated in this state, a motor carrier in violation of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty nor more than five hundred dollars; and each day the violation continues or reoccurs constitutes a separate offense.

(2) Any person, whether the person be the owner, licensee or lessee, or the employee, servant or agent thereof, who transfers or sells an identification marker or trip permit is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars.

(3) Any person, whether the person be the owner, licensee or lessee, or the employee, servant or agent thereof, who receives or purchases from any person not the commissioner of motor vehicles an identification marker or trip permit is guilty of a felony and, upon conviction thereof, shall be fined not less than five thousand dollars nor more than ten thousand dollars.

(f) Notwithstanding the provisions of section five-d, article ten of this chapter, the tax commissioner shall deliver to or receive from the commissioner of the division of motor vehicles and the commissioner of the public service commission, the information contained in the application filed by a motor carrier for a trip permit under this section, when the information is used to administer a combined trip permit registration program.
for motor carriers operating in this state, which program may be
administered by one agency or any combination of the three
agencies, as embodied in a written agreement executed by the
head of each agency participating in the program. The agencies
have authority to enter into an agreement notwithstanding any
 provision of this code to the contrary; and the fee for a com-
bined trip permit is twenty-four dollars, which shall be in lieu
of the fee set forth in subsection (b) of this section.

§11-14A-9. Credits against tax.

Every taxpayer subject to the road tax imposed in this
article is entitled to a credit on the tax equivalent to the amount
of tax per gallon of gasoline or special fuel imposed by article
fourteen of this chapter on all gasoline or special fuel purchased
by the taxpayer for fuel in each motor carrier which it operates
or causes to be operated within this state, and upon which
gasoline or special fuel the tax imposed by the laws of this state
has been paid: Provided, That the credit is not allowed for any
gasoline or special fuel taxes for which any taxpayer has
applied or received a refund of gasoline or special fuel tax
under article fourteen of this chapter: Provided, however, That
effective the first day of January, two thousand four, every
taxpayer subject to said road tax is entitled to a credit against
the tax equivalent to the amount of the flat rate of tax per gallon
of motor fuel imposed by article fourteen-c of this chapter on
all motor fuel purchased by the taxpayer and used as motor fuel
in motor carriers which it operates or causes to be operated
within this state, and upon which the motor fuel tax imposed by
the laws of this state has been paid: Provided further, That no
credit is allowed for any motor fuel taxes for which the tax-
payer has applied or received a refund of motor fuel tax under
article fourteen-c of this chapter. Evidence of the payment of
the tax in the form as required by the commissioner shall be
furnished by the taxpayer claiming the credit allowed in this
section. When the amount of the credit provided for in this
section exceeds the amount of the tax for which the taxpayer is liable in the same quarter, the excess, if less than twenty dollars, shall be used as a credit on the tax for which the taxpayer would be otherwise liable for any of the eight succeeding quarters: And provided further, That if the taxpayer has ceased to do business in this state under either this article or article fourteen-b of this chapter, the amount of the credit shall be refunded in accordance with section eleven of this article: And provided further, That if the amount of the credit provided in this section exceeds by twenty dollars or more the amount of the tax for which the taxpayer is liable in the same quarter, the entire amount, upon the written request by the taxpayer, shall be allowed as a credit on the tax for which the taxpayer would otherwise be liable for any of the succeeding eight quarters: And provided further, That any credit not used within the eight succeeding quarters after the credit is established shall be forfeited.

§11-14A-11. Refunds authorized; claim for refund and procedure thereon; surety bonds and cash bonds.

The commissioner is hereby authorized to refund from the funds collected under the provisions of this article and article fourteen of this chapter, the amount of the credit accrued for gallons of motor fuel purchased in this state but consumed outside of this state, if the taxpayer by duly filed claim requests the commissioner to issue a refund and if the commissioner is satisfied that the taxpayer is entitled to the refund and that the taxpayer has not applied for a refund of the tax imposed by article fourteen of this chapter: Provided, That effective the first day of January, two thousand four, the refunds authorized in this section shall be made from the funds collected under the provisions of this article and from the flat rate of tax imposed under section five, article fourteen-c of this chapter: Provided, however, That unless the taxpayer has ceased doing business in this state under either this article or article fourteen-b of this
chapter, any amount less than twenty dollars may not be refunded but shall be used as a credit in accordance with the provisions of section nine of this article: Provided further, That the commissioner shall not approve a claim for refund when the claim for a refund is filed after thirteen months from the close of the quarter in which the tax was paid or the credit, as provided in section nine of this article, was allowed: And provided further, That effective the first day of April, two thousand four, the commissioner shall not approve a claim for refund when the claim for refund is filed after eight quarters from the close of the quarter in which the tax was paid or the credit, as provided in section nine of this article, was allowed: And provided further, That any refund or credit due a taxpayer subject to article fourteen-b of this chapter shall be withheld if the taxpayer is delinquent on any fuel taxes due any other state: And provided further, That the credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a taxpayer below the amount due as tax on gasoline or special fuel used as fuel in this state as provided by article fourteen of this chapter: And provided further, That effective the first day of January, two thousand four, the credit or refund shall in no case be allowed to reduce the amount of tax to be paid by a taxpayer below the amount due as tax on motor fuel used in this state as provided by article fourteen-c of this chapter. The right to receive any refund under the provisions of this article is not assignable and any attempt at assignment thereof is void and of no effect. The claim for refund or credit shall also be subject to the provisions of section fourteen, article ten of this chapter.


All tax collected under the provisions of this article shall be paid into the state treasury and shall be used only for the purpose of construction, reconstruction, maintenance and repair of highways, and payment of the interest and sinking fund obligations on state bonds issued for highway purposes:
6 Provided, That the taxes collected under the provisions of this article but for the purposes of article fourteen-b of this chapter shall be disposed of in accordance with the provisions of section eleven, article fourteen-b of this chapter.

10 Unless necessary for the bond requirements, five fourteenth parts of the tax collected under the provisions of this article shall be used for feeder and state local service highway purposes.

§11-14A-16. Civil penalty for failure to file required return when no tax due.

1 In the case of any failure to make or file a return when no tax is due, as required by this article, on the date prescribed therefor, unless it can be shown that the failure is due to reasonable cause and not due to willful neglect, there shall be collected a civil penalty of fifty dollars or ten percent of the net tax due, whichever is greater, for each month of the failure or fraction thereof. The civil penalty prescribed under this section shall be assessed, collected and paid in the same manner as the motor carrier road tax.

§11-14A-27. General procedure and administration.

1 Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter shall apply to the motor carrier road tax imposed by this article with like effect as if said act were applicable only to the motor carrier road tax imposed by this article and were set forth with respect thereto in extenso in this article: Provided, That for purposes of the tax imposed by this article and notwithstanding sections seventeen and seventeen-a, article ten of this chapter, the annual rate of interest in effect at the time of assessment or when the payment of delinquent tax is made shall be one percent per month, calculated for each month or part

The provisions of this article take effect on the first day of April, one thousand nine hundred eighty-nine. Provided, That the amendments to this article made during the two thousand four legislative session shall be effective the first day of July, two thousand four.

ARTICLE 14B. INTERNATIONAL FUEL TAX AGREEMENT.

§11-14B-1. Purpose.

This article is enacted to conform laws of this state relating to registration of motor carriers and reporting and payment of motor fuel use taxes with requirements of the “Intermodal Surface Transportation and Efficiency Act of 1991”, Public Law 102-240. More specifically:

(1) Section 4005 of said act requires establishment of a single state registration system for motor carriers. Under this system, a motor carrier is required to register annually only with one state. Single state registration is considered to satisfy the registration requirements of all other states.

(2) Section 4008 of said act mandates state participation in the international registration plan and adoption of the interna-
tional fuel tax agreement by providing that after the thirtieth day of September, one thousand nine hundred ninety-six:

(A) No state, other than a state participating in the international registration plan, may establish, maintain or enforce any motor carrier registration law, regulation or agreement which limits the operation of any motor carrier within its borders which is not registered under the laws of the state if the motor carrier is registered under the laws of any other state participating in the international registration plan;

(B) No state may establish, maintain or enforce any law or regulation which has fuel use tax reporting requirements including tax reporting forms which are not in conformity with the international fuel tax agreement; and

(C) No state may establish, maintain or enforce any law or regulation which provides for the payment of a fuel use tax unless the law or regulation is in conformity with the international fuel tax agreement with respect to collection of tax by a single base jurisdiction and proportional sharing of fuel use taxes charged among the states in which a motor carrier is operated.


For purposes of this article:

(a) "Base jurisdiction" means the member jurisdiction where a motor carrier is based for vehicle registration purposes and:

(1) Where the operational control and operational records of the licensee's motor carriers are maintained or can be made available; and
(2) Where some travel is accrued by motor carriers within the fleet.

(b) "Fuel use tax" means a tax imposed on or measured by the consumption of fuel in a motor carrier.

(c) "International fuel tax agreement" means the international agreement for the collection and distribution of fuel use taxes paid by motor carriers, developed under the auspices of the national governors' association: Provided, That this term includes amendments to the international fuel tax agreement.

(d) "International registration plan" means the interstate agreement for the apportionment of vehicle registration fees paid by motor carriers developed by the American association of motor vehicle administrators.

(e) "Licensee" means a person who holds an uncanceled license issued by a base jurisdiction in accordance with the international fuel tax agreement.

(f) "Motor carrier":

(1) As used with respect to the international registration plan, has the meaning the term "apportionable vehicle" has under that plan; and

(2) As used with respect to the international fuel tax agreement, has the meaning the term "qualified motor vehicle" has under that agreement.

(g) "Motor fuel" means motor fuel as defined in article fourteen-c of this chapter.

(h) "Motor fuel use taxes imposed by this state" means the aggregate amount of taxes, expressed in cents per gallon, imposed by this state, under articles fourteen-a and fifteen-a of
this chapter, on motor fuel consumed in this state by a motor carrier.

(i) "State" means any of the forty-eight contiguous states and the District of Columbia, and any other jurisdiction which imposes a motor fuel use tax and is a member of the international fuel tax agreement.

§11-14B-3. Registration of motor carriers.

(a) To facilitate adoption of the single point registration system in this state, the powers, duties and responsibilities of the tax commissioner under section seven, article fourteen-a of this chapter, are transferred to the commissioner of the division of motor vehicles effective with the registration year that begins the first day of July, one thousand nine hundred ninety-five: Provided, That no identification marker or trip permit is required under section seven, article fourteen-a of this chapter of a motor carrier based in another state which is a member of the international fuel tax agreement.

(b) Beginning with the registration year specified in subsection (a) of this section, the commissioner of motor vehicles shall furnish the tax commissioner with motor carrier registration information and information pertaining to the trip permit registration program for use by the tax commissioner in collecting motor fuel taxes.

(c) Also beginning with the registration year specified in subsection (a) of this section, the tax commissioner shall furnish the commissioner of motor vehicles with the taxpayer identity information for any motor carrier which fails to file required returns or report for, or to pay, the motor fuel use taxes imposed by this state. This information may give the commissioner of motor vehicles sufficient cause to revoke or refuse to renew the identification marker previously issued under section seven, article fourteen-a of this chapter.
(d) Information exchanged pursuant to this section shall be used solely for tax administration and motor carrier registration purposes and treated as confidential information for all other purposes as provided in article ten of this chapter.

§11-14B-5. Scope of agreement.

An international fuel tax agreement may provide for:

(a) Determining the base jurisdiction of motor carriers;

(b) Making and retaining of records by motor carriers;

(c) Auditing the books and records of motor carriers and auditing procedures;

(d) Exchanging information for purposes of motor fuel use tax administration and collection;

(e) Determining persons eligible for a motor carrier tax license or registration;

(f) Defining qualified motor carriers;

(g) Determining if or when bonding is required;

(h) Specify reporting requirements and periods;

(i) Specifying uniform penalty and interest rates for late reporting and payment of motor fuel use taxes;

(j) Determining methods for collecting and forwarding of motor fuel use taxes and penalties to another jurisdiction; and

(k) Any other provision which the parties to the agreement believe will facilitate administration of the agreement and collection of motor fuel use taxes from interstate motor carriers.
§11-14B-6. Effect of international fuel tax agreement on the administration or application of motor fuel use taxes imposed by this state.

(a) Even though the state of West Virginia is a member of the international fuel tax agreement, the state of West Virginia retains substantive authority to determine when the motor fuel use taxes imposed by this state apply, the applicable rate of tax, the applicable interest rate, and any other substantive tax issues related to the administration or application of those taxes.

(b) The provisions of article fourteen-a of this chapter shall apply to every licensee that is subject to the provisions of this article: Provided, That, The amount of international fuel tax agreement taxes reported as due and owing by a motor carrier based in this state shall for purposes of articles nine and ten of this chapter be treated as taxes due and owing to the state of West Virginia: and,

(c) Every motor carrier that is not a licensee, every motor carrier based in another state which is not a member of the international fuel tax agreement and every West Virginia intrastate motor carrier shall continue to be subject to the provisions of article fourteen-a of this chapter, and any subsequent amendments thereto.

§11-14B-10. Audits.

(a) The international fuel tax agreement provides that each base jurisdiction audit the records of motor carriers based in that jurisdiction to determine if the motor fuel taxes due all other base jurisdictions are properly reported and paid. When a base jurisdiction performs a motor fuel use tax audit on an interstate motor carrier based in that jurisdiction, it shall forward the findings of the audit to each base jurisdiction in which the interstate motor carrier has taxable use of motor fuels.
(b) The tax commissioner is authorized to participate in auditing motor carriers in other base jurisdictions to determine if the motor fuel taxes due this state are properly reported and paid: Provided, That any other base jurisdiction may participate with the tax commissioner in auditing motor carriers based in this state to determine if motor fuel taxes due that base jurisdiction are properly reported and paid.

c) No international fuel tax agreement entered into under this article may preclude the tax commissioner from auditing the records of any person covered by the provisions of this article.


(a) All of the provisions of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter, including amendments thereto, apply to motor fuel taxes collected under an international fuel tax agreement.

(b) In the event of any inconsistency between the provisions of article ten of this chapter and the terms of the international fuel tax agreement, the terms of said article ten control.

CHAPTER 245

(Com. Sub. for S. B. 420 — By Senator Bowman)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
§11-14C-37 and §11-14C-47 of the code of West Virginia, 1931, as amended, all relating generally to motor fuels excise tax; requiring tax on unaccounted-for motor fuel losses be calculated using invoiced gallons; changing aircraft fuel to aviation fuel to be consistent with definitions; repealing five hundred gallon-minimum purchase by government entities to qualify for exemption; clarifying bond requirements; specifying election by supplier for motor fuel exported to another state; requiring that all reports and returns, except those filed by terminal operators, specify invoiced gallons; requiring all reports and returns filed by terminal operators specify gross and net gallons; requiring use of machine-generated shipping documents and authorizing commissioner to allow use of manually prepared shipping documents; requiring use of diversion procedure if destination state changes prior to transport leaving rack; correcting reference to section requiring return information; authorizing refunds for motor fuel used for agricultural purposes and clarifying time for claiming refunds; correcting reference authorizing inspections; and establishing a revolving fund for general administration of taxes.

Be it enacted by the Legislature of West Virginia:

That §11-14C-6, §11-14C-7, §11-14C-9, §11-14C-13, §11-14C-20, §11-14C-22, §11-14C-24, §11-14C-25, §11-14C-26, §11-14C-29, §11-14C-30, §11-14C-31, §11-14C-34, §11-14C-37 and §11-14C-47 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUELS EXCISE TAX.

§11-14C-6. Point of imposition of motor fuels tax.
§11-14C-7. Tax on unaccounted-for motor fuel losses; liability.
§11-14C-9. Exemptions from tax; claiming refunds of tax.
§11-14C-13. Bond requirements.
§11-14C-20. Remittance of tax to supplier or permissive supplier.
§11-14C-22. Information required on return filed by supplier or permissive supplier.
§11-14C-24. Duties of supplier or permissive supplier as trustee.
§11-14C-25. Returns and discounts of importers.
§11-14C-26. Informational returns of terminal operators.
§11-14C-29. Identifying information required on return.
§11-14C-30. Refund of taxes erroneously collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.
§11-14C-31. Claiming refunds.
§11-14C-34. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank car or transport truck; civil penalty.
§11-14C-37. Refusal to allow inspection or taking of fuel sample; civil penalty.
§11-14C-47. Disposition of tax collected.

§11-14C-6. Point of imposition of motor fuels tax.

(a) The tax levied pursuant to section five of this article is imposed at the time motor fuel is imported into this state, other than by a bulk transfer, is measured by invoiced gallons received outside this state at a refinery, terminal or bulk plant for delivery to a destination in this state and is payable by the person importing the motor fuel unless otherwise specified in this section.

(b) Except as provided in subsection (a) of this section, the tax levied pursuant to section five of this article is measured by invoiced gallons of motor fuel removed, other than by a bulk transfer:

(1) From the bulk transfer/terminal system within this state;

(2) From the bulk transfer/terminal system outside this state for delivery to a location in this state as represented on the shipping papers: Provided, That the supplier imports the motor fuel for the account of the supplier; and

(3) Upon sale or transfer in a terminal or refinery in this state to any person not holding a supplier’s license and payable by the person selling or transferring the motor fuel.

(c) The tax levied pursuant to section five of this article upon motor fuel removed from a refinery or terminal in this
state shall be collected by the supplier, as shown in the records
of the terminal operator, acting as trustee, from the person
removing the motor fuel from the facility.

(d) The tax levied pursuant to section five of this article
shall not apply to motor fuel imported into this state in the
motor fuel supply tank or tanks of a motor vehicle: Provided,
That the person owning or operating as a motor carrier is not
relieved of any taxes imposed by article fourteen-a of this
chapter.

(e) The tax imposed pursuant to section five of this article
at the point that blended motor fuel is made in West Virginia
outside the bulk transfer/terminal system is payable by the
blender. The number of gallons of blended motor fuel on
which the tax is payable is the difference, if any, between the
number of invoiced gallons of blended motor fuel made and
the number of invoiced gallons of previously taxed motor fuel
used to make the blended motor fuel.

(f) The terminal operator of a terminal in this state is jointly
and severally liable with the supplier for the tax levied pursuant
to section five of this article and shall remit payment to this
state at the same time and on the same basis as a supplier under
section twenty-two of this article upon:

(1) The removal of motor fuel from the terminal on account
of any supplier who is not licensed in this state: Provided, That
the terminal operator is relieved of liability if the terminal
operator establishes all of the following:

(A) The terminal operator has a valid terminal operator’s
license issued for the facility from which the motor fuel is
withdrawn;

(B) The terminal operator has a copy of a valid license
from the supplier as required by the commissioner; and
(C) The terminal operator has no reason to believe that any information is false; or

(2) The removal of motor fuel that is not dyed and marked in accordance with internal revenue service requirements, if the terminal operator provides any person with any bill of lading, shipping paper or similar document indicating that the motor fuel is dyed and marked in accordance with the internal revenue service requirements.

§11-14C-7. Tax on unaccounted-for motor fuel losses; liability.

(a) There is hereby annually levied a tax at the rate specified by section five of this article on taxable unaccounted-for motor fuel losses at a terminal in this state. “Taxable unaccounted-for motor fuel losses” means the number of gallons of unaccounted-for motor fuel losses that exceed one half of one percent of the number of invoiced gallons removed from the terminal during the year by a bulk transfer or at the terminal rack. “Unaccounted-for motor fuel losses” means the difference between: (1) The amount of motor fuel in inventory at the terminal at the beginning of the year plus the amount of motor fuel received by the terminal during the year; and (2) the amount of motor fuel in inventory at the terminal at the end of the year plus the amount of motor fuel removed from the terminal during the year. Accounted-for motor fuel losses which have been approved by the commissioner or motor fuel losses constituting part of a transmix shall not constitute unaccounted-for motor fuel losses.

(b) The terminal operator whose motor fuel is unaccounted for is liable for the tax levied by this section. Motor fuel received by a terminal operator and not shown on an informational return filed by the terminal operator with the commissioner as having been removed from the terminal is presumed to be unaccounted-for motor fuel losses. A terminal operator
may rebut this presumption by establishing that motor fuel received at a terminal, but not shown on an informational return as having been removed from the terminal, was an accounted-for loss or constitutes part of a transmix.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

(a) Per se exemptions for flat rate. — Sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate shall not be paid at the rack:

(1) All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation: Provided, however, That this exemption shall not apply to any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aviation fuel;

(3) All sales of dyed special fuel; and

(4) Sales of propane.

(b) Per se exemptions for variable component. — Sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component shall not be paid at the rack:

All motor fuel exported from this state to any other state or nation: Provided, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation: Provided, however, That this exemption shall not apply to any motor fuel
which is transported and delivered outside this state in the
motor fuel supply tank of a highway vehicle.

(c) Refundable exemptions for flat rate. — Any person
having a right or claim to any of the following exemptions to
the flat rate of the tax levied by section five of this article that
is set forth in this subsection shall first pay the tax levied by
this article and then apply to the tax commissioner for a refund:

(1) The United States or any agency thereof;

(2) Any county government or unit or agency thereof;

(3) Any municipal government or any agency thereof;

(4) Any county boards of education;

(5) Any urban mass transportation authority created
pursuant to the provisions of article twenty-seven, chapter eight
of this code;

(6) Any municipal, county, state or federal civil defense or
emergency service program pursuant to a government contract
for use in conjunction therewith, or to any person on whom is
imposed a requirement to maintain an inventory of motor fuel
for the purpose of the program: Provided, That motor fueling
facilities used for these purposes are not capable of fueling
motor vehicles and the person in charge of the program has in
his or her possession a letter of authority from the tax commis-
sioner certifying his or her right to the exemption: Provided,
however, That in order for this exemption to apply, motor fuel
sold under this subdivision and subdivisions (1) through (5),
inclusive, of this subsection shall be used in vehicles or
equipment owned and operated by the respective government
entity or government agency or authority;
(7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund or the exporter has reported to the destination state or nation that the motor fuel was sold in a transaction not subject to tax in that state or nation: Provided, however, That a refund shall not be granted on any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;

(9) All gallons of special fuel used for heating any public or private dwelling, building or other premises;

(10) All gallons of special fuel used for boilers;

(11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial solvent;

(12) All gallons of motor fuel used as lubricants, ingredients or components of any manufactured product or compound;

(13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;

(14) All gallons of special fuel sold for use or consumed in railroad diesel locomotives;

(15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use as a motor fuel for internal combustion engines not operated upon highways of this state;

(16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and used to power a power take-
off unit on a motor vehicle. When a motor vehicle with auxiliary equipment uses motor fuel and there is no auxiliary motor for the equipment or separate tank for a motor, the person claiming the refund may present to the tax commissioner a statement of his or her claim and is allowed a refund for motor fuel used in operating a power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent of the tax levied by this article paid on all motor fuel used in such a truck;

(17) Motor fuel used by any person regularly operating any vehicle under a certificate of public convenience and necessity or under a contract carrier permit for transportation of persons when purchased in an amount of twenty-five gallons or more: 
Provided, That the amount refunded is equal to six cents per gallon: Provided, however, That the gallons of motor fuel shall have been consumed in the operation of urban and suburban bus lines and the majority of passengers use the bus for traveling a distance not exceeding forty miles, measured one way, on the same day between their places of abode and their places of work, shopping areas or schools; and

(18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through (6), inclusive, of this subsection and that are purchased and used by any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located.

(d) Refundable exemptions for variable rate. — Any of the following persons may claim an exemption to the variable rate of the tax levied by section five of this article on the purchase and use of motor fuel by first paying the tax levied by this article and then applying to the tax commissioner for a refund.
(1) The United States or any agency thereof;

(2) This state and its institutions;

(3) Any county government or unit or agency thereof;

(4) Any municipal government or any agency thereof;

(5) Any county boards of education;

(6) Any urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(7) Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of the program: Provided, That fueling facilities used for these purposes are not capable of fueling motor vehicles and the person in charge of the program has in his or her possession a letter of authority from the tax commissioner certifying his or her right to the exemption;

(8) Any bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service that has been certified by the municipality or county wherein the bona fide volunteer fire department, nonprofit ambulance service or emergency rescue service is located; or

(9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently exported from this state to any other state or nation: Provided, That the exporter has paid the applicable motor fuel tax to the destination state or nation prior to claiming this refund: Provided, however, That a refund shall not be granted on any motor fuel which is transported and
delivered outside this state in the motor fuel supply tank of a highway vehicle.

(e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this chapter that exempts as a sale for resale those sales of gasoline and special fuel by a distributor or importer to another distributor shall not apply to sales of motor fuel under this article.

§11-14C-13. Bond requirements.

(a) There shall be filed with an application for a license required by section eleven of this article either a cash bond or a continuous surety bond in the amount or amounts specified in this section: Provided, That if a person has filed applications for licenses for more than one activity, the commissioner may combine the amount of the cash bond or continuous surety bond required for each licensed activity into one amount that shall be no less than the largest amount required for any of those activities for which the license applications are filed: Provided, however, That if a continuous surety bond is filed, an annual notice of renewal shall be filed thereafter: Provided further, That if the continuous surety bond includes the requirements that the commissioner is to be notified of cancellation at least sixty days prior to the continuous surety bond being canceled, an annual notice of renewal is not required. The bond, whether a cash bond or a continuous surety bond, shall be conditioned upon compliance with the requirements of this article, be payable to this state, and be in the form required by the commissioner. The amount of the bond is as follows:

(1) For a supplier license, the amount shall be a minimum of one hundred thousand dollars or an amount equal to three months’ tax liability, whichever is greater: Provided, That the amount shall not exceed two million dollars: Provided, however, That when required by the commissioner to file a
cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(2) For a permissive supplier license, the amount shall be a minimum of one hundred thousand dollars or an amount equal to three months’ tax liability, whichever is greater: Provided, That the amount shall not exceed two million dollars: Provided, however, That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(3) For a terminal operator license, the amount shall be a minimum of one hundred thousand dollars or an amount equal to three months’ tax liability, whichever is greater: Provided, That the amount shall not exceed two million dollars: Provided, however, That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(4) For an importer license for a person, other than a supplier, that imports by transport vehicle or another means of transfer outside the bulk transfer/terminal system motor fuel removed from a terminal located in another state in which: (A) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state’s rate or the rate of the destination state; and (B) the seller of the motor fuel is not a permissive supplier, the amount shall be a minimum of one hundred thousand dollars or an amount equal to three months’ tax liability, whichever is greater: Provided, That the amount shall not exceed two million dollars: Provided, however, That when required by the commissioner to file a cash bond or a
58 continuous surety bond in an additional amount, the licensee
59 shall comply with the commissioner’s notification within thirty
days after receiving that notification;

61 (5) For an importer license for a person that imports by
transport vehicle or another means outside the bulk trans-
fer/terminal system motor fuel removed from a terminal located
in another state in which: (A) The state from which the motor
fuel is imported requires the seller of the motor fuel to collect
a motor fuel excise tax on the removal either at that state’s rate
or the rate of the destination state; or (B) the seller of the motor
fuel is a permissive supplier, the amount shall be a minimum
of two thousand dollars or an amount equal to three months’
tax liability, whichever is greater: Provided, That the amount
shall not exceed three hundred thousand dollars: Provided,
however, That when required by the commissioner to file a
cash bond or a continuous surety bond in an additional amount,
the licensee shall comply with the commissioner’s notification
within thirty days after receiving that notification;

76 (6) For a license as both a distributor and an importer as
described in subdivision (4) of this subsection, the amount
shall be a minimum of one hundred thousand dollars or an
amount equal to three months’ tax liability, whichever is
greater: Provided, That the amount shall not exceed two
million dollars: Provided, however, That when required by the
commissioner to file a cash bond or a continuous surety bond
in an additional amount, the licensee shall comply with the
commissioner’s notification within thirty days after receiving
that notification;

86 (7) For a license as both a distributor and an importer as
described in subdivision (5) of this subsection, the amount
shall be a minimum of two thousand dollars or an amount
equal to three months’ tax liability, whichever is greater:
Provided, That the amount shall not exceed three hundred
thousand dollars: *Provided, however,* That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(8) For an exporter license, the amount shall be a minimum of two thousand dollars or an amount equal to three months’ tax liability, whichever is greater: *Provided,* That the amount shall not exceed three hundred thousand dollars: *Provided, however,* That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(9) For a blender license, the amount shall be a minimum of two thousand dollars or an amount equal to three months’ tax liability, whichever is greater: *Provided,* That the amount shall not exceed three hundred thousand dollars: *Provided, however,* That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(10) For a distributor license, the amount shall be a minimum of two thousand dollars or an amount equal to three months’ tax liability, whichever is greater: *Provided,* That the amount shall not exceed three hundred thousand dollars: *Provided, however,* That when required by the commissioner to file a cash bond or a continuous surety bond in an additional amount, the licensee shall comply with the commissioner’s notification within thirty days after receiving that notification;

(11) For a motor fuel transporter license, there shall be no bond; and
(12) An applicant for a licensed activity listed under subdivisions (1) through (10), inclusive, of this subsection may in lieu of posting either the cash bond or continuous surety bond required by this subsection provide proof of financial responsibility acceptable to the commissioner: Provided, That the proof of financial responsibility shall demonstrate the absence of circumstances indicating risk with the collection of taxes from the applicant: Provided, however, That the following shall constitute proof of financial responsibility:

(A) Proof of five million dollars' net worth shall constitute evidence of financial responsibility in lieu of posting the required bond;

(B) Proof of two million five hundred thousand dollars’ net worth constitutes financial responsibility in lieu of posting fifty percent of the required bond; and

(C) Proof of one million two hundred fifty thousand dollars’ net worth constitutes financial responsibility in lieu of posting twenty-five percent of the required bond. Net worth is calculated on a business, not individual basis.

(13) In lieu of providing either cash bond, a continuance surety bond or proof of financial responsibility acceptable to the commissioner, an applicant for a licensed activity listed under this subsection that has established with the state tax division a good filing record that is accurate, complete and timely for the preceding eighteen months shall be granted a waiver of the requirement to file either a cash bond or continuance surety bond: Provided, That when a licensee that has been granted a waiver of the requirement to file a bond violates a provision of this article, the licensee shall file the applicable bond as stated in this subsection.

(14) Any licensee who disagrees with the commissioner's decision requiring new or additional security may seek a
hearing by filing a petition with the office of tax appeals in accordance with the provisions of section nine, article ten-a of this chapter: Provided, That the hearing shall be provided within thirty days after receipt by the office of tax appeals of the petition for the hearing.

(b) The surety must be authorized under article nineteen, chapter thirty-three of this code to engage in business of transacting surety insurance within this state. The cash bond and the continuous surety bond are conditioned upon faithful compliance with the provisions of this article, including the filing of the returns and payment of all tax prescribed by this article. The cash bond and the continuous surety bond shall be approved by the commissioner as to sufficiency and form and shall indemnify the state against any loss arising from the failure of the taxpayer to pay for any cause whatever the motor fuel excise tax levied by this article.

(c) Any surety on a continuous surety bond furnished hereunder shall be relieved, released and discharged from all liability accruing on the bond after the expiration of sixty days from the date the surety shall have lodged, by certified mail, with the commissioner a written request to be discharged. Discharge from the continuous surety bond shall not relieve, release or discharge the surety from liability already accrued or which shall accrue before the expiration of the sixty-day period. Whenever any surety seeks discharge as herein provided, it is the duty of the principal of the bond to supply the commissioner with another continuous surety bond or a cash bond prior to the expiration of the original bond. Failure to provide a new continuous surety bond or a cash bond shall result in the commissioner canceling each license and registration previously issued to the person.

(d) Any taxpayer that has furnished a cash bond hereunder shall be relieved, released and discharged from all liability
accruing on the cash bond after the expiration of sixty days from the date the taxpayer shall have lodged, by certified mail, with the commissioner a written request to be discharged and the amount of the cash bond refunded: Provided, That the commissioner may retain all or part of the cash bond until such time as the commissioner may perform an audit of the taxpayer's business or three years, whichever first occurs. Provided, That the commissioner may retain all or part of the cash bond until such time as the commissioner may perform an audit of the taxpayer's business or three years, whichever first occurs. Discharge from the cash bond shall not relieve, release or discharge the taxpayer from liability already accrued or which shall accrue before the expiration of the sixty-day period. Whenever any taxpayer seeks discharge as herein provided, it is the duty of the taxpayer to provide the commissioner with another cash bond or a continuous surety bond prior to the expiration of the original cash bond. Failure to provide either a new cash bond or a continuous surety bond shall result in the commissioner canceling each license and registration previously issued to the taxpayer.

§11-14C-20. Remittance of tax to supplier or permissive supplier.

(a) Each licensed distributor and licensed importer shall remit to the supplier or permissive supplier, as applicable, of the motor fuel the tax levied by section five of this article and due on motor fuel removed at a terminal rack: Provided, That at the election of a licensed distributor or licensed importer, the supplier or permissive supplier shall not require the licensed distributor or licensed importer to pay tax levied by section five of this article until two days before the date the supplier or permissive supplier is required to pay the tax to this state: Provided, however, That an election under this subsection is subject to the condition that remittances by the licensed distributor or licensed importer of all tax due to the supplier or permissive supplier shall be paid by electronic funds transfer two days before the date of the remittance by the supplier or permissive supplier to the commissioner. An election under
this subsection may be terminated by the supplier or permissive supplier if the licensed distributor or licensed importer does not make timely payments to the supplier or permissive supplier as required by this subsection.

(b) A licensed exporter shall remit tax due on motor fuel removed at a terminal rack to the supplier of the motor fuel. The date by which an exporter shall remit tax is governed by the law of the destination state of the exported motor fuel: Provided, That if the laws of the destination state prohibit the collection of the destination state’s tax, the supplier may elect to either collect the tax levied by section five of this article or, in lieu thereof, take from the exporter documentation sufficient to establish: (i) That the motor fuel was immediately exported to another state and the name of that state; (ii) that the entire amount of motor fuel exported was reported to the destination state and the tax imposed on the motor fuel by the destination state was paid by the exporter; (iii) the name and address of the person to which the motor fuel was sold and the quantity of motor fuel sold to that person; and (iv) that the exporter shall pay the tax levied by section five of this article if the foregoing documentation is not provided: Provided, however, That until such time as either the tax imposed by this state is paid, the tax imposed by the destination state is paid or the motor fuel is sold in a transaction not subject to tax in the destination state, both the supplier and the exporter shall be jointly liable for the tax levied by section five of this article.

(c) All tax payments received by a supplier or permissive supplier shall be held in trust by the supplier or permissive supplier until the supplier or permissive supplier remits the tax payment to this state or to another state and the supplier or permissive supplier shall constitute the trustee for the tax payments.
(d) The license of a licensed distributor, exporter or importer who fails to pay the full amount of tax required by this article is subject to cancellation.

§11-14C-22. Information required on return filed by supplier or permissive supplier.

The return of each supplier and permissive supplier shall list all of the following information and any other information required by the commissioner:

(a) The number of invoiced gallons of tax-paid motor fuel received by the supplier or permissive supplier during the month, sorted by type of motor fuel, seller, point of origin, destination state and carrier or motor fuel transporter;

(b) The number of invoiced gallons of motor fuel removed at a terminal rack during the month from the account of the supplier, sorted by type of motor fuel, person receiving the motor fuel, terminal code and carrier or motor fuel transporter;

(c) The number of invoiced gallons of motor fuel removed during the month for export, sorted by type of motor fuel, person receiving the motor fuel, terminal code, destination state and carrier or motor fuel transporter; and

(d) The number of invoiced gallons of motor fuel removed during the month from a terminal located in another state for conveyance to West Virginia, as indicated on the shipping document for the motor fuel, sorted by type of motor fuel, person receiving the motor fuel, terminal code and carrier or motor fuel transporter.

§11-14C-24. Duties of supplier or permissive supplier as trustee.

(a) All tax payments due to this state that are received by a supplier or permissive supplier shall be held by the supplier
or permissive supplier as trustee in trust for this state and the supplier or permissive supplier has a fiduciary duty to remit to the commissioner the amount of tax received. A supplier or permissive supplier is liable for the taxes paid to it.

(b) A supplier or permissive supplier shall notify a licensed distributor, licensed exporter or licensed importer who received motor fuel from the supplier or permissive supplier during a reporting period of the number of invoiced gallons received. The supplier or permissive supplier shall give this notice after the end of each reporting period and before the licensee is required to remit the amount of tax due on the motor fuel.

(c) A supplier or permissive supplier of motor fuel at a terminal shall notify the commissioner within the time period established by the commissioner of any licensed distributors, licensed exporters or licensed importers who did not pay the tax due when the supplier or permissive supplier filed its return. The notice shall be transmitted to the commissioner in the form required by the commissioner.

(d) A supplier or permissive supplier who receives a payment of tax shall not apply the payment of tax to a debt that the person making the payment owes for motor fuel purchased from the supplier or permissive supplier.

§11-14C-25. Returns and discounts of importers.

(a) The monthly return of an importer shall contain the following information for the period covered by the return and any other information required by the commissioner:

(1) The number of invoiced gallons of imported motor fuel acquired from a supplier or permissive supplier who collected the tax due this state on the motor fuel;
(2) The number of invoiced gallons of imported motor fuel acquired from a person who did not collect the tax due this state on the motor fuel, listed by type of motor fuel, source state, person and terminal;

(3) The number of invoiced gallons of imported motor fuel acquired from a bulk plant outside this state, listed by bulk plant name, address and type of motor fuel; and

(4) The import confirmation number, as may be required under section thirty-five of this article, of each import that is reported under subdivision (2) or (3) of this subsection, as applicable, and was removed from a terminal or bulk plant.

(b) An importer that imports by transport vehicle or another means of transfer outside the terminal transfer system motor fuel removed from a terminal located in another state in which: (1) The state from which the motor fuel is imported does not require the seller of the motor fuel to collect a motor fuel excise tax on the removal either at that state’s rate or the rate of the destination state; and (2) the seller of the motor fuel is not a licensed supplier or permissive supplier, who timely files a return with the payment due, may deduct, from the amount of tax payable with the return, an administrative discount of one tenth of one percent of the amount of tax payable by the importer to this state not to exceed five thousand dollars per month.

§11-14C-26. Informational returns of terminal operators.

(a) A terminal operator shall file with the commissioner a monthly information return showing the amount of motor fuel received and removed from the terminal during the month. The return is due by the last day of the month following the month covered by the return. The return shall contain the following information and any other information required by the commissioner:
(1) The beginning and ending inventory which pertains to the applicable reporting month;

(2) The number of gross and net gallons of motor fuel received in inventory at the terminal during the month and each position holder for the motor fuel;

(3) The number of gross and net gallons of motor fuel removed from inventory at the terminal during the month and, for each removal, the position holder for the motor fuel and the destination state of the motor fuel; and

(4) The number of gross and net gallons of motor fuel gained or lost at the terminal during the month.

(b) The tax commissioner may accept the federal ExSTARS terminal operator report provided to the internal revenue service in lieu of the required state terminal operator report.

§11-14C-29. Identifying information required on return.

When a transaction with a person licensed under this article is required to be reported on a return, the return must state the licensee’s name, address and, if available, license number and telephone number as stated on the lists compiled by the commissioner under section eighteen of this article.

§11-14C-30. Refund of taxes erroneously collected, etc.; refund for gallonage exported or lost through casualty or evaporation; change of rate; petition for refund.

(a) The commissioner is hereby authorized to refund from the funds collected under the provisions of this article any tax, interest, additions to tax or penalties which have been erroneously collected from any person.
(b) Any supplier, distributor, producer, retail dealer, exporter or importer, while the owner of motor fuel in this state, that loses any invoiced gallons of motor fuel through fire, lightning, breakage, flood or other casualty, which gallons having been previously included in the tax by or for that person, may claim a refund of a sum equal to the amount of the flat rate of the tax levied by section five of this article paid upon the invoiced gallons lost.

(c) Any dealer as defined in section two, article eleven-c, chapter forty-seven of the code, and any bulk plant in this state that purchases or receives motor fuel in this state upon which the tax levied by section five of this article has been paid, is entitled to an annual refund of the flat rate of the tax levied by section five of this article for invoiced gallons lost through evaporation: Provided, That only the owner of the bulk plant that is also the owner of the fuel in the bulk plant may claim this refund for invoiced gallons lost through evaporation. The refund is computed at the flat rate of tax levied per gallon under this article on all invoiced gallons of motor fuel actually lost due to evaporation, not exceeding one half of one percent of the adjusted total accountable gallons, computed as determined by the commissioner.

(d) Every supplier, distributor or producer, retail dealer, exporter or importer is entitled to a refund of the flat rate of the tax levied by section five of this article from this state of the amount resulting from a change of rate decreasing the tax under the provisions of this article on motor fuel on hand and in inventory on the effective date of the rate change, which motor fuel has been included in any previous computation by which the tax levied by this article has been paid.

§11-14C-31. Claiming refunds.
(a) Any person seeking a refund pursuant to subsection (c), section nine of this article shall present to the commissioner a petition accompanied by the original or duplicate original sales slip or invoice from the distributor or producer or retail dealer, as the case may be, showing the amount of the purchases, together with evidence of payment thereof, and a statement stating how the motor fuel was used: Provided, That sales slips or invoices marked "duplicate" are not acceptable: Provided, however, That certified copies of sales slips or invoices are acceptable: Provided further, That copies of sales slips and invoices may be used with any application for refund made under authority of subdivision (15), subsection (c), section nine of this article when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes.

(b) Any person claiming a refund pursuant to section thirty of this article shall file a petition in writing with the commissioner. The petition shall be in the form and with supporting records as required by the commissioner and made under the penalty of perjury.

(c) The right to receive any refund under the provisions of this section is not assignable and any assignment thereof is void and of no effect. No payment of any refund may be made to any person other than the original person entitled. The commissioner shall cause a refund to be made under the authority of this section only when the claim for refund is filed with the commissioner within the following time periods:

(1) A petition for refund under section thirty of this article, other than for evaporation loss, shall be filed with the commissioner within three years from the end of the month in which the tax was erroneously or illegally paid or the gallons were
exported or lost by casualty or in which a change of rate took effect;

(2) A petition for refund under section thirty of this article for evaporation loss shall be filed within three years from the end of the year in which the evaporation occurred;

(3) A petition for refund under subsection (c), section nine of this article shall be filed with the commissioner within six months from the month of purchase or delivery of the motor fuel: Provided, That any application for refund made under authority of subdivision (15), of said subsection when the motor fuel is used to operate tractors and gas engines or threshing machines for agricultural purposes shall be filed within twelve months from the month of purchase or delivery of the motor fuel: Provided, however, That all persons authorized to claim a refundable exemption under the authority of subdivisions (1) through (6), inclusive, subsection (c), section nine of this article and subdivisions (1) through (6), inclusive, subsection (d) of said section shall do so no later than the thirty-first day of August for the purchases of motor fuel made during the preceding fiscal year ending the thirtieth day of June.

(d) Any petition for a refund not timely filed is not construed to be or constitute a moral obligation of the state of West Virginia for payment. Every petition for refund is subject to the provisions of section fourteen, article ten of this chapter.

(e) The commissioner may make any investigation considered necessary before refunding to a person the tax levied by section five of this article. The commissioner may also subject to audit the records related to a refund of the tax levied by section five of this article.

§11-14C-34. Shipping documents; transportation of motor fuel by barge, watercraft, railroad tank car or transport truck; civil penalty.
(a) A person shall not transport in this state any motor fuel by barge, watercraft, railroad tank car or transport vehicle unless the person has a machine-generated shipping document, including applicable multiple copies thereof, for the motor fuel that complies with this section: Provided, That in the event a terminal operator or operator of a bulk plant does not have installed on the first day of January, two thousand four, an automated machine that will print machine-generated shipping documents, the commissioner may authorize the terminal operator or operator of a bulk plant to issue manually prepared shipping documents: Provided, however, That in the event of an extraordinary unforeseen circumstance, including an act of God, that temporarily interferes with the ability to issue an automated machine-generated shipping document, a manually prepared shipping document that contains all of the information required by subsection (b) of this section shall be substituted for the machine-generated shipping document. A terminal operator or operator of a bulk plant shall give a shipping document to the person who operates the barge, watercraft, railroad tank car or transport vehicle into which motor fuel is loaded at the terminal rack or bulk plant rack.

(b) The shipping document issued by the terminal operator or operator of a bulk plant shall contain the following information and any other information required by the commissioner:

1. Identification, including address, of the terminal or bulk plant from which the motor fuel was received;
2. Date the motor fuel was loaded;
3. Invoiced gallons loaded;
4. Destination state of the motor fuel as represented by the purchaser of the motor fuel or the purchaser's agent;
(5) In the case of aviation jet fuel, the shipping document shall be marked with the phrase “Aviation Jet Fuel, Not for On-road Use” or a similar phrase;

(6) In the case of dyed diesel fuel, the shipping document shall be marked with the phrase “Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use” or a similar phrase; and

(7) If the document is issued by a terminal operator, the invoiced gallons loaded and a statement indicating the name of the supplier that is responsible for the tax due on the motor fuel.

(c) A terminal operator or bulk plant operator may rely on the representation made by the purchaser of motor fuel or the purchaser’s agent concerning the destination state of the motor fuel. In the event that either the terminal operator, bulk plant operator, purchaser or transporter determines prior to the shipment of motor fuel leaving the terminal or bulk plant that the destination state indicated on the shipping document is incorrect, the diversion procedure provided in subdivision (3), subsection (d) of this section shall be used to obtain authorization to deliver the motor fuel to a different state. A purchaser is liable for any tax due as a result of the purchaser’s diversion of motor fuel from the represented destination state.

(d) A person to whom a shipping document was issued shall:

(1) Carry the shipping document in the means of conveyance for which it was issued when transporting the motor fuel described;

(2) Show the shipping document upon request to any law-enforcement officer, representative of the commissioner and
any other authorized individual when transporting the motor
fuel described;

(3) Deliver motor fuel to the destination state printed on the
shipping document unless the person:

(A) Notifies the commissioner before transporting the
motor fuel into a state other than the printed destination state
that the person has received instructions after the shipping
document was issued to deliver the motor fuel to a different
destination state;

(B) Receives from the commissioner a confirmation
number authorizing the diversion; and

(C) Writes on the shipping document the change in
destination state and the confirmation number for the diver-
sion; and

(4) Gives a copy of the shipping document to the person to
whom the motor fuel is delivered.

(e) The person to whom motor fuel is delivered by barge,
watercraft, railroad tank car or transport vehicle shall not
accept delivery of the motor fuel if the destination state shown
on the shipping document for the motor fuel is a state other
than West Virginia: Provided, That delivery may be accepted
if the destination state is other than West Virginia if the
document contains a diversion number authorized by the
commissioner. The person to whom the motor fuel is delivered
shall examine the shipping document to determine that West
Virginia is the destination state and shall retain a copy of the
shipping document: (1) At the place of business where the
motor fuel was delivered for ninety days following the date of
delivery; and (2) at the place or another place for at least three
years following the date of delivery. The person who accepts
delivery of motor fuel in violation of this subsection and any person liable for the tax on the motor fuel pursuant to section five of this article is jointly and severally liable for any tax due on the motor fuel.

(f) Any person who transports motor fuel in a barge, watercraft, railroad tank car or transport vehicle without a shipping document or with a false or an incomplete shipping document, or delivers motor fuel to a destination state other than the destination state shown on the shipping document, is subject to the following civil penalty.

(1) If the motor fuel is transported in a barge, watercraft or transport vehicle, the civil penalty shall be payable by the person in whose name the means of conveyance is registered.

(2) If the motor fuel is transported in a railroad tank car, the civil penalty shall be payable by the person responsible for shipping the motor fuel in the railroad tank car.

(3) The amount of the civil penalty for a first violation is five thousand dollars.

(4) The amount of the civil penalty for each subsequent violation is ten thousand dollars.

(5) Civil penalties prescribed under this section are assessed, collected and paid in the same manner as the motor fuel excise tax imposed by this article.

§11-14C-37. Refusal to allow inspection or taking of fuel sample; civil penalty.

(a) Any person who refuses to allow an inspection authorized by section forty-five of this article or to allow the taking of a fuel sample authorized by said section is subject to a civil penalty of five thousand dollars for each refusal. If the refusal
is for a sample to be taken from a vehicle, the person operating
the vehicle and the owner of the vehicle are jointly and
severally liable for payment of the civil penalty. If the refusal
is for a sample to be taken from any other storage tank or
container, the owner of the storage tank or container and the
owner of the motor fuel in the storage tank or container, if
different from the owner of the storage tank or container, are
jointly and severally liable for payment of the civil penalty.

(b) Civil penalties prescribed under this section shall be
assessed, collected and paid in the same manner as the motor
fuel tax.

§11-14C-47. Disposition of tax collected.

(a) There is hereby created and established in the state
treasury a special revolving fund to be known and designated
as the “motor fuel general tax administration fund”. The
commissioner is authorized to retain one half of one percent of
the tax collected pursuant to the provisions of this article:
Provided, That in any fiscal year in which the tax collected
pursuant to the provisions of this article exceed three hundred
million dollars, the commissioner is authorized to retain an
additional one percent of the tax in excess of the three hundred
million dollars that is collected. The amounts retained by the
commissioner under this subsection shall be deposited in the
motor fuel general tax administration fund and may be ex-
pended for the general administration of taxes imposed by this
chapter.

(b) All remaining tax collected under the provisions of this
article after deducting the amount of any refunds lawfully paid
shall be paid into the state road fund and used only for the
purpose of construction, reconstruction, maintenance and repair
of highways, matching of federal moneys available for high-
way purposes and payment of the interest and sinking fund
obligations on state bonds issued for highway purposes.
CHAPTER 246

(H. B. 4349 — By Delegates Doyle, Campbell, Boggs, Stalnaker, Houston, Anderson and G. White)

[Passed February 24, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-15-9 of the code of West Virginia, 1931, as amended; to amend and reenact §11-15B-2, §11-15B-2a, §11-15B-15, 11-15B-30, 11-15B-32 and §11-15B-36 of said code; and to amend said code by adding thereto three new sections, designated §11-15B-14a, §11-15B-19 and §11-15B-20, all relating generally to consumers sales and service tax; clarifying that exemption from tax for durable medical goods, mobility enhancing equipment and prosthetic devices purchased with prescription was not intended to be repealed when house bill 3014 was enacted during the two thousand three regular session of the Legislature; deleting language made obsolete when that bill was enacted; making technical corrections in streamlined sales and use tax administration act; updating certain definitions used in that act; providing sourcing rules and definitions for telecommunications services and retail floral sales based on streamlined sales and use tax agreement; clarifying application of hold harmless rule; deleting obsolete language; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

That §11-15-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15B-2, §11-15B-2a, §11-15B-15, 11-15B-30, 11-15B-32 and §11-15B-36 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §11-15B-14a, §11-15B-19 and §11-15B-20, all to read as follows:
ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.


(a) *Exemptions for which exemption certificate may be issued.*— A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the tax commissioner, and deliver it to the vendor of the property or service in the manner required by the tax commissioner. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia department of education and the arts, the board of trustees of the university system of West Virginia or the board of directors for colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: *Provided,* That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;
(4) Sales of vehicles which are titled by the division of
motor vehicles and which are subject to the tax imposed by
section four, article three, chapter seventeen-a of this code or
like tax;

(5) Sales of property or services to churches which make no
charge whatsoever for the services they render: Provided, That
the exemption granted in this subdivision applies only to
services, equipment, supplies, food for meals and materials
directly used or consumed by these organizations and does not
apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a
corporation or organization which has a current registration
certificate issued under article twelve of this chapter, which is
exempt from federal income taxes under Section 501(c)(3) or
(c)(4) of the Internal Revenue Code of 1986, as amended, and
which is:

(A) A church or a convention or association of churches as
defined in Section 170 of the Internal Revenue Code of 1986,
as amended;

(B) An elementary or secondary school which maintains a
regular faculty and curriculum and has a regularly enrolled
body of pupils or students in attendance at the place in this state
where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives
more than one half of its support from any combination of gifts,
grants, direct or indirect charitable contributions or membership
fees;

(D) An organization which has no paid employees and its
gross income from fundraisers, less reasonable and necessary
expenses incurred to raise the gross income (or the tangible
personal property or services purchased with the net income),
is donated to an organization which is exempt from income

taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue

Code of 1986, as amended;

(E) A youth organization, such as the girl scouts of the
United States of America, the boy scouts of America or the
YMCA Indian guide/princess program and the local affiliates
thereof, which is organized and operated exclusively for
charitable purposes and has as its primary purpose the
nonsectarian character development and citizenship training of
its members;

(F) For purposes of this subsection:

(i) The term “support” includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

(II) Gross receipts from fundraisers which include receipts
from admissions, sales of merchandise, performance of services
or furnishing of facilities in any activity which is not an
unrelated trade or business within the meaning of Section 513
of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether
or not the activities are carried on regularly as a trade or
business;

(IV) Gross investment income as defined in Section 509(e)
of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or
organization either paid to or expended on behalf of the
organization; and

(VI) The value of services or facilities (exclusive of
services or facilities generally furnished to the public without
charge) furnished by a governmental unit referred to in Section
170(c)(1) of the Internal Revenue Code of 1986, as amended,
to an organization without charge. This term does not include
any gain from the sale or other disposition of property which
would be considered as gain from the sale or exchange of a
capital asset or the value of an exemption from any federal,
state or local tax or any similar benefit;

(ii) The term “charitable contribution” means a contribution
or gift to or for the use of a corporation or organization,
described in Section 170(c)(2) of the Internal Revenue Code of
1986, as amended; and

(iii) The term “membership fee” does not include any
amounts paid for tangible personal property or specific services
rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not
apply to sales of gasoline or special fuel or to sales of tangible
personal property or services to be used or consumed in the
generation of unrelated business income as defined in Section
513 of the Internal Revenue Code of 1986, as amended. The
exemption granted in this subdivision applies only to services,
equipment, supplies and materials used or consumed in the
activities for which the organizations qualify as tax-exempt
organizations under the Internal Revenue Code and does not
apply to purchases of gasoline or special fuel;

(7) An isolated transaction in which any taxable service or
any tangible personal property is sold, transferred, offered for
sale or delivered by the owner of the property or by his or her
representative for the owner’s account, the sale, transfer, offer
for sale or delivery not being made in the ordinary course of
repeated and successive transactions of like character by the
owner or on his or her account by the representative: Provided,
That nothing contained in this subdivision may be construed to
prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The tax commissioner may propose a legislative rule for promulgation pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: Provided, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: Provided, however, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: Provided, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: Provided, however, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon
prescription and sales of insulin to consumers for medical purposes. The amendment to this subdivision shall apply to sales made after the thirty-first day of December, two thousand three;

(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any twelve-month period and “limited duration” means no more than eighty-four consecutive hours: Provided, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a twelve-month period for the purposes of this subdivision are considered “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character”;

(15) Sales of property or services to a school which has approval from the board of trustees of the university system of
West Virginia or the board of directors of the state college system to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: Provided, That sales of gasoline and special fuel are taxable;

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state lottery commission, under the provisions of article twenty-two, chapter twenty-nine of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days;

(18) Notwithstanding the provisions of section eighteen or eighteen-b of this article or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the tax commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter twenty-nine-a of this code by the tax commissioner;

(19) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, et seq., as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U. S. C. §1786;

(20) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;
(21) Sales of electronic data processing services and related software: Provided, That, for the purposes of this subdivision, “electronic data processing services” means:

(A) The processing of another’s data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and

(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(22) Tuition charged for attending educational summer camps;

(23) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. “Control” means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(24) Food for the following are exempt:
(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions
and activities of the organization and the revenue obtained from
selling the food is actually used in carrying out those functions
and activities: Provided, That purchases made by the organiza-
tions are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue
squads that are exempt from federal income taxes under Section
501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as
amended, when the purpose of the sale is to obtain revenue for
the functions and activities of the organization and the revenue
obtained is exempt from federal income tax and actually
expended for that purpose;

(25) Sales of food by little leagues, midget football leagues,
youth football or soccer leagues, band boosters or other school
or athletic booster organizations supporting activities for grades
kindergarten through twelve and similar types of organizations,
including scouting groups and church youth groups, if the
purpose in selling the food is to obtain revenue for the functions
and activities of the organization and the revenues obtained
from selling the food is actually used in supporting or carrying
on functions and activities of the groups: Provided, That the
purchases made by the organizations are not exempt as a
purchase for resale;

(26) Charges for room and meals by fraternities and
sororities to their members: Provided, That the purchases made
by a fraternity or sorority are not exempt as a purchase for
resale;

(27) Sales of or charges for the transportation of passengers
in interstate commerce;

(28) Sales of tangible personal property or services to any
person which this state is prohibited from taxing under the laws
of the United States or under the constitution of this state;
(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: Provided, That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the tax commissioner: Provided, That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;

(33) Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of
339 tangible personal property that is permanently affixed or
340 permanently attached as a component part of an aircraft owned
341 or operated by a certificated or licensed carrier of persons or
342 property, or by a governmental entity, as part of the repair,
343 remodeling or maintenance service and sales of machinery,
344 tools or equipment, directly used or consumed exclusively in
345 the repair, remodeling or maintenance of aircraft, aircraft
346 engines or aircraft component parts, for a certificated or
347 licensed carrier of persons or property, or for a governmental
348 entity;
349
350 (34) Charges for memberships or services provided by
351 health and fitness organizations relating to personalized fitness
352 programs;
353
354 (35) Sales of services by individuals who baby-sit for a
355 profit: Provided, That the gross receipts of the individual from
356 the performance of baby-sitting services do not exceed five
357 thousand dollars in a taxable year;
358
359 (36) Sales of services by public libraries or by libraries at
360 academic institutions or by libraries at institutions of higher
361 learning;
362
363 (37) Commissions received by a manufacturer's representa-
364 tive;
365
366 (38) Sales of primary opinion research services when:
367
368 (A) The services are provided to an out-of-state client;
369
370 (B) The results of the service activities, including, but not
371 limited to, reports, lists of focus group recruits and compilation
372 of data are transferred to the client across state lines by mail,
373 wire or other means of interstate commerce, for use by the
374 client outside the state of West Virginia; and
The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term “primary opinion research” means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;

Sales of property or services to persons within the state when those sales are for the purposes of the production of value-added products: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: Provided, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;
(B) Fruits into wine;
(C) Honey into wine;
(D) Wool into fabric;
(E) Raw hides into semifinished or finished leather products;
(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked or frozen product; and

(J) Poultry into a dried, canned, cooked or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed three thousand dollars: Provided, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television
shows or any video or audio taped presentations or the sale or
leasing of video or audio tapes, air shows, or any other public
meeting, display or show other than those specified herein:
Provided, however, That nothing contained herein may be
construed to exempt the sales of tickets from the tax imposed in
this article. The state tax commissioner shall propose a legisla-
tive rule pursuant to article three, chapter twenty-nine-a of this
code establishing definitions and eligibility criteria for asserting
this exemption which is not inconsistent with the provisions set
forth herein: Provided further, That nude dancers or strippers
may not be considered as entertainers for the purposes of this
exemption;

(41) Charges to a member by a membership association or
organization which is exempt from paying federal income taxes
under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
of 1986, as amended, for membership in the association or
organization, including charges to members for newsletters
prepared by the association or organization for distribution
primarily to its members, charges to members for continuing
education seminars, workshops, conventions, lectures or
courses put on or sponsored by the association or organization,
including charges for related course materials prepared by the
association or organization or by the speaker or speakers for use
during the continuing education seminar, workshop, conven-
tion, lecture or course, but not including any separate charge or
separately stated charge for meals, lodging, entertainment or
transportation taxable under this article: Provided, That the
association or organization pays the tax imposed by this article
on its purchases of meals, lodging, entertainment or transporta-
tion taxable under this article for which a separate or separately
stated charge is not made. A membership association or
organization which is exempt from paying federal income taxes
under Section 501(c)(3) or (c)(6) of the Internal Revenue Code
of 1986, as amended, may elect to pay the tax imposed under
this article on the purchases for which a separate charge or
separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the division of natural resources of the magazine currently entitled “Wonderful West Virginia” and by the division of culture and history of the magazine currently entitled “Goldenseal” and the journal currently entitled “West Virginia History”;

(44) Sales of soap to be used at car wash facilities;

(45) Commissions received by a travel agency from an out-of-state vendor;

(46) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia department of environmental protection or the West Virginia bureau for public health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;
(47) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees assessed after the first day of December, one thousand nine hundred ninety-seven, that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) *Refundable exemptions.* — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the tax commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: *Provided,* That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing,
transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: Provided, That sales of gasoline and special fuel are taxable;

(4) Sales and services, fire fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the state of West Virginia: Provided, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION ACT.

§11-15B-2a. Streamlined sales and use tax agreement defined.
§11-15B-14a. Application of general sourcing rules and exclusions from the rules.

(a) General. — When used in this article and articles fifteen and fifteen-a of this chapter, words defined in subsection (b) of this section shall have the meanings ascribed to them in this section, except in those instances where a different meaning is distinctly expressed or the context in which the term is used clearly indicates that a different meaning is intended by the Legislature.

(b) Terms defined. —

(1) “Agent” means a person appointed by a seller to represent the seller before the member states.

(2) “Agreement” means the streamlined sales and use tax agreement, as defined in section two-a of this article.

(3) “Alcoholic beverages” means beverages that are suitable for human consumption and contain one half of one percent or more of alcohol by volume.

(4) “Certified automated system” or “CAS” means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(5) “Certified service provider” or “CSP” means an agent certified under the agreement to perform all of the seller’s sales tax functions.
"Computer" means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

"Computer software" means a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.

"Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

"Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing.

"Dietary supplement" means any product, other than "tobacco", intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) A herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract or combination of any ingredient described in subparagraphs (i) through (v), inclusive, of this subdivision;
(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the “Supplemental Facts” box found on the label as required pursuant to 21 CFR §101.36, or in any successor section of the code of federal regulations.

(11) “Direct mail” means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. “Direct mail” includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. “Direct mail” does not include multiple items of printed material delivered to a single address.

(12) “Drug” means a compound, substance or preparation, and any component of a compound, substance or preparation, other than food and food ingredients, dietary supplements or alcoholic beverages:

(A) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them;

(B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans; or

(C) Intended to affect the structure or any function of the human body.
(13) "Durable medical equipment" means equipment including repair and replacement parts for the equipment, but does not include "mobility-enhancing equipment", which:

(A) Can withstand repeated use;

(B) Is primarily and customarily used to serve a medical purpose;

(C) Generally is not useful to a person in the absence of illness or injury; and

(D) Is not worn in or on the body.

(14) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(15) "Entity-based exemption" means an exemption based on who purchases the product or service or who sells the product or service.

(16) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages or tobacco.

(17) "Includes" and "including" when used in a definition contained in this article is not considered to exclude other things otherwise within the meaning of the term being defined.

(18) "Lease" includes rental, hire and license. "Lease" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.
(A) “Lease” does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer or possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set-up the tangible personal property.

(B) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the uniform commercial code, or other provisions of federal, state or local law.

(19) “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

(20) “Mobility enhancing equipment” means equipment, including repair and replacement parts to the equipment, but does not include “durable medical equipment”, which:

(A) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle;
(B) Is not generally used by persons with normal mobility; and

(C) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(21) "Model I seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(22) "Model II seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(23) "Model III seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a seller includes an affiliated group of sellers using the same proprietary system.

(24) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation or any other legal entity.

(25) "Personal service" includes those:

(A) Compensated by the payment of wages in the ordinary course of employment; and

(B) Rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, manicuring and similar services.
(26) "Prescription" means an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to issue prescriptions.

(27) "Prewritten computer software" means "computer software", including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.

(A) The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software.

(B) "Prewritten computer software" includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. Where a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person’s modifications or enhancements.

(C) "Prewritten computer software" or a prewritten portion thereof that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software: Provided, That where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement does not constitute prewritten computer software.

(28) "Product-based exemption" means an exemption based on the description of the product or service and not based on who purchases the product or service or how the purchaser intends to use the product or service.
(29) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device worn on or in the body, to:

(A) Artificially replace a missing portion of the body;

(B) Prevent or correct physical deformity or malfunction of the body; or

(C) Support a weak or deformed portion of the body.

(30) "Protective equipment" means items for human wear and designed as protection of the wearer against injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.

(31) "Purchase price" means the measure subject to the tax imposed by article fifteen or article fifteen-a of this chapter and has the same meaning as sales price.

(32) "Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

(33) "Registered under this agreement" means registration by a seller with the member states under the central registration system provided in article four of the agreement.

(34) "Retail sale" or "sale at retail" means:

(A) Any sale or lease for any purpose other than for resale as tangible personal property, sublease or subrent; and

(B) Any sale of a service other than a service purchased for resale.

(35)(A) "Sales price" means the measure subject to the tax levied by this article and includes the total amount of consideration, including cash, credit, property and services, for which
personal property or services are sold, leased or rented, valued
in money, whether received in money or otherwise, without any
deduction for the following:

(i) The seller’s cost of the property sold;

(ii) The cost of materials used, labor or service cost,
interest, losses, all costs of transportation to the seller, all taxes
imposed on the seller, and any other expense of the seller;

(iii) Charges by the seller for any services necessary to
complete the sale, other than delivery and installation charges;

(iv) Delivery charges;

(v) Installation charges;

(vi) The value of exempt personal property given to the
purchaser where taxable and exempt personal property have
been bundled together and sold by the seller as a single product
or piece of merchandise; and

(vii) Credit for the fair market value of any trade-in.

(B) “Sales price” does not include:

(i) Discounts, including cash, term, or coupons that are not
reimbursed by a third party that are allowed by a seller and
taken by a purchaser on a sale;

(ii) Interest, financing, and carrying charges from credit
extended on the sale of personal property, goods or services, if
the amount is separately stated on the invoice, bill of sale or
similar document given to the purchaser; and

(iii) Any taxes legally imposed directly on the consumer
that are separately stated on the invoice, bill of sale or similar
document given to the purchaser.
(36) "Sales tax" means the tax levied under article fifteen of this chapter.

(37) "Seller" means any person making sales, leases or rentals of personal property or services.

(38) "Service" or "selected service" includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property, but does not include contracting, personal services, services rendered by an employee to his or her employer, any service rendered for resale, or any service furnished by a business that is subject to the control of the public service commission when the service or the manner in which it is delivered is subject to regulation by the public service commission of this state. The term "service" or "selected service" does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer's, distributor's or other third-party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a "service" or "selected service" rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(39) "State" means any state of the United States and the District of Columbia.

(40) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any manner perceptible to the senses. "Tangible personal property" includes, but is not limited to, electricity, water, gas, and prewritten computer software.
(41) "Tax" includes all taxes levied under articles fifteen and fifteen-a of this chapter, and additions to tax, interest and penalties levied under article ten of this chapter.

(42) "Tax commissioner" means the state tax commissioner or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the tax commissioner, means any officer or employee of the state tax division duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(43) "Taxpayer" means any person liable for the taxes levied by articles fifteen and fifteen-a of this chapter or any additions to tax, interest and penalties imposed by article ten of this chapter.

(44) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(45) "Use tax" means the tax levied under article fifteen-a of this chapter.

(46) "Use-based exemption" means an exemption based on the purchaser's use of the product or service.

(47) "Vendor" means any person furnishing services taxed by article fifteen or fifteen-a of this chapter, or making sales of tangible personal property or custom software. "Vendor" and "seller" are used interchangeably in this article and in article fifteen and fifteen-a of this chapter.

(c) Additional definitions. — Other terms used in this article are defined in articles fifteen and fifteen-a of this chapter, which definitions are incorporated by reference into this article. Additionally, other sections of this article may
§11-15B-2a. Streamlined sales and use tax agreement defined.

As used in this article and articles fifteen and fifteen-a of this chapter, the term “streamlined sales and use tax agreement” or “agreement” means the agreement adopted the twelfth day of November, two thousand two, by states that enacted authority to engage in multistate discussions similar to that provided in section four of this article, except when the context in which the term is used clearly indicates that a different meaning is intended by the Legislature. “Agreement” includes amendments to the agreement adopted by the implementing states in calendar year two thousand three but does not include any substantive changes in the agreement adopted after the thirty-first day of December, two thousand three.

§11-15B-14a. Application of general sourcing rules and exclusions from the rules.

(a) Sellers shall source the sale of a product in accordance with section fifteen of this article. The provisions of said section apply regardless of the characterization of the product as tangible personal property, custom software, or a service. The provisions of said section only apply to determine a seller’s obligation to pay or collect and remit a sales or use tax with respect to the seller’s sale of a product. These provisions do not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdiction of that use.

(b) Section fifteen of this article does not apply to sales or use tax levied on telecommunication services as defined in section twenty of this article. Telecommunication services shall be sourced in accordance with section nineteen of this article.

(a) General rule. – For purposes of articles fifteen and fifteen-a of this chapter, the retail sale, excluding lease or rental, of a product shall be sourced as follows:

(1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser’s designated donee occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(3) When subdivisions (1) and (2) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller’s business when use of this address does not constitute bad faith.

(4) When subdivisions (1), (2) and (3) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser’s payment instrument, if no other address is available, provided use of this address does not constitute bad faith.

(5) When none of the previous subdivisions of this subsection apply, including the circumstance in which the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, or computer software delivered electronically was first available for transmission by the seller, or from which the service was provided: Provided, That any location that merely provided the digital transfer of the product sold is disregarded for these purposes.
(b) Lease or rental. — The lease or rental of tangible personal property or custom software, other than property identified in subsection (c) or (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location may not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(c) Vehicles.— The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment, as defined in subsection (d) of this section, shall be sourced as follows:

(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is indicated by
an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section.

(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(d) Sale or lease or rental of transportation equipment. – The retail sale, including lease or rental, of transportation equipment is sourced the same as a retail sale in accordance with the provisions of subsection (a) of this section, notwithstanding the exclusion of lease or rental in said subsection. “Transportation equipment” means any of the following:

(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.

(2) Trucks and truck-tractors with a gross vehicle weight rating of ten thousand pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.
(3) Aircraft that are operated by air carriers authorized and certificated by the U.S. department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

(4) Containers designed for use on and component parts attached or secured on the items set forth in subdivisions (1) through (3), inclusive, of this subsection.

(e) Exceptions.— Subsections (a) and (b) of this section shall not apply to the following goods or services:

(1) Telecommunications services, as set out in section twenty of this article, shall be sourced in accordance with section nineteen of this article; and

(2) Until the first day of January, two thousand six, a seller who is primarily engaged in the retail sale of cut flowers and flower arrangements taking the original order to sell tangible personal property shall source the sale to the place where order was taken. For purposes of this exception, “primarily” means more than fifty percent of the seller’s total gross sales or receipts are derived from that activity. In determining if a seller is primarily a florist, the total sales price of cut flowers and floral arrangements includes separately stated delivery or service charges. After the thirty-first day of December, two thousand five, sales by florists shall be subject to the general sourcing rules stated in subsection (a) of this section.

(f) Product defined.— As used in subsection (a) of this section, “product” includes tangible personal property, custom software or a service, or any combination thereof.


(a) Except for the defined telecommunication services in subsection (c) of this section, the sale of telecommunication
service sold on a call-by-call basis shall be sourced to: (1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or (2) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(b) Except for the defined telecommunication services in subsection (c) of this section, a sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer’s place of primary use.

(c) The sale of the following telecommunication services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than air-to-ground radiotelephone service and prepaid calling service, is sourced to the customer’s place of primary use, as required by the Mobile Telecommunications Sourcing Act.

(2) A sale of post-paid calling service is sourced to the origination point of the telecommunications signal as first identified by either: The seller’s telecommunications system, or information received by the seller from its service provider, where the system used to transport the signal is not that of the seller.

(3) A sale of prepaid calling service is sourced in accordance with section fifteen of this article: Provided, That in the case of a sale of mobile telecommunication service that is a prepaid telecommunication service, the rule provided in subdivision (5), subsection (a), section fifteen of this article shall include, as an option, the location associated with the mobile telephone number.

(4) A sale of a private communication service is sourced as follows:
(A) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(B) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(C) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(D) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

§11-15B-20. Telecommunication sourcing definitions.

For the purpose of section nineteen of this article, the following definitions apply:

(1) “Air-to-ground radiotelephone service” means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) “Call-by-call basis” means any method of charging for telecommunications services where the price is measured by individual calls.
(3) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(4) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under section nineteen of this article. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(5) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(6) "End user" means the person who utilizes the telecommunication service. In the case of an entity, "end user" means the individual who utilizes the service on behalf of the entity.

(7) "Home service provider" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(8) "Mobile telecommunications service" means the same as that term is defined in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(9) "Place of primary use" means the street address representative where the customer's use of the telecommunication service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services,
“place of primary use” must be within the licensed service area of the home service provider.

(10) “Post-paid calling service” means the telecommunication service obtained by making a payment on a call-by-call basis, either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunication service. A post-paid calling service includes a telecommunication service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(11) “Prepaid calling service” means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(12) “Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

(13) “Service address” means:

(A) The location of the telecommunications equipment to which a customer’s call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;
(B) If the location in paragraph (A) of this subdivision is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller’s telecommunications system or in information received by the seller from its service provider, where the system used to transport the signals is not that of the seller; or

(C) If the location in paragraphs (A) and (B) of this subdivision are not known, then “service address” means the location of the customer’s place of primary use.

§11-15B-30. Monetary allowances for new technological models for sales tax collection; delayed effective date.

(a) Monetary allowance under Model I. —

(1) The tax commissioner shall provide a monetary allowance to a certified service provider in Model I. This allowance shall be in accordance with the terms of the contract between the governing board of the streamlined sales and use tax agreement and the certified service provider. The details of this monetary allowance shall be developed and provided through the contract process. The contract shall provide that the allowance be funded entirely from money collected in Model I.

(2) The contract between the governing board and the certified service provider may base the monetary allowance to a certified service provider on one or more of the following:

(A) A base rate that applies to taxable transactions processed by the certified service provider; or

(B) For a period not to exceed twenty-four months following a voluntary seller’s registration through the agreement’s central registration process, a percentage of tax revenue generated for a member state by the voluntary seller for each
member state for which the seller does not have a requirement
to register to collect the tax.

(b) Monetary allowance for Model II sellers.— The
monetary allowance to sellers under Model II may be based on
the following:

(1) All sellers shall receive a base rate for a period not to
exceed twenty-four months following the commencement of
participation by a seller. The base rate is set by the governing
board of the streamlined sales and use tax agreement after the
base rate has been established for Model I certified service
providers. This allowance is in addition to any vendor or seller
discount afforded by each member state at the time.

(2) Following the conclusion of the twenty-four month
period, a seller will only be entitled to a vendor discount
afforded under each member state’s law at the time the base
rate expires.

(c) Monetary allowance for Model III sellers and all other
sellers that are not under Model I or II.— A monetary allow-
ance to sellers under Model III and to all other sellers registered
under the agreement that are not sellers under Model I or II may
be allowed based on the following:

(1) For a period not to exceed twenty-four months follow-
ing a voluntary seller’s registration through the agreement’s
central registration process, a percentage of tax revenue
generated for a member state by the voluntary seller for each
member state for which the seller does not have a requirement
to register to collect the tax; and

(2) Vendor discounts afforded under each member state’s
law.
(d) *Prohibition on allowance or payment of monetary allowances.*— Notwithstanding subsections (a), (b) and (c) of this section, the tax commissioner may not allow any vendor, seller or certified service provider any monetary allowance, discount or other compensation for collecting and remitting the taxes levied by articles fifteen and fifteen-a of this chapter, or for making and filing the periodic reports required by this article, or articles fifteen and fifteen-a of this chapter, until the cost of collection study required by the agreement is completed and the monetary allowances are based on the results of that study, or on requirements of federal law requiring remote sellers to collect sales and use taxes for states that have signed the agreement.

§11-15B-32. Effective date.

(a) The provisions of this article, as amended or added during the regular legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date and to all returns and payments due on or after that day, except as otherwise expressly provided in section five of this article.

(b) The provisions of this article, as amended or added during the second extraordinary legislative session in the year two thousand three, shall take effect the first day of January, two thousand four, and apply to all sales made on or after that date.

(c) The provisions of this article, as amended or added by this act of the Legislature, shall apply to all sales made on or after the date of passage of this act in the year two thousand four.

§11-15B-36. Relief from certain liability for state and local taxes.

(a) *General.*— Sellers and certified service providers registered under the streamlined sales and use tax agreement to
3 collect sales and use taxes imposed by this state or the eco-
4 nomic opportunity development district excise tax imposed by
5 a local jurisdiction of this state who charged and collected the
6 incorrect amount of sales or use taxes or district excise taxes
7 resulting from the seller or the certified service provider relying
8 on erroneous data provided by this state on tax rates, boundaries
9 or taxing jurisdiction assignments shall be held harmless by the
10 tax commissioner and the local taxing jurisdiction.

11 (b) Exception.—A state that is a member of the streamlined
12 sales and use tax agreement and provides an address-based
13 system for assigning taxing jurisdictions pursuant to subdivi-
14 sion (4), subsection (d), section thirty-five of this article, or
15 pursuant to the federal Mobile Telecommunications Sourcing
16 Act, is not required to provide liability relief for errors resulting
17 from reliance on information provided by the member state
18 under subdivision (3), subsection (d), section thirty-five of this
19 article.

CHAPTER 247

(Com. Sub. for H. B. 4501 — By Delegates Campbell, Boggs,
Staton, Cann and Canterbury)

[Passed March 13, 2004; in effect July 1, 2004. Approved by the Governor.]

AN ACT to amend and reenact §11-15-9g of the code of West
Virginia, 1931, as amended; and to amend said code by adding
thereto a new section, designated §11-15-9h, all relating to the
sales tax holiday on back-to-school purchases; providing an
exemption from consumers sales tax for sales of computer
hardware and software directly incorporated into manufactured
products; creating exemptions for payment of certain licensing fees, for sales of computer hardware and software directly used in communication, for sales of electronic data processing services, for sales of certain educational software to be used in certain educational or nonprofit institutions, for sales of internet advertising of goods and services and for certain sales of high technology business services; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §11-15-9g 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 §11-15-9h, all to read as follows:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand four.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of internet advertising; sales of high technology business services directly used in fulfillment of a government contract; definitions.

§11-15-9g. Exemption for clothing, footwear and school supplies for limited period in the year two thousand four.

(a) The sale of an article of clothing or footwear designed to be worn on or about the human body and the sale of school supplies, such as pens, pencils, binders, notebooks, reference books, book bags, lunch boxes, computers, computer accessories and calculators, is exempted from the taxes imposed by this article if:

(1) The sales price of the article or school supply, except for a computer or computer accessory, is less than one hundred dollars;
(2) The sales price of a computer is less than seven hundred fifty dollars after credit for any manufacturer's rebate or computer accessory is less than one hundred dollars after credit for any manufacturer's rebate; and

(3) The sale takes place during a period beginning at 12:01 a.m. eastern daylight time on the first Friday in August, two thousand four, and ending at 12 midnight eastern daylight time on the following Sunday in August, two thousand four.

(b) This section does not apply to:

(1) Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed;

(2) Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing;

(3) The rental of clothing, footwear or school supplies;

(4) Furniture; and

(5) Tangible personal property for use in a trade or business.

§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of internet advertising; sales of high technology business services directly used in fulfillment of a government contract; definitions.
(a) In order to modernize the exemptions from tax contained in this article as a result of technological advances in computers and the expanded role of computers, the internet and global instant communications in business, and to encourage computer software developers, computer hardware designers, systems engineering firms, electronic data processing companies and other high technology companies to locate and expand their businesses in West Virginia the following sales of tangible personal property and software are exempt:

1. Sales of computer hardware or software (including custom designed software) to be directly incorporated by a manufacturer into a manufactured product. For purposes of this subsection, the payment of licensing fees for the right to incorporate hardware or software developed by persons other than the manufacturer into a manufactured product is exempt from the tax imposed by this article;

2. Sales of computer hardware or software (including custom designed software) directly used in communication as defined in this article;

3. Sales of electronic data processing services;

4. Sales of educational software required to be used in any of the public schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to administration, regulation, certification or approval of the department of education, the department of education and the arts or the higher education policy commission;

5. Sales of internet advertising of goods and services; and

6. Sales of high technology business services to high technology businesses which enter into contracts with this state, its institutions and subdivisions, governmental units, institutions or subdivisions of other states, or with the United States,
including agencies of federal, state or local governments for
direct use in fulfilling the government contract.

(b) Definitions. — As used in this article, the following
terms have the following meanings:

(1) “Computer hardware” means a computer, as defined in
article fifteen-b of this chapter, and the directly and immediately connected physical equipment involved in the performance of data processing or communications functions, including data input, data output, data processing, data storage, and data communication apparatus that is directly and immediately connected to the computer. The term “computer hardware” does not include computer software.

(2) “High technology business” means and is limited to businesses primarily engaged in the following activities: Computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; design and development of new manufactured products which incorporate computer hardware and software; electronic data processing; network management, maintenance, engineering, administration and security services; website management, maintenance, engineering, administration and security services and computer systems management, maintenance, engineering, administration and security services: Provided, That high technology business as defined herein is intended to include businesses which engage in the activities enumerated in this definition as their primary business activity, and not as a secondary or incidental activity and not as an activity in support of or incidental to business activity not specifically enumerated in this definition.

(3) “High technology business services” means and is limited to computer hardware design and development; computer software design, development, customization and
upgrade; computer systems design and development; website
design and development; network design and development;
electronic data processing; computer systems management;
computer systems maintenance; computer systems engineering;
computer systems administration; and computer systems
security services.

CHAPTER 248

(H. B. 4011—By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed February 24, 2004; in effect from passage. Approved by the Governor.]  

AN ACT to amend and reenact §11-21-9 of the code of West Virginia, 1931, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and updating effective date.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.


(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue
Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of May, two thousand three, but prior to the first day of January, two thousand four, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand four, shall be given any effect.

(b) Medical savings accounts. — The term “taxable trust” does not include a medical savings account established pursuant to section twenty, article fifteen, chapter thirty-three of this code or section fifteen, article sixteen of said chapter. Employer contributions to a medical savings account established pursuant to said sections are not “wages” for purposes of withholding under section seventy-one of this article.

(c) Surtax. — The term “surtax” means the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section twenty, article fifteen, chapter thirty-three of this code and the twenty percent additional tax imposed on taxable withdrawals from a medical savings account under section fifteen, article sixteen of said chapter which are collected by the tax commissioner as tax collected under this article.

(d) Effective date. — The amendments to this section enacted in the year two thousand four are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of June, two thousand three, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
(e) For purposes of the refundable credit allowed to a low income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in subsection (b), section twenty-one of this article and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

CHAPTER 249

(S. B. 321 — By Senators Bowman, McKenzie, Prezioso, Facemyer, Jenkins and Plymale)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §11-21-12d of the code of West Virginia, 1931, as amended, relating to providing a personal income tax adjustment to the gross income of certain retirees receiving pensions from defined pension plans that terminated and are being paid a reduced maximum benefit guarantee.

Be it enacted by the Legislature of West Virginia:

That §11-21-12d of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

PART II. RESIDENTS.

§11-21-12d. Additional modification reducing federal adjusted gross income.
In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to subsection (c), section twelve of this article, any person who retires under an employer-provided defined benefit pension plan that terminates prior to or after the retirement of that person and the pension plan is covered by a guarantor whose maximum benefit guarantee is less than the maximum benefit to which the retiree was entitled had the plan not terminated may subtract annually from his or her federal adjusted income a sum equal to the difference in the amount of the maximum annual pension benefit the person would have received for such tax year had the plan not terminated and the maximum annual pension benefit actually received from the guarantor under a benefit guarantee plan: Provided, That if the tax commissioner determines that this adjustment reduces the revenues of the state by two million dollars or more in any one year, then the tax commissioner shall reduce the percentage of the reduction to a level at which the commissioner believes will reduce the cost of the adjustment to two million dollars for the next year. This tax adjustment shall be effective for taxable years beginning on and after the first day of January, two thousand one: Provided, however, That the adjustment shall terminate for the tax years on or after the first day of January, two thousand seven. This modification is available regardless of the type of return form filed.

CHAPTER 250

(Com. Sub. for H. B. 4318 — By Delegates Craig, Morgan, Leach, Amores, Kominar, H. White and R. M. Thompson)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]
Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-21-12f, to read as follows.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12f. Additional modification increasing federal adjusted gross income.

In addition to amounts added to federal adjusted gross income pursuant to subsection (b), section twelve of this article, unless already included in federal adjusted gross income for the taxable year, there shall be added to federal adjusted gross income any amount previously deducted from federal adjusted gross income under section twelve-a of this article for amounts deposited into a prepaid tuition contract or other college savings plan administered by the board of trustees of the college prepaid tuition and savings program, pursuant to article thirty, chapter eighteen of this code and subsequently withdrawn from the
prepaid tuition contract or other college savings plan, that was
used for purposes other than those qualified expenses autho-
rized by I.R.C. § 529. The provisions of this section are
effective for taxable years beginning after the thirty-first day of
December, two thousand three.

CHAPTER 251

(H. B. 4012—By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed February 23, 2004; in effect from passage. Approved by the Governor.]
this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after the thirty-first day of May, two thousand three, but prior to the first day of January, two thousand four, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after the first day of January, two thousand four, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) Effective date. — The amendments to this section enacted in the year two thousand four are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to the first day of June, two thousand three, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-7-4a, relating to payments for telecommunications services; providing legislative findings; creating a special revenue account; requiring certain duties of the information services and communications division; requiring state spending units budget for telecommunications services and submit payment or transfer funds to pay for services; authorizing secretary of department of administration to transfer funds to pay for telecommunications services and certain fees and penalties from funds supporting the administration of a spending unit; providing for payment and determination of contested telecommunications charges; requiring payment of telecommunications services within ninety days of receipt of invoice; providing for discontinuance of telecommunications services; authorizing fees for administration of section; and authorizing legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5A-7-4a, to read as follows:

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.
§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the information and communications division and secretary of administration.

(a) The Legislature finds that it is in the best interest of the state, its spending units and those vendors supplying telecommunications services to the state and its spending units that any properly registered and qualified vendor supplying telecommunications services to two or more spending units under a shared account is entitled to prompt payment upon presentation of a legitimate uncontested invoice for telecommunications services to the division, as provided in the following subsections.

(b) To facilitate the administration and payment of telecommunications services, there is hereby created in the state treasury a special revenue account to be known as the "Telecommunications Services Payment and Reserve Fund". All moneys transferred from state spending units pursuant to the requirements of this section shall be deposited in the account. Expenditures from the fund shall be made by the director for the exclusive purposes set forth in this section: Provided, That no more than one hundred and fifty thousand dollars or the actual amount collected pursuant to subsection (i) of this section in any fiscal year, whichever is less, may be expended from the fund in any fiscal year to defray the costs of administration of this section.

(c) Upon receipt of any telecommunications charges from a properly registered and qualified vendor, the director shall fully apportion telecommunications charges among spending units based on the spending unit's service and usage, as determined by the director. The director shall send each spending unit a statement of the spending unit's proportionate share of any telecommunications charges within thirty days of receipt by the division of the invoice detailing the telecommunications charges. The statement is to provide a date of no more
than thirty calendar days from the date the division sends the statement by which the spending unit shall submit payment or transfer to the telecommunications services payment and reserve fund all funds necessary to pay for the spending unit's charges in full: Provided, That the statement sent in last month of the fiscal year shall provide that the transfer shall be made by the thirty-first day of July. If feasible for the spending unit, the preferable method of payment is by intergovernmental transfer.

(d) All spending units shall budget for telecommunications service expenses. Prior to the date provided in each statement sent to a spending unit pursuant to subsection (c) of this section, each spending unit shall pay or transfer the statement amount to the telecommunications services payment and reserve fund.

(e) If a spending unit fails to pay or transfer funds by the date specified in the statement sent pursuant to subsection (c) of this section, the secretary of the department of administration shall transfer to the telecommunications services payment and reserve fund the statement amount plus an additional penalty in the amount of three percent of the statement amount from any funds supporting the administration of that spending unit: Provided, That the secretary shall complete all such transfers by the thirty-first day of July of each fiscal year. Upon exercising a transfer under the authority of this subsection, the director shall provide a notification to the spending unit, including, but not limited to, the date, time, total amount of the transfer, statement amount and penalty amount. If a participating spending unit does not maintain funds in the state treasury, the secretary may transfer funds by wire from any depository outside the state treasury. A participating spending unit maintaining funds in depositories outside the state treasury shall furnish the secretary access to those funds for the exclusive purposes of this section.

(f) If a spending unit contests any portion of its statement, it shall nonetheless remit payment for the entire statement
amount and notify the division in writing within thirty days of statement receipt by the spending unit. The secretary shall consider any contested apportionments of charges and provide a final determination on the apportionment of legitimate charges. Corrections or adjustments to apportionments may be effected on future transfer payments: Provided, That legitimate vendor charges are to be fully apportioned. If the basis of the contest is vendor error, overcharge, service failure, failure to terminate services as required by the division, or other failure of or error in vendor performance, the director shall withhold the contested amount from current or future vendor payments, pending resolution by the secretary, and the director shall bring the contested matter to the attention of the vendor. The director and the vendor shall attempt to resolve the matter in good faith. Within ninety days of the receipt of the vendor’s invoice or a time period mutually agreed to by the vendor and secretary, the secretary shall make the final decision as to the legitimacy of the contested amount and determine if payment is warranted. If the final decision of the secretary is to refuse to pay any amount, the vendor may proceed in accordance with the provisions of article two, chapter fourteen of this code.

(g) The director shall provide for full payment of legitimate, uncontested telecommunications charges within ninety days of receipt of an invoice detailing the telecommunications charges by the division. Payment for the charges shall be made by the director from the telecommunications services payment and reserve fund.

(h) The director may direct the discontinuance of telecommunications services to any spending unit that fails to comply with the provisions of this section and the vendor supplying telecommunication services shall comply with the written direction of the director on discontinuance of services.

(i) To help defray the additional cost of administering this section, the director may assess a proportional fee of up to one
hundred fifty thousand dollars in aggregate per fiscal year to the participating spending units based on each spending unit's portion of service and usage. This fee is to be included in the statement sent to spending units pursuant to subsection (c) of this section and transferred to the telecommunications service payment and reserve fund by the date specified in the statement for the transfer of payment.

(j) Notwithstanding any other provision of this code to the contrary, for purposes of this section, an invoice is considered received by the division on the date on which the invoice is marked as received by the division, or three business days after the date of the postmark made by the United States postal service as evidenced on the envelope in which the invoice is mailed, whichever is earlier: Provided, That if an invoice is received by the division prior to the date on which the telecommunications services covered by the invoice are delivered or fully performed, for purposes of determining the ninety-day time period for payment in subsection (g) of this section, the invoice is considered received on the date on which the telecommunications services covered by the invoice were delivered or fully performed.

(k) For purposes of this section, "telecommunications service" means and includes not only telephone service regulated under chapter twenty-four of this code or under federal law, but also may include, at the discretion of the secretary of administration, wireless service, voice over internet protocol service, internet service and any other service or equipment used for the electronic transmission of voice or data.

(l) The director may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the purposes of this section. The initial rule filed by the division pursuant to this subsection shall be filed as an emergency rule.
AN ACT to amend and reenact §4-11A-4 and §4-11A-5 of the code of West Virginia, 1931, as amended, all relating to the appeal bond that master settlement agreement signatories must post to stay the execution of a judgment pending appeal; and providing for effective date of this amendment.

Be it enacted by the Legislature of West Virginia:

That §4-11A-4 and §4-11A-5 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT FUNDS.

§4-11A-4. Limitation on appeal bond.
§4-11A-5. Applicability.

§4-11A-4. Limitation on appeal bond.

1 The bond that any appellant who is a signatory or a successor to a signatory of the master settlement agreement or who controls or is under common control with a signatory of the master settlement agreement may be required to post to stay execution on a judgment during an appeal in any cause of action shall be set in accordance with the provisions of section fourteen, article five, chapter fifty-eight of this code and the West Virginia rules of civil procedure: Provided, That an appeal bond may not exceed one hundred million dollars for
compensatory damages and all other portions of a judgment
other than punitive damages and one hundred million dollars
for punitive damages unless the appellee proves by a prepon-
derance of the evidence that the appellant or appellants are
purposefully dissipating or diverting assets outside of the
ordinary course of its business to the effect that the ability to
pay the ultimate judgment is impaired. For purposes of this
section, multiple judgments resulting from cases that have been
 consolidated or aggregated for purposes of trial proceedings
shall be treated as a single judgment.

§4-11A-5. Applicability.

The provisions of section four of this article, as originally
passed or later amended, apply to all actions pending in the
courts of this state on the effective date of this section and to
any action filed in this state on or after the effective date:
Provided, That the provisions of section four of this article
providing for the maximum amount of an appeal bond shall not
apply in any action brought by any signatory to the master
settlement agreement seeking to enforce compliance with the
terms of the master settlement agreement or for a breach of the
master settlement agreement.

CHAPTER 254

(H. B. 4625 — By Delegates Cann, Warner, Stalnaker, Boggs,
Houston, Varner and Hall)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §5B-2-12a, relating to
authorizing the tourism commission the use of the tourism promotion fund to support the 2004 Pete Dye West Virginia Classic to be held in this state in the year two thousand four.

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 §5B-2-12a, to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12a. Tourism fund support for 2004 Pete Dye West Virginia Classic in Harrison County.

Notwithstanding the provisions of section twelve of this article, the tourism commission may expend moneys from the tourism promotion fund in the amount necessary and up to but not exceeding seven hundred fifty thousand dollars to support the 2004 Pete Dye West Virginia Classic in Harrison County which will be held in the month of July, two thousand four. Any requirements for matching grants under the rules promulgated pursuant to section twelve of this article shall not apply to this section.

The provisions of this section shall expire on the thirtieth day of December, two thousand four.
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2E-1, §5B-2E-2, §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9, §5B-2E-10 and §5B-2E-11; and to amend said code by adding thereto a new section, designated §11-15-34, all relating to the West Virginia tourism development act; establishing a tourism development project tax credit; specifying short titles; specifying legislative findings and purpose; defining terms; specifying additional powers and duties of the development office; specifying activity that qualifies for the credit; requiring filing of application for tax credit as condition precedent to claiming tax credit; specifying procedures for evaluation and approval of project; providing for hiring of consultants; specifying criteria for evaluating projects; specifying determination of amount of allowable tax credits; providing maximum amount of credit; specifying application of tax credits against sales tax collected; termination of applications after a certain date; providing for forfeiture of unused tax credits; providing for a recapture credit under certain circumstances; and specifying information required to be annually submitted to the state development office.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5B-2E-1, §5B-2E-2, §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6, §5B-2E-7, §5B-2E-8, §5B-2E-9, §5B-2E-10 and §5B-2E-11; and that said code be amended by adding thereto a new section, designated §11-15-34, all to read as follows:

11. Taxation.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.
ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-1. West Virginia Tourism Development Act.

§5B-2E-2. Legislative findings.

§5B-2E-3. Definitions.

§5B-2E-4. Additional powers and duties of the development office.

§5B-2E-5. Tourism development project application; evaluation standards; consulting services; preliminary and final approval of projects; limitation of amount annual tourism development project tax credit.

§5B-2E-6. Agreement between development office and approved company.

§5B-2E-7. Amount of credit allowed; approved projects.

§5B-2E-8. Forfeiture of unused tax credits; credit recapture; recapture tax imposed; information required to be submitted annually to development office; transfer of tax credits to successors.


§5B-2E-10. Legislative review.

§5B-2E-11. Termination.

§5B-2E-1. West Virginia Tourism Development Act.

1 This article shall be referred to as the “West Virginia Tourism Development Act”.

§5B-2E-2. Legislative findings.

1 The Legislature finds and declares that the general welfare and material well-being of the citizens of the state depend, in large measure, upon the development of tourism development projects in the state and that it is in the best interest of the state to induce the creation of new, or the expansion of existing, tourism development projects within the state in order to advance the public purposes of relieving unemployment by preserving and creating jobs and by preserving and creating new and greater sources of revenues for the support of public services provided by the state; and that the inducement for the creation or expansion of tourism development projects should be in the form of a tax credit to be applied to consumers sales and service taxes collected on the gross receipts generated directly from the operations of the new or expanded tourism
development projects, in lieu of tax credits on income that are largely deferred for a number of years after start up of a major tourism development project; and all of which new or expanded tourism developments are of paramount importance to the state and its economy and for the state’s contribution to the national economy.

§5B-2E-3. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(1) “Agreement” means a tourism development agreement entered into, pursuant to section six of this article, between the development office and an approved company with respect to a tourism development project.

(2) “Approved company” means any eligible company approved by the development office pursuant to section five of this article seeking to undertake a tourism development project.

(3) “Approved costs” means:

(A) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons and material persons in connection with the acquisition, construction, equipping, installation or expansion of a tourism development project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the
acquisition, construction, equipping, installation or expansion of a tourism development project which is not paid by the vendor, supplier, delivery person, contractor or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: Estimates, plans and specifications, preliminary investigations and supervision of construction, installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, installation or expansion of a tourism development project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, installation or expansion of a tourism development project;

(vi) All costs required for the installation of utilities, including, but not limited to: Water, sewer, sewer treatment, gas, electricity, communications and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons; and

(vii) All other costs comparable with those described in this subdivision;

(B) Excluded costs. — The term “approved costs” does not include any portion of the cost required to be paid for the acquisition, construction, equipping and installation or expansion of a tourism development project that is financed with governmental incentives, grants or bonds or for which the eligible taxpayer elects to qualify for other tax credits, including, but not limited to, those provided by article thirteen-q, chapter eleven of this code.
(4) "Base tax revenue amount" means the average monthly amount of consumer sales and service tax collected by an approved company, based on the twelve-month period ending immediately prior to the opening of a new tourism development project for business, as certified by the state tax commissioner.

(5) "Council" means the council for community and economic development as provided in article two of this chapter.

(6) "Development office" means the West Virginia development office as provided in article two of this chapter.

(7) "Crafts and products center" means a facility primarily devoted to the display, promotion and sale of West Virginia products and at which a minimum of eighty percent of the sales occurring at the facility are of West Virginia arts, crafts or agricultural products.

(8) "Eligible company" means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or any other entity operating or intending to operate a tourism development project, whether owned or leased, within the state that meets the standards required by the council. An eligible company may operate or intend to operate directly or indirectly through a lessee.

(9) "Entertainment destination center" means a facility containing a minimum of two hundred thousand square feet of building space adjacent or complementary to an existing tourism attraction, an approved tourism development project or a major convention facility and which provides a variety of entertainment and leisure options that contain at least one major theme restaurant and at least three additional entertainment venues, including, but not limited to, live entertainment, multiplex theaters, large-format theaters, motion simulators,
family entertainment centers, concert halls, virtual reality or other interactive games, museums, exhibitions or other cultural and leisure time activities. Entertainment and food and drink options shall occupy a minimum of sixty percent of total gross area, as defined in the application, available for lease and other retail stores shall occupy no more than forty percent of the total gross area available for lease.

(10) “Final approval” means the action taken by the council qualifying the eligible company to receive the tax credits provided in this article.

(11) “Preliminary approval” means the action taken by the development office conditioning final approval by the council.

(12) “State agency” means any state administrative body, agency, department, division, board, commission or institution exercising any function of the state that is not a municipal corporation or political subdivision.

(13) “Tourism attraction” means a cultural or historical site, a recreation or entertainment facility, an area of natural phenomenon or scenic beauty, a West Virginia crafts and products center or an entertainment destination center. A tourism development project or attraction shall not include any of the following:

(A) Lodging facilities, unless:

(i) The facilities constitute a portion of a tourism development project and represent less than fifty percent of the total approved cost of the tourism development project, or the facilities are to be located on recreational property owned or leased by the state or federal government and the facilities have received prior approval from the appropriate state or federal agency.
(ii) The facilities involve the restoration or rehabilitation of a structure that is listed individually in the national register of historic places or are located in a national register historic district and certified by the state historic preservation officer as contributing to the historic significance of the district, and the rehabilitation or restoration project has been approved in advance by the state historic preservation officer; or

(iii) The facilities involve the construction, reconstruction, restoration, rehabilitation or upgrade of a full-service lodging facility or the reconstruction, restoration, rehabilitation or upgrade of an existing structure into a full-service lodging facility having not less than five hundred guest rooms, with construction, reconstruction, restoration, rehabilitation or upgrade costs exceeding ten million dollars;

(B) Facilities that are primarily devoted to the retail sale of goods, other than an entertainment destination center, a West Virginia crafts and products center or a tourism development project where the sale of goods is a secondary and subordinate component of the project; and

(C) Recreational facilities that do not serve as a likely destination where individuals who are not residents of the state would remain overnight in commercial lodging at or near the new tourism development project or existing attraction.

(14) "Tourism development project" means the acquisition, including the acquisition of real estate by a leasehold interest with a minimum term of ten years, construction and equipping of a tourism attraction; the construction and installation of improvements to facilities necessary or desirable for the acquisition, construction, installation or expansion of a tourism attraction, including, but not limited to, surveys, installation of utilities, which may include water, sewer, sewage treatment, gas, electricity, communications and similar facilities; and off-
site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company in a manner that allows the approved company to attract persons.

(15) “Tourism development project tax credit” means the tourism development project tax credit allowed by section seven of this article.

§5B-2E-4. Additional powers and duties of the development office.

The development office has the following powers and duties, in addition to those set forth in this case, necessary to carry out the purposes of this article including, but not limited to:

(1) Make preliminary approvals of all applications for tourism development projects and enter into agreements pertaining to tourism development projects with approved companies;

(2) Employ fiscal consultants, attorneys, appraisers and other agents as the executive director of the development office finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any tourism development project; and

(3) Impose and collect fees and charges in connection with any transaction.

§5B-2E-5. Tourism development project application; evaluation standards; consulting services; preliminary and final approval of projects; limitation of amount annual tourism development project tax credit.
(a) Each eligible company that seeks to qualify a tourism development project for the tax credit provided by this article must file a written application for approval of the project with the development office.

(b) With respect to each eligible company making an application to the development office for the tourism development project tax credit, the development office shall make inquiries and request documentation, including a completed application, from the applicant that shall include: A description and location of the project; capital and other anticipated expenditures for the project and the sources of funding therefor; the anticipated employment and wages to be paid at the project; business plans that indicate the average number of days in a year in which the project will be in operation and open to the public; and the anticipated revenues and expenses generated by the project.

(c) Based upon a review of the application and additional documentation provided by the eligible company, if the director of the development office determines that the applicant and the tourism development project may reasonably satisfy the criteria for final approval set forth in subsection (d) of this section, then the director of the development office may grant a preliminary approval of the applicant and the tourism development project.

(d) After preliminary approval by the director of the development office, the development office shall engage the services of a competent consulting firm or firms to analyze the data made available by the applicant and to collect and analyze additional information necessary to determine that, in the independent judgment of the consultant, the tourism development project:

(1) Likely will attract at least twenty-five percent of its visitors from outside of this state;
(2) Will have approved costs in excess of one million dollars;

(3) Will have a significant and positive economic impact on the state considering, among other factors, the extent to which the tourism development project will compete directly with or complement existing tourism attractions in the state and the amount by which increased tax revenues from the tourism development project will exceed the credit given to the approved company;

(4) Will produce sufficient revenues and public demand to be operating and open to the public for a minimum of one hundred days per year; and

(5) Will provide additional employment opportunities in the state.

(e) The applicant shall pay to the development office, prior to the engagement of the services of a competent consulting firm or firms pursuant to the provisions of subsection (d) of this section, for the cost of the consulting report or reports and shall cooperate with the consulting firm or firms to provide all of the data that the consultant considers necessary or convenient to make its determination under subsection (d) of this section.

(f) The director of the development office, within thirty days following receipt of the consultant’s report or reports, shall decide whether to recommend the tourism development project to the council for final approval. If the director of the development office recommends the tourism development project to the council, he or she shall submit the project application, the consulting report or reports and other information regarding the project to the council.

(g) The council shall review all applications properly submitted to the council for conformance to statutory and
regulatory requirements, the reasonableness of the project’s budget and timetable for completion, and, in addition to the criteria for final approval set forth in subsection (d) of this section, the following criteria:

(1) The quality of the proposed tourism development project and how it addresses economic problems in the area in which the tourism development project will be located;

(2) Whether there is substantial and credible evidence that the tourism development project is likely to be started and completed in a timely fashion;

(3) Whether the tourism development project will, directly or indirectly, improve the opportunities in the area where the tourism development project will be located for the successful establishment or expansion of other industrial or commercial businesses;

(4) Whether the tourism development project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the tourism development project will be located;

(5) Whether the project helps to diversify the local economy;

(6) Whether the project is consistent with the goals of this article;

(7) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting; and

(8) The ability of the eligible company to carry out the tourism development project.
(h) The council may establish other criteria for consideration when approving the applications.

(i) The council may give its final approval to the applicant's application for a tourism development project and may grant to the applicant the status of an approved company: Provided, That the total amount of tourism development project tax credits for all approved companies may not exceed one million five hundred thousand dollars each calendar year. The council 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 council, whichever is later. The decision by the development office and the council is final.

§5B-2E-6. Agreement between development office and approved company.

The development office, upon grant of the council's final approval, may enter into an agreement with any approved company with respect to its tourism development project. The terms and provisions of each agreement shall include, but not be limited to:

(1) The amount of approved costs of the project that qualify for the sales tax credit, provided for in section seven of this article. Within three months of the completion date, the approved company shall document the actual cost of the project through a certification of the costs to the development office by an independent certified public accountant acceptable to the development office; and

(2) A date certain by which the approved company shall have completed and opened the tourism development project to the public. Any approved company that has received final approval may request and the development office may grant an extension or change, however, in no event shall the extension
exceed three years from the date of final approval to the completion date specified in the agreement with the approved company.

§5B-2E-7. Amount of credit allowed; approved projects.

(a) Approved companies are allowed a credit against the West Virginia consumers sales and service tax imposed by article fifteen, chapter eleven of this code and collected by the approved company on sales generated by or arising from the operations of the tourism development project: Provided, That if the consumers sales and service tax collected by the approved company is not solely attributable to sales resulting from the operation of the new tourism development project, the credit shall only be applied against that portion of the consumers sales and service tax collected in excess of the base tax revenue amount. The amount of this credit is determined and applied as provided in this article.

(b) The maximum amount of credit allowable in this article is equal to twenty-five percent of the approved company’s approved costs as provided in the agreement: Provided, That, if the tourism development project site is located within the permit area or an adjacent area of a surface mining operation, as these terms are defined in section three, article three, chapter twenty-two of this code, from which all coal has been or will be extracted prior to the commencement of the tourism development project, the maximum amount of credit allowable is equal to fifty percent of the approved company’s approved costs as provided in the agreement.

(c) The amount of credit allowable must be taken over a ten-year period, at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which the project is opened to the public, unless the approved company elects to delay the beginning of the ten-year period until the
next succeeding taxable year. This election shall be made in the
first consumers sales and service tax return filed by the ap-
proved company following the date the project is opened to the
public. Once made, the election cannot be revoked.

(d) The amount determined under subsection (b) of this
section is allowed as a credit against the consumers sales and
service tax collected by the approved company on sales from
the operation of the tourism development project. The amount
determined under said subsection may be used as a credit
against taxes required to be remitted on the approved com-
pany’s monthly consumers sales and service tax returns that are
filed pursuant to section sixteen, article fifteen, chapter eleven
of this code. The approved company shall claim the credit by
reducing the amount of consumers sales and service tax
required to be remitted with its monthly consumers sales and
service tax returns by the amount of its aggregate annual credit
allowance until such time as the full current year annual credit
allowance has been claimed. Once the total credit claimed for
the tax year equals the approved company’s aggregate annual
credit allowance no further reductions to its monthly consumers
sales and service tax returns will be permitted.

(e) If any credit remains after application of subsection (d)
of this section, the amount of credit is carried forward to each
ensuing tax year until used or until the expiration of the third
taxable year subsequent to the end of the initial ten-year credit
application period. If any unused credit remains after the
thirteenth year, that amount is forfeited. No carryback to a
prior taxable year is allowed for the amount of any unused
portion of any annual credit allowance.

§5B-2E-8. Forfeiture of unused tax credits; credit recapture;
recapture tax imposed; information required
to be submitted annually to development
office; transfer of tax credits to successors.
(a) The approved company shall forfeit the tourism development project tax credit allowed by this article with respect to any calendar year and shall pay the recapture tax imposed by subsection (b) of this section, if:

(1) In any year following the first calendar year the project is open to the public, the tourism development project fails to attract at least twenty-five percent of its visitors from among persons who are not residents of the state;

(2) In any year following the first year the project is open to the public, the tourism development project is not operating and open to the public for at least one hundred days; or

(3) The approved company is not in good standing with the state tax division, the workers’ compensation commission or the bureau of employment programs as of the beginning of each calendar year.

(b) In addition to the loss of credit allowed under this article for the calendar year, any approved company or successor eligible company that forfeits the tourism development project tax credit under the provisions of subsection (a) of this section, credit recapture shall apply and the approved company, and successor eligible companies, shall return to the state all previously claimed tourism development project tax credit allowed by this article. An amended return shall be filed with the state tax commissioner for the prior calendar year, or calendar years, for which credit recapture is required, along with interest, as provided in section seventeen, article ten, chapter eleven of this code: Provided, That the approved company and successor eligible companies who previously claimed the tourism development project tax credit allowed by this article are jointly and severally liable for payment of any recapture tax subsequently imposed under this section.
(c) Within forty-five days after the end of each calendar year during the term of the agreement, the approved company shall supply the development office with all reports and certifications the development office requires demonstrating to the satisfaction of the development office that the approved company is in compliance with applicable provisions of law. Based upon a review of these materials and other documents that are available, the development office shall then certify to the tax commissioner that the approved company is in compliance with this section.

(d) The tax credit allowed in this article is transferable, subject to the written consent of the development office, to an eligible successor company that continues to operate the approved tourism development project.


The council may promulgate rules to implement the tourism development 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.

§5B-2E-10. Legislative review.

The development office shall report annually to the joint commission on economic development by the first day of December of each year on the number of applications received from eligible companies as provided in this article, the status of each application, the number of projects approved, the status of each project, the amount of credit allowed and the amount of consumers sales and service tax generated by each project.

§5B-2E-11. Termination.
The development office may not accept any new application on or after the first day of January, two thousand seven, and all applications submitted prior to the first day of January, two thousand seven, that have not been previously approved or not approved, shall be deemed not approved and shall be null and void as of the first day of January, two thousand seven.

CHAPTER 11. TAXATION.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-34. Tourism development project tax credit.

(a) There is allowed as a credit against the consumers sales and service tax collected and required to be remitted pursuant to this article from the operation of an approved tourism development project as defined in section three, article two-e, chapter five-b of this code, the amount determined under section eight, article two-e, chapter five-b of this code relating to the tourism development project tax credit.

(b) The tax commissioner may propose legislative rules in accordance with article three, chapter twenty-nine-a of this code designed to require the filing of forms designed by the tax commissioner to reflect the intent of this section and article two-e, chapter five-b of this code.

CHAPTER 256

(H. B. 4746 — By Delegates Michael, R. M. Thompson, H. White, Hall, Campbell and Leach)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §12-1-2, §12-1-7, §12-1-12 and §12-1-13 of the code of West Virginia, 1931, as amended; to amend and reenact §12-2-1 of said code; to amend and reenact §12-3-1 and §12-3-1a of said code; to amend and reenact §12-3A-3, §12-3A-4 and §12-3A-6 of said code; to amend and reenact §12-5-1 and §12-5-5 of said code; and to amend and reenact §18-30-4 of said code, all relating generally to the state treasurer’s office; designating financial institutions as depositories for state funds; adding state and federal savings and loan associations as candidates for depository banks; exceptions; defining spending unit for the purposes of chapter twelve of the code; allowing only the treasurer to enter into contracts for banking goods and services; exceptions; requiring financial institutions outside the state with state funds to meet the same collateral requirements for other depositories; clarifying that the treasurer may pay for banking goods and services by maintaining a compensating balance in an account other than only accounts that do not earn interest; adding electronic funds transfers to the methods the state uses to receive moneys; amending procedures for stale dated checks and requiring the treasurer to search for the payee; requiring spending units which have payments in which the checks have become stale to inform the treasurer’s office when the stale dated checks contain federal funds, the amount of the federal funds and which account should receive the funds; specifying legal effect of documents and electronic signatures; adding the treasurer as additional administrator of the West Virginia check card; allowing the state treasurer to authorize spending units to assess and collect fees for electronic commerce receipts; requiring the state treasurer to issue legislative rules to authorize spending units to assess and collect fees for electronic commerce receipts; adding cash to the definition of securities; creating fund in treasury to allow for the deposit of cash into safekeeping and allowing the treasurer to invest the money and to prescribe forms and procedures for processing the moneys; changing the qualifications for certain members of the West
Virginia college prepaid tuition and savings program and changing the appointment process of two members of the West Virginia college prepaid tuition and savings program.

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

That §12-1-2, §12-1-7, §12-1-12 and §12-1-13 of the code of West Virginia, 1931, as amended, be amended and reenacted; that §12-2-1 of said code be amended and reenacted; that §12-3-1 and §12-3-1a of said code be amended and reenacted; that §12-3A-3, §12-3A-4 and §12-3A-6 of said code be amended and reenacted; that §12-5-1 and §12-5-5 of said code be amended and reenacted; and that §18-30-4 of said code be amended and reenacted, all to read as follows:

**Chapter 12. Public Moneys and Securities.**

**CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

**Article**

1. **State Depositories.**
2. **Payment and Deposit of Taxes and Other Amounts Due the State or Any Political Subdivision.**
3. **Appropriations, Expenditures and Deductions.**
3A. **Financial Electronic Commerce.**
5. **Public Securities.**

**ARTICLE 1. STATE DEPOSITORIES.**

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer; definition of spending unit.

§12-1-7. Rules; banking contracts and agreements; depositors; agreements.

§12-1-12. Investing funds in treasury; depositories outside the state.

§12-1-13. Payment of banking services and litigation costs for prior investment losses.
§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by state treasurer; definition of spending unit.

The state treasurer shall designate the state and national banks and the state and federal savings and loan associations in this state meeting the requirements of this chapter as depositories for all state funds placed in demand deposits.

Demand deposit accounts shall consist of receipt and disbursement accounts. Receipt accounts are accounts in which are deposited moneys belonging to or due the state of West Virginia or any official, department, board, commission or agency thereof.

Disbursement accounts are accounts from which are paid moneys due from the state of West Virginia or any official, department, board, commission, political subdivision or agency thereof to any political subdivision, person, firm or corporation, except moneys paid from investment accounts.

Investment accounts are accounts established by the West Virginia investment management board or the state treasurer for the buying and selling of securities for investment purposes.

The state treasurer shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, concerning depositories for receipt accounts prescribing the selection criteria, procedures, compensation and such other contractual terms as it considers to be in the best interests of the state giving due consideration to: (1) The activity of the various accounts maintained therein; (2) the reasonable value of the banking services rendered or to be rendered the state by such depositories; and (3) the value and importance of such deposits to the economy of the communities and the various areas of the state affected thereby.
The state treasurer shall select depositories for disbursement accounts through competitive bidding by eligible banks in this state. If none of the eligible banks in this state are able to provide the needed services, then the treasurer may include eligible banks outside this state in the competitive bidding process. The treasurer shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code, prescribing the procedures and criteria for the bidding and selection. The treasurer shall, in the invitations for bids, specify the approximate amounts of deposits, the duration of contracts to be awarded and such other contractual terms as the treasurer considers to be in the best interests of the state, consistent with obtaining the most efficient service at the lowest cost.

The amount of money needed for current operation purposes of the state government, as determined by the state treasurer, shall be maintained at all times in the state treasury, in cash, in short term investments not to exceed five days, or in disbursement accounts with financial institutions designated as depositories in accordance with the provisions of this section. No state officer or employee shall make or cause to be made any deposits of state funds in banks not so designated. Only banks and state and federal savings and loan associations designated by the treasurer as depositories may accept deposits of state funds. Boards, commissions and spending units with authority pursuant to this code to deposit moneys in a financial institution without approval of the state treasurer shall retain that authority and are not required to have the treasurer designate a financial institution as a depository: Provided, That boards, commissions and spending units with moneys deposited in financial institutions not approved for that purpose by the state treasurer shall submit a report on those moneys annually to the legislative auditor. The provisions of this section shall not apply to the proceeds from the sale of general obligation bonds or bonds issued by the school building authority, the parkways,
economic development and tourism authority, the housing
development fund, the economic development authority, the
infrastructure and jobs development council, the water develop-
ment authority or the hospital finance authority.

As used in this chapter, “spending unit” means a depart-
ment, agency, board, commission or institution of state govern-
ment for which an appropriation is requested, or to which an
appropriation is made by the Legislature.

§12-1-7. Rules; banking contracts and agreements; depositors;
agreements.

In addition to rules specially authorized in this article, the
West Virginia investment management board and the state
treasurer are generally authorized to promulgate any rules
necessary to protect the interests of the state, its depositories
and taxpayers. All rules promulgated are subject to the provi-
sions of article three, chapter twenty-nine-a of this code. Any
rules previously established by the board of public works, the
board of investments, the investment management board or the
state treasurer pursuant to this article shall remain in effect until
amended, superseded or rescinded.

Only the treasurer may enter into contracts or agreements
with financial institutions for banking goods or services
required by spending units. Boards, commissions and spending
units with authority pursuant to this code to enter into contracts
or agreements with financial institution for banking goods and
services without approval of the state treasurer shall retain that
authority and are not required to have the treasurer designate a
financial institution as a depository. The provisions of this
section shall not apply to trust and investment accounts and
activities for general obligation bonds or bonds issued by the
school building authority, the parkways, economic development
and tourism authority, the housing development fund, the
economic development authority, the infrastructure and jobs
development council, the water development authority or the
hospital finance authority. A state spending unit requiring
banking goods or services shall submit a request for the goods
or services to the treasurer. If the treasurer enters into a contract
or agreement for the required goods or services, spending units
using the contract or agreement shall pay either the vendor or
the treasurer for the goods or services used.

The treasurer is also authorized to enter into any depositors’
agreements for the purpose of reorganizing or rehabilitating any
depository in which state funds are deposited, and for the
purpose of transferring the assets, in whole or in part, of any
depository to any other lawful depository when, in the judgment
of the treasurer, the interests of the state are promoted thereby,
and upon condition that no right of the state to preferred
payment is waived.

§12-1-12. Investing funds in treasury; depositories outside the
state.

When the funds in the treasury exceed the amount needed
for current operational purposes, as determined by the treasurer,
the treasurer shall make all of such excess available for
investment by the investment management board which shall
invest the excess for the benefit of the general revenue fund:
Provided, That the state treasurer, after reviewing the cash flow
needs of the state, may withhold and invest amounts not to
exceed one hundred twenty-five million dollars of the operating
funds needed to meet current operational purposes. Investments
made by the state treasurer under this section shall be made in
short term investments not to exceed five days. Operating funds
means the consolidated fund established in section eight, article
six of this chapter, including all cash and investments of the
fund.
Spending units with authority to retain interest or earnings on a fund or account may submit requests to the treasurer to transfer moneys to a specific investment pool of the investment management board and retain any interest or earnings on the money invested. The general revenue fund shall receive all interest or other earnings on money invested that are not designated for a specific fund or account.

Whenever the funds in the treasury exceed the amount for which depositories within the state have qualified, or the depositories within the state which have qualified are unwilling to receive larger deposits, the treasurer may designate depositories outside the state, disbursement accounts being bid for in the same manner as required by depositories within the state, and when depositories outside the state have qualified by giving the bond prescribed in section four of this article, the state treasurer shall deposit funds in the same manner as funds are deposited in depositories within the state under this article.

The state treasurer may transfer funds to financial institutions outside the state to meet obligations to paying agents outside the state if the financial institution meets the same collateral requirements as set forth in this article.

§12-1-13. Payment of banking services and litigation costs for prior investment losses.

(a) The treasurer is authorized to pay for banking services, and goods and services ancillary thereto, by either a compensating balance in an account maintained at the financial institution providing the services or with a state warrant as described in section one, article three of this chapter.

(b) The investment management board is authorized to pay for the investigation and pursuit of claims against third parties for the investment losses incurred during the period beginning on the first day of August, one thousand nine hundred
eighty-four, and ending on the thirty-first day of August, one
thousand nine hundred eighty-nine. The payment may be in the
form of a state warrant.

(c) If payment is made by a state warrant, the investment
management board, at the request of the treasurer, is authorized
to establish within the consolidated fund an investment pool
which will generate sufficient income to pay for all banking
services provided to the state and to pay for the investigation
and pursuit of the prior investment loss claims. All income
earned by the investment pool shall be paid into a special
account of the treasurer known as the banking services account
to pay for all banking services and goods and services ancillary
to the banking services provided to the state, for the investiga-
tion and pursuit of the prior investment loss claims, and for
amortization of the balance in the investment imbalance fund.

ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER
AMOUNTS DUE THE STATE OR ANY POLITICAL
SUBDIVISION.

§12-2-1. How and to whom taxes and other amounts due the state
or any political subdivision, official, department, board, commission or other collecting agency
thereof may be paid.

All persons, firms and corporations shall promptly pay all
taxes and other amounts due from them to the state, or to any
political subdivision, official, department, board, commission
or other collecting agency thereof authorized by law to collect
the taxes and other amounts due by any authorized commer-
cially acceptable means, in money, United States currency or by
check, bank draft, certified check, cashier’s check, post office
money order, express money order or electronic funds transfer
payable and delivered to the official, department, board,
commission or collecting agency thereof authorized by law to
collect the taxes and other amounts due and having the account
upon which the taxes or amounts due are chargeable against the payer of the taxes or amounts due. The duly elected or appointed officers of the state and of its political subdivisions, departments, boards, commissions and collecting agencies having the account on which the taxes or other amounts due are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the taxes or other amounts due, and their respective agents, deputies, assistants and employees shall in no case be the agent of the payer in and about the collection of the taxes or other amounts, but shall at all times and under all circumstances be the agent of the state, its political subdivision, official, department, board, commission or collecting agency having the account on which the taxes or amounts are chargeable against the payer of the taxes or other amounts due and authorized by law to collect the same.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-1. Manner of payment from treasury; form of checks.

§12-3-1a. Payment by deposit in bank account.

§12-3-1. Manner of payment from treasury; form of checks.

(a) Every person claiming to receive money from the treasury of the state shall apply to the auditor for a warrant for same. The auditor shall thereupon examine the claim, and the vouchers, certificates and evidence, if any, offered in support thereof, and for so much thereof as he or she finds to be justly due from the state, if payment thereof is authorized by law, and if there is an appropriation not exhausted or expired out of which it is properly payable, the auditor shall issue his or her warrant on the treasurer, specifying to whom and on what account the money mentioned therein is to be paid, and to what appropriation it is to be charged. The auditor shall present to the treasurer daily reports on the number of warrants issued, the amounts of the warrants and the dates on the warrants for the purpose of effectuating the investment policies of the state
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15 treasurer and the investment management board. On the
16 presentation of the warrant to the treasurer, the treasurer shall
17 ascertain whether there are sufficient funds in the treasury to
18 pay that warrant, and if he or she finds it to be so, he or she
19 shall in that case, but not otherwise, endorse his or her check
20 upon the warrant, directed to some depository, which check
21 shall be payable to the order of the person who is to receive the
22 money therein specified.

23 (b) If a check is not presented for payment within six
24 months after it is drawn, it is the duty of the treasurer to credit
25 it to the depository on which it was drawn, to credit the
26 “Treasurer’s Stale Check Fund,” which is hereby created in the
27 state treasury, and immediately notify the auditor to make
28 corresponding entries on the auditor’s books. If the state
29 treasurer determines any funds deposited in the stale check
30 account are federal funds, the state treasurer shall notify the
31 spending unit authorizing the payment. Within six months
32 following issuance of the notice, the spending unit shall inform
33 the state treasurer of the amount of federal funds included in the
34 check, the account from which the federal funds were dis-
35 bursed, and the current fiscal year account to which the federal
36 funds are to be transferred. After receiving the information, the
37 state treasurer shall transfer the amount of federal funds
38 specified as a reimbursement to the current fiscal year account
39 specified to receive federal funds by the spending unit. For a
40 period of up to six months, the state treasurer shall endeavor to
41 pay the money in the stale check account to the payee. The
42 treasurer shall credit the money that has been in the stale check
43 account for six months, or for a shorter period as determined by
44 the treasurer, to the unclaimed property fund pursuant to the
45 provisions of article eight, chapter thirty-six of this code, and
46 shall immediately notify the auditor to make corresponding
47 entries on the auditor’s books.
(c) No state depository may pay a check unless it is presented within six months after it is drawn and every check shall bear upon its face the words "Void, unless presented for payment within six months."

(d) Any information or records maintained by the treasurer concerning any check not presented for payment within six months of the date of issuance is confidential and exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code, and is disclosable only to the state spending unit authorizing the check, or to the payee, his or her personal representative, next of kin or attorney-at-law.

(e) All claims required by law to be allowed by any court, and payable out of the state treasury, shall have the seal of the court allowing or authorizing the payment of the claim affixed by the clerk of the court to his or her certificate of its allowance. No claim may be audited and paid by the auditor unless the seal of the court is thereto attached as aforesaid. No tax or fee may be charged by the clerk for affixing his or her seal to the certificate, referred to in this section. The treasurer shall propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the procedure for such payments from the treasury.

§12-3-1a. Payment by deposit in bank account.

The auditor may issue his warrant on the treasurer to pay any person claiming to receive money from the treasury by deposit to the person’s account in any bank or other financial institution by electronic funds transfer, if the person furnishes authorization of the method of payment. The auditor shall prescribe the form of the authorization. If the authorization is in written form, it shall be sent to the auditor for review and approval and then forwarded in electronic form to the treasurer. If the authorization is in electronic form, it shall be sent to both
the auditor and the treasurer. The auditor must review and approve the authorization. This section may not be construed to require the auditor to utilize the method of payment authorized by this section. An authorization furnished pursuant to this section may be revoked by written notice furnished to the auditor and then forwarded by the auditor in electronic form to the treasurer or by electronic notice furnished to both the auditor and the treasurer. Upon execution of the authorization and its receipt by the office of the auditor, the warrant shall be created in the manner specified on the authorization and forwarded to the treasurer for further disposition to the designated bank or other financial institution specified on the electronic warrant: Provided, That after the first day of July, two thousand two, the state auditor shall cease issuing paper warrants except for income tax refunds. After that date all warrants except for income tax refunds, shall be issued by electronic funds transfer: Provided, however, That the auditor, in his or her discretion, may issue paper warrants on an emergency basis.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-4. Payment by the West Virginia check card.
§12-3A-6. Receipting of electronic commerce purchases.


The state auditor and the state treasurer shall implement electronic commerce capabilities for each of their offices to facilitate the performance of their duties under this code. The state treasurer shall competitively bid the selection of vendors needed to provide the necessary banking, investment and related goods and services, and the provisions of article one-b, chapter five, and articles three and seven, chapter five-a of this code shall not apply, unless requested by the state auditor or state treasurer.
A record, an authentication, a document or a signature issued or used by the auditor, the treasurer shall be considered an original and may not be denied legal effect on the ground that it is in electronic form.

The head of each spending unit is responsible for adopting and implementing security procedures to ensure adequate integrity, security, confidentiality, and auditability of the business transactions of his or her spending unit when utilizing electronic commerce.

§12-3A-4. Payment by the West Virginia check card.

The state auditor and the state treasurer may establish a state debit card known as the “West Virginia Check Card” for recipients of employee payroll or of retirement, benefits or entitlement programs who are considered unbanked and who do not possess a federally insured depository institution account. The state auditor and the state treasurer shall use every reasonable effort to make a federally insured depository account available to a recipient, and to encourage all recipients to obtain a federally insured depository account. Prior to issuing the West Virginia check card, the state auditor and the state treasurer shall first make a determination that a recipient has shown good cause that an alternative method to direct deposit is necessary. The state auditor and the state treasurer shall jointly issue a request for proposals in accordance with section three of this article to aid in the administration of the program and in the establishment of state owned bank accounts and accommodate accessible locations for use of the West Virginia check card. In carrying out the purposes of this article, the state auditor and state treasurer shall not compete with banks or other federally insured financial institutions, or for profit.

§12-3A-6. Receipting of electronic commerce purchases.
(a) The state treasurer may establish a system for acceptance of credit card and other payment methods for electronic commerce purchases from spending units. Notwithstanding any other provision of this code to the contrary, each spending unit utilizing WEB commerce, electronic commerce or other method that offers products or services for sale shall utilize the state treasurer’s system for acceptance of payments.

(b) To facilitate electronic commerce, the state treasurer may charge a spending unit for the banking and other expenses incurred by the treasurer on behalf of the spending unit and for any work performed, including, without limitation, assisting in the development of a website and utilization of the treasurer’s payment gateway. A special revenue account, entitled the “Treasurer’s Financial Electronic Commerce Fund,” is created in the state treasury to receive the amounts charged by the treasurer. The treasurer may expend the funds received in the Treasurer’s Financial Electronic Commerce Fund only for the purposes of this article and for other purposes as determined by the Legislature.

(c) The state treasurer may authorize a spending unit to assess and collect a fee to recover or pay the cost of accepting bank, charge, check, credit or debit cards from amounts collected. The state treasurer shall propose legislative rules for promulgation in accordance with the provisions of article three of chapter twenty-nine-a of this code to establish the criteria and procedures involved in granting the authorization and may promulgate emergency rules in accordance with the provisions of article three of chapter twenty-nine-a of the code to implement the provisions of this section prior to authorization of the legislative rules.

ARTICLE 5. PUBLIC SECURITIES.

§12-5-1. Securities defined.
§12-5-5. Protection and handling of securities.
§12-5-1. Securities defined.

1 The term "securities" when used in this article shall include all bonds, securities, debentures, notes or other evidences of indebtedness, and for purposes of this chapter all cash received by any state spending unit intended to serve as security for a legal obligation, whether pursuant to court order or otherwise.

§12-5-5. Protection and handling of securities.

(a) The noncash securities retained in the treasury shall be kept in a vault. The treasurer shall use due diligence in protecting the securities against loss from any cause. The treasurer shall designate certain employees to take special care of the securities. Only the treasurer and the designated employees may have access to the securities, and at least two of these persons shall be present whenever the securities are handled in any manner. The treasurer may contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities. The contract shall prescribe the rules for the handling and protection of the securities.

(b) The "Treasurer's Safekeeping Fund" is established in the state treasury. The treasurer shall deposit moneys received pursuant to this article in the Treasurer's Safekeeping Fund. The treasurer is authorized to invest the money in accordance with this code and the restrictions placed on the money, with earnings accruing to the moneys in the fund. The treasurer shall prescribe the forms and procedures for processing the moneys.

CHAPTER 18. EDUCATION.

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.
(a) The West Virginia college prepaid tuition and savings program is continued. The program consists of a prepaid tuition plan and a savings plan.

(b) The board of the college prepaid tuition and savings program is continued and all powers, rights and responsibilities of the board of trustees of the prepaid tuition trust fund are vested in the board of the college prepaid tuition and savings program.

(c) The board consists of nine members and includes the following:

1. The secretary of education and the arts, or his or her designee;
2. The state treasurer, or his or her designee;
3. Two representatives of the higher education policy commission, who may or may not be members of the higher education policy commission, appointed by the commission who serve as voting members of the board, one of whom shall represent the interests of the universities of West Virginia and the state colleges and one of whom shall represent the interests of community and technical colleges of West Virginia;
4. Five other members, appointed by the governor, with knowledge, skill and experience in an academic, business or financial field, to be appointed as follows:
   A. Two private citizens not employed by, or an officer of, the state or any political subdivision of the state;
   B. One member representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia association of private colleges; and
(C) Two members representing the public.

(d) The public members and the member representing the interests of private institutions of higher education are appointed by the governor with the advice and consent of the Senate.

(e) Only state residents are eligible for appointment to the board.

(f) Members appointed by the governor serve a term of five years and are eligible for reappointment at the expiration of their terms. In the event of a vacancy among appointed members, the governor shall appoint a person representing the same interests to fill the unexpired term.

(g) Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor. Members of the board serve without compensation. The treasurer may pay all expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the college prepaid tuition and savings program administrative account, and are made at the same rate paid to state employees.

(h) The treasurer may provide support staff and office space for the board.

(i) The treasurer is the chairman and presiding officer of the board, and may appoint the employees the board considers advisable or necessary. A majority of the members of the board constitute a quorum for the transaction of the business of the board.
AN ACT to amend and reenact §22-17-20 of the code of West Virginia, 1931, as amended, relating to the underground storage tank act; increasing the annual registration fee; requiring emergency rule; increasing cap amount for underground storage tank fund; and requiring annual report to the joint committee on government and finance.

Be it enacted by the Legislature of West Virginia:

That §22-17-20 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. UNDERGROUND STORAGE TANK ACT.

§22-17-20. Appropriation of funds; underground storage tank administrative fund.

(a) The secretary shall collect annual registration fees from owners of underground storage tanks. The registration fee collected under this section shall not exceed sixty-five dollars per tank per year. All such registration fees and the net proceeds of all fines, penalties and forfeitures collected under this article including accrued interest shall be paid into the state treasury into a special revenue fund designated “the underground storage tank administrative fund” to be used to defray the cost of administering this article in accordance with rules promulgated pursuant to section six of this article. The secretary shall
promulgate an emergency rule in accordance with article three, chapter twenty-nine-a of this code, implementing the increase in registration fees. This fee of up to sixty-five dollars is effective for the fiscal year ending the thirtieth day of June, two thousand four.

(b) The total fee assessed shall be sufficient to assure a balance in the fund not to exceed five hundred thousand dollars at the beginning of each year.

(c) Any amount received pursuant to subsection (a) of this section which exceeds the annual balance required in subsection (b) of this section shall be deposited into the leaking underground storage tank response fund established pursuant to this article to be used for the purposes set forth for expenditure of moneys in the fund.

(d) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by article XII, section 5 of the Constitution of West Virginia. For the purposes of this section, the net proceeds of such fines, penalties and forfeitures are the proceeds remaining after deducting from the proceeds those sums appropriated by the Legislature for defraying the cost of administering this article. In making the appropriation for defraying the cost of administering this article, the Legislature shall first take into account the sums included in the special fund prior to deducting additional sums as may be needed from the civil fines, civil penalties and forfeitures collected pursuant to this article. At the end of each fiscal year any unexpended balance of the collected civil fines, civil penalties, forfeitures and registration fees shall not be transferred to the general revenue fund but shall remain in the fund.

(e) The secretary shall submit an annual report to the joint committee on government and finance on or before the first day
of January each year providing information as to the status of
the underground storage tank fund, the registration fees or
forfeitures collected and any fines and penalties assessed
pursuant to this article, the amount of net proceeds of fines,
penalties and forfeitures paid into the fund and information as
to the progress of the underground storage tank program in the
protection of human health and the environment.

CHAPTER 258

(Com. Sub. for H. B. 4086 — By Delegates Beane and Frich)

[Passed March 12, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact §9A-1-2 and §9A-1-3 of the code of
West Virginia, 1931, as amended, all relating to the veterans’
council; adding Gulf War veterans and Afghanistan conflict or
Iraqi conflict veterans to the veterans’ council; and deleting
outdated language.

Be it enacted by the Legislature of West Virginia:

That §9A-1-2 and §9A-1-3 of the code of West Virginia, 1931, as
amended, be amended and reenacted, all to read as follows:

ARTICLE 1. DIVISION OF VETERANS’ AFFAIRS.

§9A-1-2. Veterans’ council; administration of division.
§9A-1-3. Appointment of veterans’ council members; term of office; removal.

§9A-1-2. Veterans’ council; administration of division.

1 There is continued the “veterans’ council” consisting of
2 nine members who must be citizens and residents of this state
and who have served in and been honorably discharged or separated under honorable conditions from the armed forces of the United States and whose service was within a time of war as defined by the laws of the United States, either Public Law No. 2 — 73rd Congress, or Public Law No. 346 — 78th Congress, and amendments thereto. At least one member of the council must be a veteran of World War II, at least one member of the council must be a veteran of the Korean Conflict, at least two members of the council must be veterans of the Vietnam era, at least one member must be a veteran of the first Gulf War and at least one member must be a veteran of the Afghanistan or Iraqi Conflicts. The members of the veterans' council must be selected with special reference to their ability and fitness to effectuate the purposes of this article.

A director and such veterans' affairs officers, assistants and employees as may be deemed advisable, shall administer the West Virginia division of veterans' affairs.

§9A-1-3. Appointment of veterans' council members; term of office; removal.

The term of office of the members of the veterans' council is six years, and members must be appointed by the governor by and with the advice and consent of the Senate: Provided, That upon the expansion of the council from seven to nine members, the governor shall initially appoint one new member for a term of four years and shall initially appoint the other new member for a term of six years. Thereafter the successors of these members shall be appointed for the term of six years. In case of a vacancy in the veterans' council, the appointment is for the remainder of the unexpired term. A member of the veterans' council is subject to removal by the governor for cause, but may have upon his or her own request an open hearing before the governor on the complaints or charges lodged against him or her. The action of the governor is final.
AN ACT to amend and reenact §9A-1-4 of the code of West Virginia, 1931, as amended, relating to duties and functions of veterans’ council; honoring academic achievement of West Virginians at military academies.

Be it enacted by the Legislature of West Virginia:

That §9A-1-4 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF VETERANS AFFAIRS.

§9A-1-4. Duties and functions of veterans’ council; appointment of director; term of office; removal; honoring academic achievement at military academies.

(a) It is the duty and function of the veterans’ council to advise the director on the general administrative policies of the division, to select, at their first meeting in each fiscal year commencing on the first day of July, a chairman to serve one year, to advise the director on rules as may be necessary, to advise the governor and the Legislature with respect to legislation affecting the interests of veterans, their widows, dependents and orphans and to make annual reports to the governor respecting the service of the division. The director has the same eligibility and qualifications prescribed for members of the
11 veterans’ council. The governor shall appoint a director for a
12 term of six years, by and with the advice and consent of the
13 Senate. Before making the appointment, the governor shall
14 request the council of the West Virginia division of veterans’
15 affairs to furnish a full and complete report concerning the
16 qualifications and suitability of the proposed appointee. The
17 director may only be removed by the governor for cause, but
18 shall have upon his or her own request an open hearing before
19 the governor on the complaints or charges lodged against him
20 or her. The action of the governor shall be final. The director ex
21 officio shall be the executive secretary of the veterans’ council,
22 keep the minutes of each meeting and be in charge of all
23 records of the division.

24 (b) The veterans’ council may annually honor each West
25 Virginian graduating from the U. S. Military Academy, the U. S.
26 Naval Academy, the U. S. Air Force Academy and the U. S.
27 Coast Guard Academy with the highest grade point average by
28 bestowing upon him or her the “West Augusta Award”. The
29 award shall be in a design and form established by the council
30 and include the famous Revolutionary War phrase from which
31 the award’s name is derived: “Once again our brethren from
32 West Augusta have answered the call to duty.” The council
33 shall coordinate the manner of recognition of the recipient at
34 graduation ceremonies with each academy.

CHAPTER 260

(Com. Sub. for H. B. 2423 — By Delegate Louisos)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
AN ACT to amend and reenact §18-2-34 of the code of West Virginia, 1931, as amended, relating to authorizing awarding of high school diplomas to certain surviving veterans.

Be it enacted by the Legislature of West Virginia:

That §18-2-34 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BOARD OF EDUCATION.


(a) Notwithstanding any provision of this code to the contrary, the state board shall provide for the awarding of high school diplomas, either by the county board in the county in which the veteran resides or the county in which the veteran would have received his or her diploma, whichever location the veteran chooses, to any surviving World War I, World War II, Korean Conflict or Vietnam Conflict veteran who:

(1) Left school prior to graduation and served in the armed forces of the United States: Provided, That a veteran of the Korean Conflict or the Vietnam Conflict must have been attending high school at the time he or she left prior to graduating and served in the armed forces of the United States;

(2) Did not receive a high school diploma;

(3) Was discharged from the armed services under honorable conditions; and

(4) Completes the application process as provided by the joint rules of the state board and the veterans' council.
(b) The state board and the veterans’ council, created in article one, chapter nine-a of this code, shall jointly propose rules for the identification of eligible veterans and for the awarding of high school diplomas. The rules shall provide for an application process and the credentials required to receive the high school diplomas.

(c) For purposes of this section:

(1) “World War I veteran” means any veteran who:

(A) Performed wartime service between April sixth, one thousand nine hundred seventeen, and November eleventh, one thousand nine hundred eighteen; or

(B) Has been awarded the World War I Victory Medal;

(2) “World War II veteran” means any veteran who performed wartime service between September sixteenth, one thousand nine hundred forty, and December thirty-first, one thousand nine hundred forty-six;

(3) “Korean Conflict veteran” means any veteran who performed military service between June twenty-seventh, one thousand nine hundred fifty, and January thirty-first, one thousand nine hundred fifty-five; and

(4) “Vietnam Conflict veteran” means any veteran who performed military service between February twenty-eighth, one thousand nine hundred sixty-one, and May seventh, one thousand nine hundred seventy-five.
AN ACT to amend and reenact §61-11A-8 of the code of West Virginia, 1931, as amended, relating to allowing victims of crime to be notified by telephone when a specified defendant is released from custody.

Be it enacted by the Legislature of West Virginia:

That §61-11A-8 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:


§61-11A-8. Notification to victim of offender's release, placement, or escape from custody.

1 (a) At the time a criminal prosecution is commenced by the filing of a complaint, if the complaint charges a person with committing an offense described in subsection (e) of this section, then in such case the prosecuting attorney is required to provide notice, in writing or by telephone, to the victim or a family member that he or she may request that they be notified prior to or at the time of any release of the accused from custody pending judicial proceedings.

9 (b) If a person is convicted of an offense described in subsection (e) of this section, the prosecuting attorney is
required to provide notice, in writing or by telephone, to the
victim or a family member that he or she may request that they
be notified prior to or at the time of sentencing if the convicted
person will be placed on work release, home confinement or
probation.

(c) If a person is convicted of an offense described in
subsection (e) of this section and is imprisoned in a state
correctional facility or confined in a county or regional jail, the
commissioner of corrections, the regional jail supervisor or the
sheriff, as the case may be, is required to provide notice, in
writing or by telephone, to the victim or a family member that
he or she may request that they be notified prior to or at the
time of:

(1) Releasing the convicted person from imprisonment in
any correctional facility;

(2) Releasing the convicted person from confinement in
any county or regional jail;

(3) Placing the convicted person in a halfway house or
other non-secure facility to complete his or her sentence; or

(4) Any escape by the convicted person from a state
correctional facility or a county or regional jail.

(d) The notice shall include instructions for the victim or
the victim’s family member on how to request the notification.

(e) Offenses which are subject to the provisions of this
section are as follows:

(1) Murder;

(2) Aggravated robbery;
38 (3) Sexual assault in the first degree;
39 (4) Kidnapping;
40 (5) Arson;
41 (6) Any sexual offense against a minor; or
42 (7) Any violent crime against a person.
43 (f) The commissioner of corrections, a regional jail supervisor, a sheriff or a prosecuting attorney who receives a written request for notification shall provide notice, in writing or by telephone, to the last known address or addresses or telephone number or numbers provided by the victim or a member of the victim’s family, or in the case of a minor child, to the custodial parent of the child, in accordance with the provisions of this section. In case of escape, notification shall be by telephone, if possible.
44 (g) If one or more family members request notification and if the victim is an adult and is alive and competent, notification shall be sent to the victim, if possible, notwithstanding that the victim did not request the notification.
45 (h) If notification by telephone to a victim is attempted, notification is not complete unless it is given directly to the person requesting notification and after that person’s identity has been verified. An attempted notification made to a voice mail or another recording device or to another member of the household is insufficient.
46 (i) For the purposes of this section, the following words or phrases defined in this subsection have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.
(1) "Filing of a complaint" means the filing of a complaint in accordance with the requirements of rules promulgated by the supreme court of appeals or the provisions of this code.

(2) "Victim" means a victim of a crime listed in subsection (e) of this section who is alive and competent.

(3) "Victim’s family member" means a member of the family of a victim of a crime listed in subsection (e) of this section who is not alive and competent.

CHAPTER 262

(H. B. 4330 — By Delegates Beane, Butcher, Ferrell, Yeager, Blair, Romine and Schoen)

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5-36, relating to vital statistics; authorizing electronic filing of certificates.

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 §16-5-36, to read as follows:

ARTICLE 5. VITAL STATISTICS.

§16-5-36. Electronic filing.

That any certificate filed pursuant to this article may be filed electronically.
AN ACT to amend and reenact §17-24-4 and §17-24-6 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §17-24-10, all relating to the waste tire remediation program; allowing balance in fund at end of fiscal year to be transferred to state road fund in certain circumstances; and continuation of the waste tire remediation program.

Be it enacted by the Legislature of West Virginia:

That §17-24-4 and §17-24-6 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §17-24-10, all to read as follows:

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

§17-24-6. Creation of the A. James Manchin fund; proceeds from sale of waste tires; fee on issuance of certificate of title.

§17-24-10. Continuation of waste tire remediation program.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

(a) The division of highways shall administer all funds made available to the division for remediation of waste tire
piles and for the proper disposal of waste tires removed from waste tire piles. The commissioner of the division of highways may: (i) Propose for legislative promulgation in accordance with article three, chapter twenty-nine-a of this code emergency and legislative rules necessary to implement the provisions of this article; and (ii) administer all funds appropriated by the Legislature to carry out the requirements of this article and any other funds from whatever source, including, but not limited to, federal, state or private grants.

(b) The commissioner also has the following powers:

(1) To apply and carry out the provisions of this article and the rules promulgated under this article.

(2) To investigate, from time to time, the operation and effect of this article and of the rules promulgated under this article and to report his or her findings and recommendations to the Legislature and the governor.

(c) The provisions of articles two-a and four of this chapter and the policy, rules, practices and procedures under those articles shall be followed by the commissioner in carrying out the purposes of this article.

(d) On or before the first day of June, two thousand one, the commissioner shall determine the location, approximate size and potential risk to the public of all waste tire piles in the state and establish, in descending order, a waste tire remediation list.

(e) The commissioner may contract with the department of health and human resources or the division of corrections, or both, to remediate or assist in remediation of waste tire piles throughout the state. Use of available department of health and human resources and the division of corrections work programs shall be given priority status in the contract process so long as
such programs prove a cost-effective method of remediating waste tire piles.

(f) Waste tire remediation shall be stopped and the division of environmental protection notified upon the discovery of any potentially hazardous material at a remediation site. The division of environmental protection shall respond to the notification in accordance with the provisions of article eighteen, chapter twenty-two of this code.

(g) The commissioner may establish a tire disposal program within the division to provide for a cost effective and efficient method to accept passenger car and light truck waste tires at such division of highways county headquarters as have sufficient space for temporary storage of waste tires and personnel to accept and handle waste tires. The commissioner may pay a fee for each tire an individual West Virginia resident or West Virginia business brings to the division. The commissioner may establish a limit on the number of tires an individual or business may be paid for during any calendar month. The commissioner may in his or her discretion authorize commercial businesses to participate in the collection program: Provided, That no person or business who has a waste tire pile subject to remediation under this article may participate in this program.

(h) The commissioner may pledge not more than two and one-half million dollars annually of the moneys appropriated, deposited or accrued in the A. James Manchin fund created by section six of this article, to the payment of debt service, including the funding of reasonable reserves, on bonds issued by the water development authority pursuant to section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure projects relating to waste tire processing facilities located in this state: Provided, That a waste tire processing facility shall be determined by the solid waste management board, established pursuant to the provisions of
article three, chapter twenty-two-c of this code, to meet all
applicable federal and state environmental laws and rules and
regulations and to aid the state in efforts to promote and
encourage recycling and use of constituent component parts of
waste tires in an environmentally sound manner: Provided,
however, That the waste tire processing facility shall have a
capital cost of not less than three hundred million dollars, and
the council for community and economic development shall
determine that the waste tire processing facility is a viable
economic development project of benefit to the state’s econ-
omy.

§17-24-6. Creation of the A. James Manchin fund; proceeds from
sale of waste tires; fee on issuance of certificate of
title.

(a) There is continued in the state treasury a special revenue
fund known as the “A. James Manchin Fund”. All moneys
appropriated, deposited or accrued in this fund shall be used
exclusively for remediation of waste tire piles as required by
this article for the tire disposal program established under
section four of this article or for the purposes of subsection (h),
section four of this article or for the purposes of subsection (c),
section five of this article. The fund consists of the proceeds
from the sale of waste tires; fees collected by the division of
motor vehicles as provided in section sixteen, article ten,
chapter seventeen-a of this code; any federal, state or private
grants; legislative appropriations; loans; and any other funding
source available for waste tire remediation. Any unprogrammed
balance remaining in the fund at the end of any state fiscal year
shall be transferred to the state road fund.

(b) No further collections or deposits shall be made after
the commissioner certifies to the governor and the Legislature
that the remediation of all waste tire piles that were determined
by the commissioner to exist on the first day of June, two
20 thousand one, has been completed and that all infrastructure
21 bonds issued by the water development authority pursuant to
22 section seventeen-a, article fifteen-a of chapter thirty-one of this
23 code have been paid in full or legally defeased.

24 (c) If infrastructure bonds are not issued by the water
25 development authority pursuant to section seventeen-a, article
26 fifteen-a, chapter thirty-one of this code to finance infrastruc-
27 ture projects relating to waste tire processing facilities located
28 in this state on or before the thirty-first day of December, two
29 thousand six, all further collections and deposits to the A. James
30 Manchin fund which are not programmed for remediation or
31 disposal shall be transferred to the state road fund at the end of
32 each fiscal year.

§17-24-10. Continuation of waste tire remediation program.

1 The waste tire remediation program shall continue to exist,
2 pursuant to the provisions of article ten, chapter four of this
3 code, until the first day of July, two thousand six, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

CHAPTER 264

(Com. Sub. for S. B. 163 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]
26-3, §22-26-4, §22-26-5 and §22-26-6, all relating to establishing the water resources protection act; providing legislative findings; finding that the state reserves a sovereign interest in the waters of the state as a valuable public resource; defining terms; declaring the state shall claim and protect state waters for the use and benefit of its citizens; providing for preservation of common law rights; providing that a water use survey and registration of large users of state waters be undertaken by the secretary of the department of environmental protection; requiring the secretary to coordinate survey with state agencies and report to a legislative oversight commission; requiring persons making withdrawals exceeding seven hundred fifty thousand gallons per month to participate in survey and registration; requiring the secretary to use reasonable alternatives for estimating usage; requiring persons participating in survey and registration to submit accurate information; providing limited exceptions to survey and registration participation; authorizing the secretary to coordinate with other state agencies and the United States geological survey; directing the department of environmental protection to propose a strategy for water management; authorizing secretary of department of environmental protection to promulgate rules; establishing confidentiality of submitted information and exceptions; providing criteria for requesting and receiving confidentiality designation; establishing requirements for requesting confidential documents and appeal process; establishing a joint legislative oversight commission to monitor survey and develop policies; and providing civil penalties for noncompliance.

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 §22-26-1, §22-26-2, §22-26-3, §22-26-4, §22-26-5 and §22-26-6, all to read as follows:

ARTICLE 26. WATER RESOURCES PROTECTION ACT.
§22-26-1. Short title; legislative findings.
§22-26-2. Definitions.
§22-26-3. Waters claimed by state; water resources protection survey; need for study; registration requirements; agency cooperation; information gathering.
§22-26-5. Joint legislative oversight commission on state water resources.
§22-26-6. Mandatory survey and registration compliance.

§22-26-1. Short title; legislative findings.

(a) Short title - This article may be known and cited as the “Water Resources Protection Act”.

(b) Legislative findings:

(1) The West Virginia Legislature finds that it is the public policy of the state of West Virginia to protect and conserve the water resources for the state and to provide for the public welfare. The state’s water resources are vital natural resources of the state that are essential to maintain, preserve and promote quality of life and economic vitality of the state.

(2) The West Virginia Legislature further finds that it is the public policy of the state that the water resources of the state be available for the benefit of the citizens of West Virginia, consistent with and preserving all other existing rights and remedies recognized in common law or by statute, while also preserving this resource within its sovereign powers for the common good.

§22-26-2. Definitions.

For purposes of this article, the following words have the meanings assigned unless the context indicates otherwise:

(a) “Beneficial use” means uses that include, but are not limited to, public or private water supplies, agriculture,
tourism, commercial, industrial, coal, oil and gas and other
mineral extraction, preservation of fish and wildlife habitat,
maintenance of waste assimilation, recreation, navigation and
preservation of cultural values.

(b) "Consumptive withdrawal" means any withdrawal of
water which returns less water to the water body than is
withdrawn.

(c) "Farm use" means irrigation of any land used for
general farming, forage, aquiculture, pasture, orchards,
nurseries, the provision of water supply for farm animals,
poultry farming or any other activity conducted in the course
of a farming operation.

(d) "Interbasin transfer" means the permanent removal of
water from the watershed from which it is withdrawn.

(e) "Maximum potential" means the maximum designed
capacity of a facility to withdraw water under its physical and
operational design.

(f) "Person", "persons" or "people" means an individual,
public and private business or industry, public or private water
service and governmental entity.

(g) "Nonconsumptive withdrawal" means any withdrawal
of water which is not a consumptive withdrawal as defined in
this section.

(h) "Secretary" means the secretary of the department of
environmental protection or his or her designee.

(i) "Water resources", "water" or "waters" means any and
all water on or beneath the surface of the ground, whether
percolating, standing, diffused or flowing, wholly or partially
within this state, or bordering this state and within its jurisdic-
Water Resources Protection Act

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Section 22-26-3. Waters claimed by state; water resources protection survey; need for study; registration requirements; agency cooperation; information gathering.

(a) The waters of the state of West Virginia are hereby claimed as valuable public natural resources held by the state for the use and benefit of its citizens. The state shall manage the quantity of its waters effectively for present and future use and enjoyment and for the protection of the environment. Therefore, it is necessary for the state to determine the nature and extent of its water resources, the quantity of water being withdrawn or otherwise used and the nature of the withdrawals.
or other uses: Provided, That no provisions of this article may
be construed to amend or limit any other rights and remedies
created by statute or common law in existence on the date of
the enactment of this article.

(b) The secretary shall conduct a water resources survey of
consumptive and nonconsumptive surface water and ground-
water withdrawals in this state. The secretary shall determine
the form and format of the information submitted, including
the use of electronic submissions. The survey shall collect
information covering the years two thousand three, two
thousand four and two thousand five. The secretary shall
establish a statewide registration program to monitor large
quantity users of water resources of this state beginning in two
thousand six.

(c) Beginning in the year two thousand three, every person
utilizing the state's water resources whose withdrawal from a
water resource during any month exceeds seven hundred fifty
thousand gallons, except those who purchase water from a
public or private water utility or other service that is reporting
its total withdrawal, shall provide all requested information
regarding withdrawals of the water resource. Multiple with-
drawals of water from a particular water resource that are made
or controlled by a single person and used at one facility or
location shall be considered a single withdrawal of water.
Water withdrawals for self-supplied farm use and private
households will be estimated. Water utilities regulated by the
public service commission pursuant to article two, chapter
twenty-four of the code are exempted from providing informa-
tion on interbasin transfers to the extent those transfers are
necessary to provide water utility services within the state.

(d) The secretary shall make a good faith effort to obtain
survey and registration information from persons who are
withdrawing water from an in-state water resource but who are located outside the state borders.

(e) All state agencies that have a regulatory, research or other function relating to water resources, including, but not limited to, the state geological and economic survey, the division of natural resources, the public service commission, the bureau for public health, the commissioner of the department of agriculture, the office of emergency services, Marshall university and West Virginia university may enter into inter-agency agreements with the secretary and shall cooperate by:

(i) Providing information relating to the water resources of the state; and (ii) providing any necessary assistance to the secretary in effectuating the purposes of this article. The secretary shall determine the form and format of the information submitted by these agencies.

(f) Persons required to participate in the survey and registration shall provide any reasonably available information on stream flow conditions that impact withdrawal rates.

(g) Persons required to participate in the survey and registration shall provide the most accurate information available on water withdrawal during seasonal conditions and future potential maximum withdrawals or other information that the secretary determines is necessary for the completion of the survey or registration: Provided, That a coal-fired electric generating facility shall also report the nominal design capacity of the facility, which is the quantity of water withdrawn by the facility’s intake pumps necessary to operate the facility during a calendar day.

(h) The secretary shall, to the extent reliable water withdrawal data is reasonably available from sources other than persons required to provide data and participate in the survey and registration, utilize that data to fulfill the requirements of
this section. If the data is not reasonably available to the
secretary, persons required to participate in the survey and
registration are required to provide the data. Registered
persons that report withdrawals on an annual basis for a period
of three consecutive years are not required to register further
withdrawals unless the amount withdrawn annually varies by
more than ten percent from the three year average. Altering
locations of intakes and discharge points that result in an
impact to the withdrawal of the water resource by an amount of
ten percent or more from the consecutive three year average
shall also be reported.

(i) The secretary shall report regularly to the joint legisla-
tive oversight commission on state water resources to advise
the commission of the progress of the survey as well as any
problems that may be encountered in conducting the survey
and to make recommendations on policy and statutory changes
that may be needed.

(j) Upon completion of the survey, the secretary shall file
a final report with the joint committee on government and
finance no later than the thirty-first day of December, two
thousand six. In preparing the final report the secretary shall
consult with the commissioner of the department of agriculture,
the bureau for public health, the division of natural resources
and the public service commission. The final report shall
include the following:

(1) To the extent the information is available, the location
and quantity of all surface water and groundwater resources in
this state;

(2) A discussion of the consumptive and nonconsumptive
withdrawals of surface water and groundwater in this state;

(3) A listing of each person whose consumptive or
nonconsumptive withdrawal during any single month during
the calendar year exceeds seven hundred fifty thousand gallons, including the amount of water used, location of the water resource, the nature of the use, location of each intake and discharge point by longitude and latitude where available and, if the use involves more than one watershed or basin, the watersheds or basins involved and the amount transferred;

(4) A discussion of any area of concern regarding historical or current conditions that indicate a low flow condition or where a drought or flood has occurred or is likely to occur that threatens the beneficial use of the surface water or groundwater in the area;

(5) Current or potential in-stream or off-stream uses that contribute to or are likely to exacerbate natural low flow conditions to the detriment of the water resource;

(6) Discussion of a potential groundwater well network that provides indicators that groundwater levels in an area are declining or are expected to decline excessively;

(7) Potential growth areas where competition for water resources may be expected;

(8) Any occurrence of two or more withdrawals that are interfering or may reasonably be expected to interfere with one another;

(9) Discussion of practices or methods persons have implemented to reduce water withdrawals; and

(10) Any other information that may be beneficial in adequately assessing water availability and withdrawal and in determining the need for and the preparation of water resources plans.
(k) In addition to any requirements for completion of the survey established by the secretary, the survey must accurately reflect both actual and maximum potential water withdrawal. Actual withdrawal shall be established through metering, measuring or alternative accepted scientific methods to obtain a reasonable estimate or indirect calculation of actual use.

(l) Upon completion of the survey, the secretary shall make recommendations to the joint legislative oversight commission created in section five of this article relating to the need to implement a water quantity management strategy for the state or regions of the state where the quantity of water resources are found to be currently stressed or likely to be stressed due to emerging beneficial or other uses, ecological conditions or other factors requiring the development of a strategy for management of these water resources. The report shall include an analysis of the costs and benefits upon persons potentially impacted by the implementation of a water quantity management strategy.

(m) The secretary may propose rules pursuant to article three, chapter twenty-nine-a of this code as necessary to implement the survey and registration requirements of this article.

(n) The secretary is authorized to enter into cooperative agreements with the United States geological survey to obtain federal matching funds, conduct research and analyze survey and registration data and other agreements as may be necessary to carry out his or her duties under this article.


(a) Information required to be submitted by a person as part of the water withdrawal survey and registration that may be a trade secret, contain protected information relating to homeland
security or be subject to another exemption provided by the state freedom of information act may be deemed confidential. Each such document shall be identified by that person as confidential information. The person claiming confidentiality shall provide written justification to the secretary at the time the information is submitted stating the reasons for confidentiality and why the information should not be released or made public. The secretary has the discretion to approve or deny requests for confidentiality as prescribed by this section.

(b) In addition to records or documents that may be considered confidential under article one, chapter twenty-nine-b of this code, confidential information means records, reports or information, or a particular portion thereof, that if made public would:

(1) Divulge production or sales figures or methods, processes or production unique to the submitting person;

(2) Otherwise tend to adversely affect the competitive position of a person by revealing trade secrets, including intellectual property rights; or

(3) Present a threat to the safety and security of any water supply, including information concerning water supply vulnerability assessments.

(c) Information designated as confidential and the written justification shall be maintained in a file separate from the general records related to the person.

(d) Information designated as confidential may be released when the information is contained in a report in which the identity of the person has been removed and the confidential information is aggregated by hydrologic unit or region.
Information designated as confidential may be released to governmental entities, their employees and agents when compiling and analyzing survey and registration information and as may be necessary to develop the legislative report required by this section or to develop water resources plans. Any governmental entity or person receiving information designated confidential shall protect the information as confidential.

(f) Upon receipt of a request for information that has been designated confidential and prior to making a determination to grant or deny the request, the secretary shall notify the person claiming confidentiality of the request and may allow the person an opportunity to respond to the request in writing within five days.

(g) All requests to inspect or copy documents shall state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within ten business days of the receipt of a request, the secretary shall: (1) Advise the person making the request in writing of the time and place where the person may inspect and copy the documents which, if the request addresses information claimed as confidential, may not be sooner than twenty days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the person claiming confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, then notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

(h) Any person adversely affected by a determination regarding confidential information under this article may appeal the determination to the appropriate circuit court pursuant to the provisions of article five, chapter twenty-nine-a of this code. The filing of a timely notice of appeal shall stay
any determination to disclose confidential information pending
a final decision on appeal. The scope of review is limited to
the question of whether the portion of the records, reports, data
or other information sought to be deemed confidential,
inspected or copied is entitled to be treated as confidential
under this section. The secretary shall afford evidentiary
protection in appeals as necessary to protect the confidentiality
of the information at issue, including the use of in camera
proceedings and the sealing of records when appropriate.

§22-26-5. Joint legislative oversight commission on state water
resources.

(a) The president of the Senate and the speaker of the
House of Delegates shall each designate five members of their
respective houses, at least one of whom shall be a member of
the minority party, to serve on a joint legislative oversight
commission charged with immediate and ongoing oversight of
the water resources survey and registration. This commission
shall be known as the “Joint Legislative Oversight Commission
on State Water Resources” and shall regularly investigate and
monitor all matters relating to the water resources survey and
the need for a water resources strategy and policy.

(b) The expenses of the commission, including the cost of
conducting the survey and monitoring any subsequent strategy
and those incurred in the employment of legal, technical,
investigative, clerical, stenographic, advisory and other
personnel, are to be approved by the joint committee on
government and finance and paid from legislative appropria-
tions.

(c) The secretary shall report, at a minimum of quarterly,
in sufficient detail for the commission to monitor the water
resources survey and to develop recommendations resulting
from the survey. The secretary shall submit an annual report
to the commission by the thirty-first day of December each year. The secretary shall also file a final report on the water resources survey no later than the thirty-first day of December, two thousand six.

§22-26-6. Mandatory survey and registration compliance.

(a) The water resources survey and subsequent registry will provide critical information for protection of the state’s water resources and, thus, mandatory compliance with the survey and registry is necessary.

(b) Any person who fails to complete the survey or register, provides false or misleading information on the survey or registration, fails to provide other information as required by this article may be subject to a civil administrative penalty not to exceed five thousand dollars to be collected by the secretary consistent with the secretary’s authority pursuant to this chapter. Every thirty days after the initial imposition of the civil administrative penalty, another penalty may be assessed if the information is not provided. The secretary shall provide written notice of failure to comply with this section thirty days prior to assessing the first administrative penalty.

CHAPTER 265

(H. B. 4672 — By Delegates Michael, Boggs, Warner, Browning, Cann, H. White and G. White)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact §31B-12-1207 of the code of West Virginia, 1931, as amended, relating to calculation of workers’
compensation premiums for members of limited liability compa-
nies; and clarifying that workers’ compensation coverage is not
required for a person who is a member solely as an investor.

Be it enacted by the legislature of West Virginia:

That §31B-12-1207 of the code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 12. MISCELLANEOUS PROVISIONS.


(a) Notwithstanding any provision of subdivision (3),
subsection (g), section one, article two, chapter twenty-three of
this code to the contrary, all covered members of limited
liability companies which are treated as partnerships for federal
income tax purposes shall be subject to the calculation of
premium on the members as provided for partners in a partner-
ship in section one-b, article two, chapter twenty-three of this
code. Any limited liability company excluding any member
from workers’ compensation coverage or computing premiums
on such member as a partner prior to the effective date of this
section is deemed to have made an effective election in accor-
dance with the provisions of this section for all periods until
such limited liability company modifies the election.

(b) Notwithstanding any provision of subdivision (3),
subsection (g), section one, article two, chapter twenty-three of
this code to the contrary, a person is not a member of a limited
liability company for whom coverage is required under that
section if the person is a member solely as an investor and does
not participate in the direction, administration, or control of the
company and its activities or investments unless that person is
employed in the service of the company for the purpose of
carrying on the industry, business, service or work in which it
is engaged.
AN ACT to amend and reenact §5B-2B-2, §5B-2B-4, §5B-2B-5 and §5B-2B-9 of the code of West Virginia, 1931, as amended, all relating to the West Virginia workforce investment act; updating terms; outlining duties; and creating the workforce investment interagency collaborative team.

Be it enacted by the Legislature of West Virginia:

That §5B-2B-2, §5B-2B-4, §5B-2B-5 and §5B-2B-9 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-2. Definitions.
§5B-2B-4. Duties of the workforce investment council.
§5B-2B-5. State agencies.
§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the executive director of the West Virginia development office.

§5B-2B-2. Definitions.

As used in this article, the following terms have the following meanings, unless the context clearly indicates otherwise:
(1) “Commission” or “legislative oversight commission” means the legislative oversight commission on workforce investment for economic development created pursuant to section seven of this article.

(2) “Council” means the West Virginia workforce investment council.

(3) “Team” means the workforce investment interagency collaborative team.

§5B-2B-4. Duties of the workforce investment council.

(a) The council shall assist the governor in the:

1. Development and revision of a strategic five-year state workforce investment plan, including the establishment of an overall workforce investment public agenda with goals and benchmarks of success for the state, state agencies and for local workforce investment boards;

2. Development and continuous improvement of a statewide system of workforce investment activities including:

(A) Development of linkages in order to assure coordination and nonduplication of services and activities of workforce investment programs conducted by various entities in the state; and

(B) The review of strategic plans created and submitted by local workforce investment boards;

3. Commenting at least annually on the measures taken by the state pursuant to the Carl D. Perkins Vocational and Applied Technology Education Act, 20 U.S.C. §2323;

4. Designation and revision of local workforce investment areas;
(5) Development and revision of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas;

(6) Development and continuous improvement of comprehensive state performance measures, including state adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the state;

(7) Preparation of the annual report to the secretary of labor as required by the Workforce Investment Act, 29 U.S.C. §2871;

(8) Development and continued improvement of a statewide employment statistics system; and

(9) Development and revision of an application for workforce investment incentive grants.

(b) The council shall make a report to the legislative oversight commission on or before the fifteenth day of January of each year detailing: (1) All the publicly funded workforce investment programs operating in the state, including the amount of federal and state funds expended by each program, how the funds are spent and the resulting improvement to the workforce; (2) the council’s recommendations concerning future use of funds for workforce investment programs; (3) the council’s analysis of operations of local workforce investment programs; (4) the council’s recommendations for the establishment of an overall workforce investment public agenda with goals and benchmarks of success for the state, state agencies and for local workforce investment boards; and (5) any other information the commission may require.

§5B-2B-5. State agencies.

On or before the first day of November any state agency that receives federal or state funding that has been used for
workforce investment activities for the past fiscal year shall provide to the council a report, detailing the source and amount of federal, state or other funds received; the purposes for which the funds were provided; the services provided in each regional workforce investment area; the measures used to evaluate program performance, including current and baseline performance data; and any other information requested by the council. All reports submitted pursuant to this section are to be in a form approved by the council.

§5B-2B-9. Coordination between agencies providing workforce investment programs, local workforce investment boards and the executive director of the West Virginia development office.

(a) To provide on-going attention to addressing issues that will build and continually improve the overall workforce investment system, the workforce investment interagency collaborative team is hereby created. The team shall be the single state interagency source for addressing issues or concerns related to building and maintaining the most effective and efficient implementation of the federal workforce investment act and the overall workforce development system in West Virginia. The team shall focus on how best to collaborate between and among the state agencies directly involved in workforce investment activities and shall develop a strategic plan to that end. The team shall serve as a forum for the council to seek information or recommendations in furtherance of its responsibilities under this article. The West Virginia development office is the entity which shall convene the team at least monthly and shall provide administrative and other services to the team as the team requires.

(b) The team shall consist of members from each agency subject to the reporting provisions of section five of this article. Each agency shall appoint two representatives to the team.
consisting of the chief official of the department or division and
the official within that department or division who is directly
responsible for overseeing the workforce investment program
or activities at the state level. A designee may be selected to
represent a member appointed to the team: Provided, That the
designee has policy-making decision authority regarding
workforce investment activities including program and fiscal
issues. The team members have authority to make decisions on
behalf of the agency at the level required for the team to address
issues and advance system improvements.

(c) The team shall coordinate the development of a self-
sufficiency standard study for the State of West Virginia. The
self-sufficiency standard is to measure how much income is
needed for a household of a given composition in a given place
to adequately meet its basic needs without public or private
assistance. Beginning on the first day of November, two
thousand four, and every two years thereafter, this study is to be
reported to the speaker of the House of Delegates, the president
of the Senate, the workforce investment council and the
legislative oversight commission on workforce investment for
economic development.

(d) Beginning the first day of January, two thousand three,
in order to lawfully continue any workforce investment
activities, any agency subject to the reporting provisions of
section five of this article shall enter into a memorandum of
understanding with the executive director of the West Virginia
development office and any local workforce investment board
representing an area of this state in which the agency is engaged
in workforce investment activities. To the extent permitted by
federal law, the agreements are to maximize coordination of
workforce investment activities and eliminate duplication of
services on both state and local levels.
(e) No memorandum of understanding may be effective for more than one year without annual reaffirmation by the parties.

(f) Any state agency entering a memorandum of understanding shall deliver a copy thereof to both the West Virginia workforce investment council and the legislative oversight commission.

CHAPTER 267

(H. B. 4464 — By Delegates Craig, Morgan, Leach, Smirl, Howard and Sobonya)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the governing body of the County Commission of Cabell County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of said county an election to consider an excess levy for fire protection service, firefighter training and economic development from the third Tuesday of April until the third Tuesday in May, two thousand four.

Be it enacted by the Legislature of West Virginia:

COUNTY COMMISSION OF CABELL COUNTY MEETING AS LEVYING BODY EXTENDED FOR ELECTION ON THE QUESTION OF AN EXCESS LEVY.

§1. Extending the time for the County Commission of Cabell County to meet as levying body for election to consider an excess levy.
Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the County Commission of Cabell County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levying rate and certifying its actions to the state tax commissioner from the third Tuesday in April until the third Tuesday in May, two thousand four, for the purpose of submitting to the voters of Cabell County, West Virginia, an excess levy to be used for fire protection service, firefighter training and economic development in Cabell County.

CHAPTER 268

(Com. Sub. for S. B. 516 — By Senators Unger, Snyder and Rowe)

[Passed March 13, 2004; in effect ninety days from passage. Approved by the Governor.]

AN ACT to establish the West Virginia eastern panhandle transportation authority to include representatives from Berkeley, Jefferson and Morgan counties; appointment of officers; and powers of authority.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA EASTERN PANHANDLE TRANSPORTATION AUTHORITY.

§1. West Virginia eastern panhandle transportation authority created; purposes.

There is hereby created a West Virginia eastern panhandle transportation authority to promote and advance the construc-
tion of a modern highway through Berkeley, Jefferson and Morgan counties and to coordinate with counties, municipalities, state and federal agencies, public nonprofit corporations, private corporations, associations, partnerships and individuals for the purpose of planning, assisting and establishing recreational, tourism, industrial, economic and community development of West Virginia Route 9 and the new Route 9 proposals and construction from the Virginia line to Berkeley Springs, Interstate 81, Route 11, Route 522, Route 340 and also any existing and proposed by-passes around any municipalities, as well as any other highways in those counties for the benefit of West Virginians.

§2. Members; appointment; officers.

(a) The authority consists of nine voting members and three ex officio nonvoting members. All members shall be appointed before the first day of July, two thousand four.

(b) Each of the county commissions of the counties of Berkeley, Jefferson, and Morgan shall appoint three voting members to the authority. The terms of the voting members initially appointed by a county commission are as follows: One member shall be appointed for a term of two years and two members shall be appointed for terms of four years. All successive appointments shall be for four-year terms. Any voting member may be removed for cause by the appointing county commission.

(c) The three ex officio nonvoting members are the commissioner of highways or his or her designee, the director of the parkways, economic development and tourism authority or his or her designee and the executive director of the West Virginia development office or his or her designee.
(d) Should a vacancy occur, the person appointed to fill the vacancy shall serve only for the unexpired portion thereof. All members are eligible for reappointment.

(e) The authority shall meet annually on the third Monday in July and at such other times designated by the authority in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and may be held only after all members are given notice of the meeting in writing. Five voting members constitute a quorum for all meetings. At each annual meeting of the authority, it shall elect a president, vice president, secretary and treasurer. The authority shall adopt bylaws and rules as may be necessary for its operation and management.

§3. Powers.

(a) The authority has all but only those powers necessary, incidental, convenient and advisable for the following purposes:

(1) Promoting economic development and tourism along West Virginia Route 9 and the new Route 9 proposals and construction from the Virginia line to Berkeley Springs, Interstate 81, Route 11, Route 522, Route 340 and also any existing and proposed by-passes around any municipalities, as well as any other highways in Berkeley, Jefferson and Morgan counties;

(2) Advocating actions consistent with that plan or its provisions to or before any governmental entity or any private person or entity; and

(3) Otherwise acting in an advisory capacity with regard to any aspects of West Virginia Route 9 and new Route 9 construction and design and other highways in those counties at the request of or without the request of any governmental entity or private person or entity.
(b) The authority may not own any of the real estate or real property herein described for development and may not be responsible for operating or maintaining the highways described herein.

CHAPTER 269

(H. B. 4763 — By Delegates Brown, Webb, Armstead, Webster, Palumbo, Calvert and Amores)

[Passed March 13, 2004; in effect from passage. Approved by the Governor.]

AN ACT extending the time for the city council of Dunbar to meet as a levying body for the purpose of presenting to the voters of the city an election to continue an additional city levy to maintain the present salaries of all employees of the paid fire and paid police departments of the City of Dunbar and to repair and service existing police department and fire fighting equipment and to purchase additional fire fighting and police equipment where necessary from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand four.

Be it enacted by the Legislature of West Virginia:

THE CITY COUNCIL OF DUNBAR MEETING AS A LEVYING BODY EXTENDED.

§1. Extending time for the City of Dunbar to meet as a levying body for election of additional levies to maintain present salaries of employees of the paid fire and paid police departments, to repair and service existing police department and fire fighting equipment, and to purchase additional fire fighting and police department equipment.
Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the city council of Dunbar is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state auditor from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first of May, two thousand four, for the purpose of submitting to the voters of the City of Dunbar the continuation of an additional city levy to maintain the present salaries of all employees of the paid fire and paid police departments of the City of Dunbar and to repair and service existing police department and fire fighting equipment and to purchase additional fire fighting and police equipment where necessary.

CHAPTER 270

(H. B. 4456 — By Delegates Warner, laquinta, Coleman, Cann and Fragale)

[Passed March 12, 2004; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the county commission of Harrison County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election on the question of continuing the excess levy for vital public services in Harrison County from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand four.

Be it enacted by the Legislature of West Virginia:

HARRISON COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.
§1. Extending time for the Harrison County commission to meet as a levying body for an election continuing the excess levy for vital public services.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, 1931, as amended, the county commission of Harrison County, West Virginia, is hereby authorized to extend the time for its meeting as a levying body, setting the levy rate and certifying its actions to the state tax commissioner from between the seventh and twenty-eighth days of March until the first Thursday in June, two thousand four, for the purpose of submitting to the voters of Harrison County the question of continuing the excess levy for vital public services.

CHAPTER 271

(S. B. 734 — Originating in the Committee on the Judiciary)

[Passed March 12, 2004; in effect form passage. Approved by the Governor.]

AN ACT extending the time for the town council of Smithers to meet as a levying body for the purpose of presenting to the voters of the town an election to continue an additional town levy for solid waste services and retirement benefits from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand four.

Be it enacted by the Legislature of West Virginia:

THE TOWN COUNCIL OF SMITHERS MEETING AS A LEVYING BODY EXTENDED.
§1. Extending time for the town council of Smithers to meet as a levying body for election of additional levy for solid waste services and retirement benefits.

Notwithstanding the provisions of article eight, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the town council of Smithers is hereby authorized to extend the time for its meeting as a levying body and certifying its actions to the state auditor from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand four, for the purpose of submitting to the voters of the town of Smithers the continuation of an additional town levy for solid waste services and retirement benefits.
Proposing an amendment to the Constitution of the State of West Virginia, authorizing appropriations and the issuance and sale of additional state bonds in an amount not exceeding eight million dollars for the purpose of paying bonuses to certain veterans or to relatives of certain veterans; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.
Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year two thousand four, or at any special election held prior thereto, which proposed amendment is as follows:

1. **VETERANS BONUS AMENDMENT**
   (Kosovo, Afghanistan, and Iraq)

The Legislature shall provide by law, either for the appropriation from the general revenues of the State, or for the issuance and sale of state bonds, which shall be in addition to all other state bonds heretofore issued, or a combination of both as the Legislature may determine, for the purpose of paying a cash bonus to: (1) Veterans of the armed forces of the United States who served on active duty in areas of conflict in Iraq, or were members of reserve components called to active duty by the President of the United States under Title 10, United States Code section 12301, 12302, 12303 or 12304 during the Iraqi War, between the nineteenth day of March, two thousand three and the date determined by the President or Congress of the United States as the end of the involvement of the United States armed forces in Iraq, both dates inclusive; or (2) veterans, active service members, or members of reserve components of the armed forces of the United States, who served on active duty in one of the military operations for which he or she received a campaign badge or expeditionary medal during the periods hereinafter described. For purposes of this amendment, periods of active duty in a campaign or expedition are designated as: The conflict in Kosovo between the twentieth day of November, one thousand nine hundred ninety-five and the thirty-first day of December, two thousand, both dates inclusive; and the conflict in Afghanistan, between the seventh day...
of October, two thousand one and the date determined by the
President or Congress of the United States as the end of the
involvement of the United States armed forces in Afghanistan,
both dates inclusive. For purposes of this amendment not more
than one bonus shall be paid to or on behalf of the service of a
veteran. In order to be eligible to receive a bonus, a veteran
must have been a bona fide resident of the State of West
Virginia at the time of his or her entry into active service and
for a period of at least six months immediately prior thereto,
and has not been separated from service under conditions other
than honorable. The bonus shall also be paid to any veteran
otherwise qualified pursuant to this amendment, who was
discharged within ninety days after entering the armed forces
because of a service-connected disability. The amount of the
bonus shall be six hundred dollars per eligible veteran who was
in active service, inside the combat zone in Kosovo, Afghan-
istan or Iraq as designated by the President or Congress of the
United States at anytime during the dates specified hereinabove.
In the case of the Iraqi War and the conflict in Afghanistan, the
amount of bonus shall be four hundred dollars per eligible
veteran who was in active service outside the combat zone
designated by the President or Congress of the United States
during the dates specified hereinabove. The bonus to which any
deceased veteran would have been entitled, if living, shall be
paid to the following surviving relatives of the veteran, if the
relatives are residents of the State when the application is made
and if the relatives are living at the time payment is made: Any
unremarried widow or widower, or, if none, all children,
stepchildren and adopted children under the age of eighteen, or,
if none, any parent, stepparent, adoptive parent or person
standing in loco parentis. The categories of persons listed shall
be treated as separate categories listed in order of entitlement
and where there is more than one member of a class, the bonus
shall be paid to each member according to his or her propor-
tional share. Where a deceased veteran’s death was connected
with the service and resulted from the service during the time
period specified, however, the surviving relatives shall be paid,
in accordance with the same order of entitlement, the sum of
two thousand dollars in lieu of any bonus to which the deceased
might have been entitled if living. The person receiving the
bonus shall not be required to include the bonus as income for
state income tax purposes.

The principal amount of any bonds issued for the purpose
of paying the bonuses provided for in this amendment shall not
exceed the principal amount of eight million dollars, but may be
funded or refunded either on the maturity dates of the bonds or
on any date on which the bonds are callable prior to maturity,
and if any of the bonds have not matured or are not then
callable prior to maturity, the Legislature may nevertheless
provide at any time for the issuance of refunding bonds to fund
or refund the bonds on the dates when the bonds mature or on
any date on which the bonds are callable prior to maturity and
for the investment or reinvestment of the proceeds of the
refunding bonds in direct obligations of the United States of
America until the date or dates upon which the bonds mature or
are callable prior to maturity. The principal amount of any
refunding bonds issued under the provisions of this paragraph
shall not exceed the principal amount of the bonds to be funded
or refunded thereby.

The bonds may be issued from time to time for the purposes
authorized by this amendment as separate issues or as combined
issues.

Whenever the Legislature shall provide for the issuance of
any bonds under the authority of this amendment, it shall at the
same time provide for the levy, collection and dedication of an
additional tax, or enhancement to another tax as the Legislature
may determine, in an amount as may be required to pay
annually the interest on the bonds and the principal thereof within and not exceeding fifteen years, and all taxes or charges so levied shall be irrevocably dedicated for the payment of the principal of and interest on the bonds until the principal of and interest on the bonds are finally paid and discharged and any of the covenants, agreements or provisions in the acts of the Legislature levying the taxes or charges shall be enforceable in any court of competent jurisdiction by any of the holders of said bonds. Any revenue generated in excess of that which is required to pay the bonuses herein and to pay any administrative cost associated with the payment shall be used to pay the principal and interest on any bonds issued as soon as is economically practicable.

The Legislature shall have the power to enact legislation necessary and proper to implement the provisions of this amendment: Provided, That no bonus may be issued until the Governor certifies a list of veterans and relatives of deceased veterans eligible to receive such bonus to the Legislature at any regular or special session of the Legislature as the Legislature will provide by general law.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Veterans Bonus Amendment of 2004," and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit the Legislature to appropriate general revenues or sell state bonds for the payment of bonuses and death benefits to veterans of the conflicts in Kosovo, Afghanistan and Iraq or to their relatives, and to impose or increase a tax to pay for the bonds."
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of health and human resources - division of human services - health care provider tax, fund 5090, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - division of human services - health care provider tax, fund
5090, fiscal year 2004, organization 0511, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 5090, fiscal year 2004, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

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</tr>
<tr>
<td>131—Division of Human Services—</td>
</tr>
<tr>
<td>Health Care Provider Tax</td>
</tr>
<tr>
<td>(WV Code Chapter 11)</td>
</tr>
<tr>
<td>Fund 5090 FY 2004 Org 0511</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Activity</td>
</tr>
<tr>
<td>Unclassified - Total</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand four.
AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of health and human resources - division of health - hospital services revenue account, fund 5156, fiscal year 2004, organization 0506, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of health and human resources - division of health - hospital services revenue account, fund 5156, fiscal year 2004, organization 0506, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 5156, fiscal year 2004, organization 0506, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS

2 Sec. 3. Appropriations from other funds.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

124—Division of Health—

Hospital Services Revenue Account

(Special Fund)

(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2004 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Institutional Facilities</td>
</tr>
<tr>
<td>3</td>
<td>Operations (R) ............</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand four.

CHAPTER 3

(S. B. 1004 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the
thirtieth day of June, two thousand four, to the public service commission, fund 8623, fiscal year 2004, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the public service commission, fund 8623, fiscal year 2004, organization 0926, available for expenditure during the fiscal year ending the thirtieth day of June two thousand four; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8623, fiscal year 2004, organization 0926, be supplemented and amended by increasing the total appropriation as follows:

1  TITLE II--APPROPRIATIONS.

2  Sec. 3. Appropriations from other funds.

3  MISCELLANEOUS BOARDS AND COMMISSIONS

4  213--Public Service Commission--

5  (WV Code Chapter 24)

6  Fund 8623  FY 2004  Org 0926

7  Activity

8  Other Funds

9  4 Unclassified ....................... 099 $ 1,000,000

10 The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand four.
CHAPTER 4
(S. B. 1005 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of health and human resources - division of human services, fund 8722, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand four, 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 the thirtieth day of June, two thousand four, to fund 8722, fiscal year 2004, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.

2 Sec. 6. Appropriations of federal funds.
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

268—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2004 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096 $33,000,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriations in the aforementioned account for the designated spending unit for expenditure during the fiscal year two thousand four.

CHAPTER 5

(S. B. 1006 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]
supplementing, adding and increasing the department of agriculture - state conservation committee, fund 0132, fiscal year 2004, organization 1400, to the department of administration - public defender services, fund 0226, fiscal year 2004, organization 0221, to the state department of education, fund 0313, fiscal year 2004, organization 0402, to the division of human services, fund 0403, fiscal year 2004, organization 0511, to the department of military affairs and public safety - division of corrections - correctional units, fund 0450, fiscal year 2004, organization 0608, to the department of military affairs and public safety - West Virginia state police, fund 0453, fiscal year 2004, organization 0612, to the division of forestry, fund 0250, fiscal year 2004, organization 0305, to the West Virginia development office, fund 0256, fiscal year 2004, organization 0307, to the department of tax and revenue - tax division, fund 0470, fiscal year 2004, organization 0702.

WHEREAS, The Legislature finds that the account balance in the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2004, organization 2300, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fourteenth day of January, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand four; and

WHEREAS, By the provision of the 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 the thirtieth day of June, two thousand four; therefore
Be it enacted by the Legislature of West Virginia:

That the balance of funds in the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2004, organization 2300, be decreased by expiring the amount of $19,418,121.38 to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand four, to fund 0132, fiscal year 2004, organization 1400, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.
2
3 Section 1. Appropriations from general revenue.
4
5 EXECUTIVE
6
7 12—Department of Agriculture-
8
9 State Conservation Committee
10 (WV Code Chapter 19)
11
12 Fund 0132 FY 2004 Org 1400
13
14
15 5 Soil Conservation Projects-
16 5a Surplus (R) .................. 269 $ 1,392,000
17
18 Any unexpended balance remaining in the appropriation for Soil Conservation Projects - Surplus (fund 0132, activity 269) at the close of the fiscal year two thousand four is hereby reappropriated for expenditure during the fiscal year two thousand five.
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0226, fiscal year 2004, organization 0221, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27—Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2004 Org 0221

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>8a Surplus (R)</td>
<td>435 $ 4,224,409</td>
</tr>
</tbody>
</table>

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

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0313, fiscal year 2004, organization 0402, be supplemented and amended by increasing and adding a new appropriation to the total appropriation as follows:
TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

34—State Department of Education—

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2004 Org 0402

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>26a Traditional Student Increased</td>
<td></td>
</tr>
<tr>
<td>26b Enrollment - 5 years through</td>
<td></td>
</tr>
<tr>
<td>26c 12th grade-Surplus</td>
<td>997 $ 615,000</td>
</tr>
<tr>
<td>26d River Cities Child Development</td>
<td></td>
</tr>
<tr>
<td>26e Center-Surplus</td>
<td>049 111,000</td>
</tr>
</tbody>
</table>

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0403, fiscal year 2004, organization 0511, be supplemented and amended by increasing and adding an appropriation to the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Division of Human Services
Any unexpended balance remaining in the appropriation for Pinecrest Hospital-Surplus (fund 0403, activity 050) at the close of the fiscal year two thousand four is hereby reappropriated for expenditure during the fiscal year two thousand five.

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0450, fiscal year 2004, organization 0608, be supplemented and amended by increasing the total appropriation as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

56—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2004 Org 0608
Any unexpended balances remaining in the appropriations for Inmate Medical Expenses - Surplus (fund 0450, activity 846) and Payments to Federal, County, and/or Regional Jails - Surplus (fund 0450, activity 008) at the close of the fiscal year two thousand four are hereby reappropriated for expenditure during the fiscal year two thousand five.

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0453, fiscal year 2004, organization 0612, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

57—West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2004 Org 0612
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0250, fiscal year 2004, organization 0305, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

BUREAU OF COMMERCE

71—Division of Forestry—

(WV Code Chapter 19)

Fund 0250 FY 2004 Org 0305

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0256, fiscal year 2004, organization 0307, be supplemented and amended by increasing and adding a new appropriation to the total appropriation as follows:
Section 1. Appropriations from general revenue.

**BUREAU OF COMMERCE**

73—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2004 Org 0307

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>39</td>
<td>Local Economic</td>
</tr>
<tr>
<td>40</td>
<td>Development Assistance</td>
</tr>
<tr>
<td>819</td>
<td>$3,953,578</td>
</tr>
<tr>
<td>40a</td>
<td>-Surplus (R)</td>
</tr>
<tr>
<td>44a</td>
<td>Tourism - Unclassified- Surplus (R)</td>
</tr>
<tr>
<td>662</td>
<td>1,983,245</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Local Economic Development Assistance - Surplus (fund 0256, activity 819) and Tourism - Unclassified - Surplus (fund 0256, activity 662) at the close of the fiscal year two thousand four are hereby reappropriated for expenditure during the fiscal year two thousand five.

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0470, fiscal year 2004, organization 0702, be supplemented and amended by increasing the total appropriation as follows:
DEPARTMENT OF TAX AND REVENUE

64—Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2004 Org 0702

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 Employee Benefits - Surplus</td>
<td>250</td>
</tr>
<tr>
<td>4 Unclassified - Surplus (R)</td>
<td>097</td>
</tr>
<tr>
<td>7a Tax Technology Upgrade -</td>
<td>450</td>
</tr>
<tr>
<td>Surplus (R)</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified - Surplus (fund 0470, activity 097) and Tax Technology Upgrade - Surplus (fund 0470, activity 450) at the close of the fiscal year two thousand four are hereby reappropriated for expenditure during the fiscal year two thousand five.

The purpose of this supplemental appropriation bill is to expire the sum of $19,418,121.38 to the unappropriated surplus balance in the state fund, general revenue from the tax reduction and federal funding increased compliance fund, fund 1732, fiscal year 2004, organization 2300 and to supplement, establish and increase items of appropriation in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand four.
AN ACT expiring funds to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of ten million dollars from the higher education improvement fund, fund 4297, fiscal year 2003, organization 0441, activity 096, and in the amount of seven million five hundred six thousand forty-one dollars from the higher education improvement fund, fund 4297, fiscal year 2002, organization 0441, activity 096.

WHEREAS, The Legislature finds that the account balances in the higher education improvement fund, fund 4297, fiscal year 2003, organization 0441, activity 096, and higher education improvement fund, fund 4297, fiscal year 2002, organization 0441, activity 096, will exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

1 That the amount of ten million dollars from the higher education improvement fund, fund 4297, fiscal year 2003, organization 0441, activity 096, and the amount of seven million five hundred six thousand forty-one dollars from the higher education improvement fund, fund 4297, fiscal year 2002, organization 0441, activity 096, be expired to the unappropriated balance of the state fund, general revenue, to be available for appropriation during the fiscal year two thousand five.
The purpose of this bill is to expire the sum of ten million dollars from the higher education improvement fund, fund 4297, fiscal year 2003, organization 0441, activity 096, and seven million five hundred six thousand forty-one dollars from the higher education improvement fund, fund 4297, fiscal year 2002, organization 0441, activity 096, to the unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, to be available for appropriation during the fiscal year two thousand five.

CHAPTER 7
(S. B. 1008 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand four, to the department of environmental protection - division of environmental protection - stream restoration fund, fund 3349, fiscal year 2004, organization 0313, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

WHEREAS, The governor has established that there now remains an unappropriated balance in the department of environmental protection - division of environmental protection - stream restoration fund, fund 3349, fiscal year 2004, organization 0313, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand four; therefore

Be it enacted by the Legislature of West Virginia:
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 3349, fiscal year 2004, organization 0313, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS.
2
3 Sec. 3. Appropriations from other funds.
4
5 DEPARTMENT OF ENVIRONMENTAL PROTECTION
6
7 199—Division of Environmental Protection—
8
9 Stream Restoration Fund
10
11 Fund 3349 FY 2004 Org 0313
12
13 Activity Other Funds
14
15 1 Unclassified — Total ............... 096 $ 500,000
16
17 The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand four.

CHAPTER 8

(S. B. 1009 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2004, organization 0442, the department of health and human resources - consolidated medical service fund, fund 0525, fiscal year 2004, organization 0506, and the department of health and human resources - division of human services, fund 0403, fiscal year 2004, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2004, organization 0442, be amended and reduced in the line items as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HIGHER EDUCATION POLICY COMMISSION

4 86—Higher Education Policy Commission—

5 System—

6 Control Account

7 (WV Code Chapter 18B)

8 Fund 0586 FY 2004 Org 0442
And that the items of the total appropriations from the state fund, general revenue, to the department of health and human resources - consolidated medical service fund, fund 0525, fiscal year 2004, organization 0506, be amended and reduced in the line item as follows:

**TITLE II--APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**47—Consolidated Medical Service Fund**

(WV Code Chapter 16)

Fund 0525 FY 2004 Org 0506

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Institutional Facilities</td>
</tr>
<tr>
<td>12</td>
<td>Operations ............... $ 1,072,823</td>
</tr>
<tr>
<td>13</td>
<td>And that the items of the total appropriations from the state fund, general revenue, to the department of health and human</td>
</tr>
</tbody>
</table>
TITLII--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2004 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical Services</td>
<td>189 $33,018,926</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid accounts for the designated spending units. The funds are for expenditure during the fiscal year two thousand four with no new money being appropriated.

CHAPTER 9

(S. B. 1010 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2005, organization 0442, the department of health and human resources - consolidated medical service fund, fund 0525, fiscal year 2005, organization 0506, and the department of health and human resources - division of human services, fund 0403, fiscal year 2005, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2005, organization 0442, be amended and reduced in the line items as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HIGHER EDUCATION POLICY COMMISSION

4 86—Higher Education Policy Commission—

5 System—

6 Control Account

7 (WV Code Chapter 18B)

8 Fund 0586 FY 2005 Org 0442
And that the items of the total appropriations from the state fund, general revenue, to the department of health and human resources - consolidated medical service fund, fund 0525, fiscal year 2005, organization 0506, be amended and reduced in the line item as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

47—Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2005 Org 0506

And that the items of the total appropriations from the state fund, general revenue, to the department of health and human resources - division of human services, fund 0403, fiscal year
TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2005 Org 0511

8 Medical Services ............... 189 $41,062,279

The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase items of existing appropriations in the aforesaid accounts for the designated spending units. The funds are for expenditure during the fiscal year two thousand five with no new money being appropriated.

CHAPTER 10

(S. B. 1011 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]
AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of military affairs and public safety - West Virginia parole board, fund 0440, fiscal year 2004, organization 0605, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

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

That the items of the total appropriation from the state fund, general revenue, to the department of military affairs and public safety - West Virginia parole board, fund 0440, fiscal year 2004, organization 0605, be amended and reduced in the existing line item as follows:

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>$6,550</td>
</tr>
</tbody>
</table>

And that the total appropriations from the state fund, general revenue, to the department of military affairs and public safety - West Virginia parole board, fund 0440, fiscal year
15 2004, organization 0605, be amended and increased in the
existing line item as follows:

1

TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 53—West Virginia Parole Board

6 (WV Code Chapter 62)

7 Fund 0440 FY 2004 Org 0605

8

General

9 Activity

Revenue

Funds

10

11 4 Unclassified ..................... 099 $ 6,550

12 The purpose of this supplementary appropriation bill is to
supplement, amend, reduce and increase items of existing
appropriations in the aforesaid account for the designated
spending unit. The funds are for expenditure during the fiscal
year two thousand four with no new money being appropriated.

CHAPTER 11

(S. B. 1012 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand four, in the amount of five million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand four, to the governor’s office - civil contingent fund, fund 0105, fiscal year 2004, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand four; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand four; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, organization 0201, be decreased by expiring the amount of five million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, two thousand four, to fund 0105, fiscal year 2004, organization 0100, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II--APPROPRIATIONS

2 Section 1. Appropriations from general revenue.

EXECUTIVE

4 8—Governor’s Office—
Ch. 12] APPROPRIATIONS 2429

5

Civil Contingent Fund

6 (WV Code Chapter 5)

Fund 0105 FY 2004 Org 0100

8 General

9 Activity

10 Revenue

11 1 Civil Contingent Fund - Surplus... 263 $5,000,000

12 The purpose of this bill is to expire the sum of five million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and to supplement the governor's office - civil contingent fund, fund 0105, fiscal year 2004, organization 0100, in the budget act for the fiscal year ending the thirtieth day of June, two thousand four, by adding five million dollars to the appropriation for civil contingent fund - surplus for expenditure during the fiscal year two thousand four.

CHAPTER 12

(S. B. 1014 — By Senator Helmick)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to higher education policy commission - higher education policy commission - system - control account, fund 0586, fiscal year 2005, organization 0442, all supplementing and amending the
appropriations for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fourteenth day of January, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand four; and further included the estimate of revenue for the fiscal year two thousand five, less regular appropriations for fiscal year two thousand five; and

WHEREAS, The governor, by executive message dated the twenty-first day of March, two thousand four, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand five; and

WHEREAS, It appears from the governor’s statement of the state fund - general revenue and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0586, fiscal year 2005, organization 0442, be supplemented and increased in the existing line item as follows:

1 TITLE II--APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 HIGHER EDUCATION POLICY COMMISSION

4 86--Higher Education Policy Commission
The purpose of this supplementary appropriation bill is to increase items of appropriations in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand five.

CHAPTER 13

(H. B. 101 — By Mr. Speaker, Mr. Kiss, and Delegates Michael, Mezzatesta, Williams, Doyle, Leach and Tabb)

[Passed March 21, 2004; in effect from passage. Approved by the Governor.]

AN ACT to repeal §18B-10-3, §18B-10-4a and §18B-10-10 of the code of West Virginia, 1931, as amended; to amend and reenact §18B-5-4 of said code; to amend said code by adding thereto a new section, designated §18B-9-2a; to amend and reenact §18B-10-1, §18B-10-2, §18B-10-4, §18B-10-4b, §18B-10-5, §18B-10-6, §18B-10-7a, §18B-10-8, §18B-10-9, §18B-10-11, §18B-10-12, §18B-10-13, §18B-10-14 and §18B-10-15 of said code; to amend said code by adding thereto a new section, designated §18B-10-1c; and to amend and reenact §18C-3-1 of said code, all relating to fees collected and moneys expended by state institutions of higher education; tuition and fee simplifica-
tion for public higher education; clarifying authority of the West Virginia council for community and technical college education related to community and technical college tuition and fees; repealing obsolete language; expanding certain purchasing authority; modifying certain purchasing procedures; expanding certain employee classifications; creating classifications of fees; authorizing deferred payment plans for students; requiring maintenance of support for certain instructional and student activities; clarifying authority of commission to enter into trust agreements; clarifying purposes for which fees may be used; deleting certain restrictions on bookstore sales; clarifying certain tuition and fee waiver provisions; and clarifying terms and conditions for the health education student loan program.

Be it enacted by the Legislature of West Virginia:

That §18B-10-3, §18B-10-4a and §18B-10-10 of the code of West Virginia, 1931, as amended, be repealed; that §18B-5-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-9-2a; that §18B-10-1, §18B-10-2, §18B-10-4, §18B-10-4b, §18B-10-5, §18B-10-6, §18B-10-7a, §18B-10-8, §18B-10-9, §18B-10-11, §18B-10-12, §18B-10-13, §18B-10-14 and §18B-10-15 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-10-1c; and that §18C-3-1 of said code be amended and reenacted, all to read as follows:

Chapter
18B. Higher Education.
18C. Student Loans; Scholarships and State Aid.

CHAPTER 18B. HIGHER EDUCATION.

Article
5. Higher Education Budgets and Expenditures.
9. Classified Employee Salary Schedule and Classification System.
10. Fees and Other Money Collected at State Institutions of Higher Education.
ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

(a) The council, commission and each governing board, through the vice chancellor for administration, shall purchase or acquire all materials, supplies, equipment, services and printing required for that governing board or the council or commission, as appropriate, and the state institutions of higher education under their jurisdiction. The commission and council jointly shall adopt rules governing and controlling acquisitions and purchases in accordance with the provisions of this section. The rules shall assure that the council, commission and governing boards:

(1) Do not preclude any person from participating and making sales thereof to the governing board or to the council or commission except as otherwise provided in section five of this article. Provision of consultant services such as strategic planning services will not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services;

(2) Establish and prescribe specifications, in all proper cases, for materials, supplies, equipment, services and printing to be purchased;

(3) Adopt and prescribe such purchase order, requisition or other forms as may be required;

(4) Negotiate for and make purchases and acquisitions in such quantities, at such times and under contract, in the open market or through other accepted methods of governmental purchasing as may be practicable in accordance with general law;
(5) Advertise for bids on all purchases exceeding twenty-five thousand dollars, to purchase by means of sealed bids and competitive bidding or to effect advantageous purchases through other accepted governmental methods and practices;

(6) Post notices of all acquisitions and purchases for which competitive bids are being solicited in the purchasing office of the specified institution involved in the purchase, at least two weeks prior to making such purchases and ensure that the notice is available to the public during business hours;

(7) Provide for purchasing in the open market;

(8) Provide for vendor notification of bid solicitation and emergency purchasing;

(9) Provide that competitive bids are not required for purchases of twenty-five thousand dollars or less; and

(10) Provide for not fewer than three bids where bidding is required. If fewer than three bids are submitted, an award may be made from among those received.

(b) The council, commission or each governing board, through the vice chancellor for administration, may issue a check in advance to a company supplying postage meters for postage used by that board, the council or commission and by the state institutions of higher education under their jurisdiction.

(c) When a purchase is to be made by bid, any or all bids may be rejected. However, all purchases based on advertised bid requests shall be awarded to the lowest responsible bidder taking into consideration the qualities of the articles to be supplied, their conformity with specifications, their suitability to the requirements of the governing boards, council or commission and delivery terms. The preference for resident vendors
as provided in section thirty-seven, article three, chapter five-a of this code apply to the competitive bids made pursuant to this section.

(d) The governing boards, council and commission shall maintain a purchase file, which shall be a public record and open for public inspection. After the award of the order or contract, the governing boards, council and commission shall indicate upon the successful bid that it was the successful bid and shall further indicate why bids are rejected and, if the mathematical low vendor is not awarded the order or contract, the reason therefor. A record in the purchase file may not be destroyed without the written consent of the legislative auditor. Those files in which the original documentation has been held for at least one year and in which the original documents have been reproduced and archived on microfilm or other equivalent method of duplication may be destroyed without the written consent of the legislative auditor. All files, no matter the storage method, shall be open for inspection by the legislative auditor upon request.

(e) The commission and council also jointly shall adopt rules to prescribe qualifications to be met by any person who is to be employed as a buyer pursuant to this section. These rules shall require that a person may not be employed as a buyer unless that person, at the time of employment, either is:

1. A graduate of an accredited college or university; or
2. Has at least four years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

(f) Any person making purchases and acquisitions pursuant to this section shall execute a bond in the penalty of fifty thousand dollars, payable to the state of West Virginia, with a corporate bonding or surety company authorized to do business
in this state as surety thereon, in form prescribed by the
attorney general and conditioned upon the faithful performance
of all duties in accordance with this section and sections five
through eight, inclusive, of this article and the rules of the
governing board and the council and commission. In lieu of
separate bonds for such buyers, a blanket surety bond may be
obtained. Any such bond shall be filed with the secretary of
state. The cost of any such bond shall be paid from funds
appropriated to the applicable governing board or the council or
commission.

(g) All purchases and acquisitions shall be made in consid-
eration and within limits of available appropriations and funds
and in accordance with applicable provisions of article two,
chapter five-a of this code relating to expenditure schedules and
quarterly allotments of funds. Notwithstanding any other
 provision of this code to the contrary, only those purchases
exceeding the dollar amount for competitive sealed bids in this
section are required to be encumbered and they may be entered
into the state’s centralized accounting system by the staff of the
commission, council or governing boards to satisfy the require-
ments of article two, chapter five-a, and specifically sections
twenty-six, twenty-seven and twenty-eight of said article two,
to determine whether the amount of the purchase is within the
commission’s, council’s or governing board’s quarterly
allotment, is in accordance with the approved expenditure
schedule, and otherwise conforms to the provisions of article
two, chapter five-a of this code.

(h) The governing boards, council and commission may
make requisitions upon the auditor for a sum to be known as an
advance allowance account, not to exceed five percent of the
total of the appropriations for the governing board, council or
commission, and the auditor shall draw a warrant upon the
treasurer for such accounts. All advance allowance accounts
shall be accounted for by the applicable governing board or the
council or commission once every thirty days or more often if required by the state auditor.

(i) Contracts entered into pursuant to this section shall be signed by the applicable governing board or the council or commission in the name of the state and shall be approved as to form by the attorney general. A contract which requires approval as to form by the attorney general is considered approved if the attorney general has not responded within fifteen days of presentation of the contract. A contract or a change order for that contract and notwithstanding any other provision of this code to the contrary, associated documents such as performance and labor/material payments, bonds and certificates of insurance which use terms and conditions or standardized forms previously approved by the attorney general and do not make substantive changes in the terms and conditions of the contract do not require approval by the attorney general. The attorney general shall make a list of those changes which he or she deems to be substantive and the list, and any changes thereto, shall be published in the state register. A contract that exceeds the dollar amount requiring competitive sealed bids in this section shall be filed with the state auditor. If requested to do so, the governing boards, council or commission shall make all contracts available for inspection by the state auditor. The governing board, council or commission, as appropriate, shall prescribe the amount of deposit or bond to be submitted with a bid or contract, if any, and the amount of deposit or bond to be given for the faithful performance of a contract.

(j) If the governing board, council or commission purchases or contracts for materials, supplies, equipment, services and printing contrary to the provisions of sections four through seven of this article or the rules pursuant thereto, such purchase or contract is void and of no effect.
(k) Any governing board or the council or commission, as appropriate, may request the director of purchases to make available, from time to time, the facilities and services of that department to the governing boards, council or commission in the purchase and acquisition of materials, supplies, equipment, services and printing and the director of purchases shall cooperate with that governing board, council or commission, as appropriate, in all such purchases and acquisitions upon such request.

(l) Each governing board or the council or commission, as appropriate, shall permit private institutions of higher education to join as purchasers on purchase contracts for materials, supplies, services and equipment entered into by that governing board or the council or commission. Any private school desiring to join as purchasers on such purchase contracts shall file with that governing board or the council or commission an affidavit signed by the president of the institution of higher education or a designee requesting that it be authorized to join as purchaser on purchase contracts of that governing board or the council or commission, as appropriate. The private school shall agree that it is bound by such terms and conditions as that governing board or the council or commission may prescribe and that it will be responsible for payment directly to the vendor under each purchase contract.

(m) Notwithstanding any other provision of this code to the contrary, the governing boards, council and commission, as appropriate, may make purchases from cooperative buying groups, consortia, the federal government or from federal government contracts if the materials, supplies, services, equipment or printing to be purchased is available from cooperative buying groups, consortia, the federal government or from a federal contract and purchasing from the cooperative buying groups, consortia, federal government or from a federal contract.
government contract would be the most financially advantageous manner of making the purchase.

(n) An independent performance audit of all purchasing functions and duties which are performed at any institution of higher education shall be performed each fiscal year. The joint committee on government and finance shall conduct the performance audit and the governing boards, council and commission, as appropriate, are responsible for paying the cost of the audit from funds appropriated to the governing boards, council or commission.

(o) The governing boards shall require each institution under their respective jurisdictions to notify and inform every vendor doing business with that institution of the provisions of section fifty-four, article three, chapter five-a of this code, also known as the “Prompt Pay Act of 1990”.

(p) Consultant services, such as strategic planning services, may not preclude or inhibit the governing boards, council or commission from considering any qualified bid or response for delivery of a product or a commodity because of the rendering of those consultant services.

(q) After the commission or council, as appropriate, has granted approval for lease-purchase arrangements by the governing boards, a governing board may enter into lease-purchase arrangements for capital improvements, including equipment. Any lease-purchase arrangement so entered shall constitute a special obligation of the state of West Virginia. The obligation under a lease-purchase arrangement so entered may be from any funds legally available to the institution and must be cancelable at the option of the governing board or institution at the end of any fiscal year. The obligation, any assignment or securitization thereof, never constitutes an indebtedness of the state of West Virginia or any department,
agency or political subdivision thereof, within the meaning of any constitutional provision or statutory limitation, and may not be a charge against the general credit or taxing powers of the state or any political subdivision thereof. Such facts shall be plainly stated in any lease-purchase agreement. Further, the lease-purchase agreement shall prohibit assignment or securitization without consent of the lessee and the approval of the attorney general of West Virginia. Proposals for any arrangement must be requested in accordance with the requirements of this section and any rules or guidelines of the commission and council. In addition, any lease-purchase agreement which exceeds one hundred thousand dollars total shall be approved by the attorney general of West Virginia. The interest component of any lease-purchase obligation is exempt from all taxation of the state of West Virginia, except inheritance, estate and transfer taxes. It is the intent of the Legislature that if the requirements set forth in the Internal Revenue Code of 1986, as amended, and any regulations promulgated pursuant thereto are met, the interest component of any lease-purchase obligation also is exempt from the gross income of the recipient for purposes of federal income taxation and may be designated by the governing board or the president of the institution as a bank-qualified obligation.

(r) Notwithstanding any other provision of this code to the contrary, the commission, council and governing boards have the authority, in the name of the state, to lease, or offer to lease, as lessee, any grounds, buildings, office or other space in accordance with this paragraph and as provided below:

(1) The commission, council and governing boards have sole authority to select and to acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is necessarily required by the commission, council or governing boards for the institutions under their jurisdiction.
The chief executive officer of the commission, council or an institution shall certify the following:

(A) That the grounds, buildings, office space or other space requested is necessarily required for the proper function of the commission, council or institution;

(B) That the commission, council or institution will be responsible for all rent and other necessary payments in connection with the contract or lease; and

(C) That satisfactory grounds, buildings, office space or other space is not available on grounds and in buildings currently owned or leased by the commission, council or the institution.

Before executing any rental contract or lease, the commission, council or a governing board shall determine the fair rental value for the rental of the requested grounds, buildings, office space or other space, in the condition in which they exist, and shall contract for or lease the premises at a price not to exceed the fair rental value.

(2) The commission, council and governing boards are authorized to enter into long-term agreements for buildings, land and space for periods longer than one fiscal year but not to exceed forty years. Any purchase of real estate, any lease-purchase agreement and any construction of new buildings or other acquisition of buildings, office space or grounds resulting therefrom, pursuant to the provisions of this subsection shall be presented by the policy commission or council, as appropriate, to the joint committee on government and finance for prior review. Any such lease shall contain, in substance, all the following provisions:

(A) That the commission, council or governing board, as lessee, has the right to cancel the lease without further obliga-
tion on the part of the lessee upon giving thirty days’ written
notice to the lessor at least thirty days prior to the last day of the
succeeding month;

(B) That the lease is considered canceled without further
obligation on the part of the lessee if the Legislature or the
federal government fails to appropriate sufficient funds therefor
or otherwise acts to impair the lease or cause it to be canceled;
and

(C) That the lease is considered renewed for each ensuing
fiscal year during the term of the lease unless it is canceled by
the commission, council or governing board before the end of
the then-current fiscal year.

(3) The commission, council or institution which is granted
any grounds, buildings, office space or other space leased in
accordance with this section may not order or make permanent
changes of any type thereto, unless the commission, council or
governing board, as appropriate, has first determined that the
change is necessary for the proper, efficient and economically
sound operation of the institution. For purposes of this section,
a “permanent change” means any addition, alteration, improve-
ment, remodeling, repair or other change involving the expendi-
ture of state funds for the installation of any tangible thing
which cannot be economically removed from the grounds,
buildings, office space or other space when vacated by the
institution.

(4) Leases and other instruments for grounds, buildings,
office or other space, once approved by the commission,
council or governing board, may be signed by the chief execu-
tive officer of the commission, council or institution. Any lease
or instrument exceeding one hundred thousand dollars annually
shall be approved as to form by the attorney general. A lease or
other instrument for grounds, buildings, office or other space
that contains a term, including any options, of more than six months for its fulfillment shall be filed with the state auditor.

(5) The commission and council jointly may promulgate rules they consider necessary to carry out the provisions of this section.

(s) Purchasing card use may be expanded by the council, commission and state institutions of higher education pursuant to the provisions of this subsection.

(1) The council and commission jointly shall establish procedures to be implemented by the council, commission and any institution under their respective jurisdictions using purchasing cards. The procedures shall ensure that each maintains:

(A) Appropriate use of the purchasing card system;

(B) Full compliance with the provisions of article three, chapter twelve of this code relating to the purchasing card program; and

(C) Sufficient accounting and auditing procedures for all purchasing card transactions.

(2) By the first day of November, two thousand four, the council and commission jointly shall present the procedures to the legislative oversight commission on education accountability for its adoption.

(3) Notwithstanding any other provision of this code to the contrary, if the legislative oversight commission on education accountability adopts the procedures, the council, commission, and any institution authorized pursuant to subdivision (4) of this subsection, may use purchasing cards for:
(A) Travel expenses directly related to the job duties of the traveling employee, including fuel and food; and

(B) Any routine, regularly-scheduled payment, including, but not limited to, utility payments and real property rental fees.

The council, commission and each institution annually by the thirtieth day of June, shall provide to the state purchasing division a list of all goods or services for which payment was made pursuant to this provision during that fiscal year.

(4) The commission and council each shall evaluate the capacity of each institution under its jurisdiction for complying with the procedures established pursuant to subdivision (3) of this subsection. The commission and council each shall authorize expanded use of purchasing cards pursuant to said subdivision (3) for any such institution it determines has the capacity to comply.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.


The Legislature finds that the doctoral institutions, as defined in section one, article eight of this chapter, have unique staffing demands for their extensive research and doctoral programs, and therefore require additional nonclassified staff. Each doctoral institution may exceed the percentage of nonclassified employees authorized in section two, article nine of this chapter by an additional five percent.

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.
§18B-10-1c. Definitions.
§18B-10-4. Medical education.
§18B-10-4b. Additional fee waivers for health sciences and technology academy programs.

§18B-10-5. Fee waivers — Undergraduate schools.

§18B-10-6. Fee waivers — Professional and graduate schools.

§18B-10-7a. Tuition and fee waivers or adjustments for residents at least sixty-five years old.

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

§18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.

§18B-10-11. Fees and money derived from athletic contests.

§18B-10-12. Student activities.

§18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.


§18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.

§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 school term for the different classes or categories of students enrolling at each 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) An institution 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 system-wide 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 such accounts, an institution may expend funds from each such 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 student's attorney to perform legal services for students in civil matters at the institutions: Provided, That the legal services are limited only to those types of cases, programs or services approved by the administrative head of the institution where the legal services are to be performed.

(d) The commission and council jointly shall propose a rule for legislative approval in accordance with the provisions of article three-a, chapter twenty-nine-a of this code to govern the fixing, collection and expenditure of tuition and other fees.

(e) The Legislature finds that an emergency exists and, therefore, the commission and council jointly shall file the rule required by subsection (d) of this section as an emergency rule pursuant to the provisions of article three-a, chapter twenty-nine-a of this code, subject to the prior approval of the legislative oversight commission on education accountability.
(f) The schedule of all tuition and fees, and any changes therein, 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 such schedule and changes.

(g) The 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 the above provisions.

(h) 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 the awarding of 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 if the finances of a student are affected adversely.

(4) The commission and council jointly shall propose a rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, defining conditions under which an institution may offer tuition and fee deferred payment plans through the institution or through third parties.

(5) An institution may charge interest or fees for any deferred or installment payment plans.

(i) 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.

(j) Institutions shall retain tuition and fee revenues not pledged for bonded indebtedness or other purposes in accordance with the tuition rule proposed by the commission and council jointly pursuant to this section. The tuition rule shall:

(1) Provide a basis for establishing nonresident tuition and fees;

(2) Allow institutions to charge different tuition and fees for different programs;
(3) Provide that a board of governors may 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, council or both, as appropriate, shall certify to the Legislature by the first day of October in the fiscal year following implementation of the fee, and annually thereafter, the amount of fees collected for each of the five years;

(4) Establish methodology, where applicable, to ensure that, within the appropriate time period under the compact, community and technical college tuition rates for community and technical college students in all independently accredited community and technical colleges will be commensurate with the tuition and fees charged by their peer institutions.

(k) A penalty may not be imposed by the commission or council upon any institution 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 imped-
ing unreasonably the ability of resident students to attend the
institution or participate in the programs of the institution. The
institutions shall report annually to the commission or council
on the numbers of nonresidents and such other enrollment
information as the commission or council may request.

(1) Tuition and fee increases of the governing boards are
subject to rules adopted by the commission and council jointly
pursuant to this section and in accordance with the provisions
of article three-a, chapter twenty-nine-a of this code.

(1) A governing board of an institution under the jurisdic-
tion of the commission may propose tuition and fee increases
of up to nine and one-half percent for undergraduate resident
students for any fiscal year. The nine and one-half percent total
includes the amount of increase over existing tuition and fees,
combined with the amount of any newly established, special-
ized fee which may be proposed by a governing board. A
governing board of an institution under the jurisdiction of the
council may propose tuition and fee increases of up to four and
three quarters percent. The four and three-quarters percent total
includes the amount of increase over existing tuition and fees,
combined with the amount of any newly established, special-
ized fee which may be proposed by a governing board. The
commission or council, as appropriate, shall examine individu-
ally each request from a governing board for an increase. Any
proposed increase requires the approval of the commission or
council, as appropriate.

In determining whether to approve or disapprove the
governing board's request, the commission or council shall
determine the progress the institution has made toward meeting
the conditions outlined in this subdivision and shall make this
determination the predominate factor in its decision. The
commission or council shall consider the degree to which each institution has met the following conditions:

(A) Has maximized resources available through nonresident tuition and fee charges to the satisfaction of the commission or council;

(B) Is consistently achieving the benchmarks established in the compact of the institution pursuant to the provisions of article one-a of this chapter;

(C) Is continuously pursuing the statewide goals for post-secondary education and the statewide compact established in articles one and one-a of this chapter;

(D) Is implementing the efficiency measures required by section nine, article five of this chapter;

(E) Has demonstrated to the satisfaction of the commission or council that an increase will be used to maintain high-quality programs at the institution;

(F) Has demonstrated to the satisfaction of the commission or council that the institution is making adequate progress toward achieving the goals for education established by the southern regional education board; and

(G) To the extent authorized, will increase by up to five percent the available tuition and fee waivers provided by the institution. The increased waivers may not be used for athletics.

(2) This section does not require equal increases among institutions or require any level of increase at an institution.

(3) The commission and council shall report to the legislative oversight commission on education accountability regarding the basis for each approval or denial as determined using the criteria established in subdivision (1) of this subsection.
For fiscal year two thousand five only, a governing board of any institution under the jurisdiction of the commission may increase tuition and fees for undergraduate resident students by one and one-half percent greater than the amount authorized by the commission pursuant to the provisions of this section.

The amount of fees assessed immediately prior to the effective date of this act under the provisions of this article relating to a higher education resource fee, a faculty improvement fee, a medical education fee, a health professions fee and a student activities fee are included in the appropriate tuition or fees classifications established under subsection (a) of this section.

§18B-10-1c. Definitions.

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) "Auxiliary capital fees" means charges levied on students to support debt service, capital projects and campus maintenance and renewal for the auxiliary facilities of the institutions;

(b) "Auxiliary fees" means charges levied on all students to support auxiliary enterprises or optional charges levied only on students using the auxiliary service. Auxiliary fees include sales and service revenue from entities that exist predominately to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers;

(c) "Full-time graduate student" means a graduate student who is enrolled for nine or more credit hours in a regular term;
(d) "Full-time undergraduate student" means an undergraduate student who is enrolled for twelve or more credit hours in a regular term;

(e) "Required educational and general capital fees" means:

(1) Charges levied on all students to support debt service of systemwide bond issues; and

(2) Charges levied on all students to support debt service, capital projects and campus maintenance and renewal for an institution’s educational and general educational facilities; and

(f) "Tuition and required educational and general fees" means:

(1) Charges levied on all students of that class or category to support educational and general program services; and

(2) Optional charges levied for education and general services collected only from students using the service or from students for whom the services are made available. Educational and general expenditures are categorized as instruction, research, academic support, student services, institutional support, operation and maintenance of plant and scholarships and fellowships. Education and general expenditures do not include expenditures for auxiliary enterprises, hospitals or independent operations.


(a) Pursuant to the authority granted by section four, article one-b of this chapter, and section six, article two-b of this chapter, the commission and council jointly shall establish a higher education resource assessment per student for each state institution of higher education under their respective jurisdictions. Community and technical colleges shall transfer all funds
collected pursuant to this section to the council. All other institutions shall transfer all funds collected pursuant to this section to the commission. Any reference in this code to higher education resource fee means this higher education resource assessment.

(b) The commission and council jointly shall fix the assessment for the various institutions and classes of students and may periodically change these assessments. The amount of the assessment for each institution shall be prorated for part-time students.

(c) Each institution shall maintain a level of support for libraries and library supplies, including books, periodicals, subscriptions and audiovisual materials, instructional equipment and materials; and for the improvement in quality and scope of student services comparable to that level supported by the higher education resource fee previously authorized by this section.

(d) The assessment shall be expended or allocated by the commission or council to meet its general operating expenses or to fund statewide programs. To the maximum extent practicable, the commission and council shall offset the impact, if any, on financially needy students of any potential assessment increase under this section by allocating an appropriate amount of the revenue to the state scholarship program to be expended in accordance with the provisions of article five, chapter eighteen-c of this code.

§18B-10-4. Medical education.

The commission shall determine an appropriate portion of all tuition and fees paid by medical students enrolled for credit at the West Virginia university school of medicine, Marshall university school of medicine and the West Virginia school of
osteopathic medicine to be used to support the health education
student loan fund. The portion determined by the commission
for this purpose shall be deposited into the health education
student loan fund account in accordance with the provisions of
article three, chapter eighteen-c of this code.

§18B-10-4b. Additional fee waivers for health sciences and technol-
ogy academy programs.

(a) In addition to the number of fee waivers permitted in
sections five and six of this article for undergraduate, graduate
and professional schools, each state institution of higher
education may waive all fees or any part thereof for students
who are residents of West Virginia and who successfully
complete the health sciences and technology academy affiliated
programs.

(b) For purposes of this section, “Health Sciences and
Technology Academy Programs” means those programs in the
health sciences designed to assist junior high and high school
students in conjunction with their parents and teachers, to
enhance their knowledge and abilities in subject matters which
will further a career in the field of health sciences.

§18B-10-5. Fee waivers — Undergraduate schools.

Each governing board periodically may establish fee
waivers for students in undergraduate studies at institutions
under its jurisdiction entitling recipients to waiver of tuition,
capital and other fees subject to the following conditions and
limitations:

(a) A state institution of higher education may not have in
effect at any time a number of undergraduate fee waivers which
exceeds five percent of the number of full-time equivalent
undergraduate students registered during the fall semester of the
immediately preceding academic year.
(b) Each undergraduate fee waiver entitles the recipient thereof to attend a designated state institution of higher education without payment of the tuition, capital and other fees as may be prescribed by the governing board and is for a period of time not to exceed eight semesters of undergraduate study.

(c) The governing board shall make rules governing the award of undergraduate fee waivers; the issuance and cancellation of certificates entitling the recipients to the benefits thereof; the use of the fee waivers by the recipients; and the rights and duties of the recipients with respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(d) The awarding of undergraduate fee waivers shall be entered in the minutes of the meetings of the governing board.

(e) Students enrolled in an administratively-linked community and technical college shall be awarded a proportionate share of the total number of undergraduate fee waivers awarded by a governing board. The number to be awarded to students of the community and technical college is based upon the full-time equivalent enrollment of that institution.

§18B-10-6. Fee waivers – Professional and graduate schools.

In addition to the fee waivers authorized for undergraduate study by the provisions of section five of this article, each governing board periodically may establish fee waivers for study in graduate and professional schools under its jurisdiction, including medicine and dentistry, entitling the recipients to waiver of tuition, capital, and other fees, subject to the following conditions and limitations:

(a) West Virginia university may not have in effect at any time graduate and professional school fee waivers in a number which exceeds ten percent of the number of full-time equivalent
graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above ten percent, all graduate assistants employed by West Virginia university shall be granted a fee waiver.

(b) Institutions of higher education other than West Virginia university may not have in effect at any time a number of graduate and professional school fee waivers which exceeds five percent of the number of full-time equivalent graduate and professional students registered during the corresponding fall semester, spring semester and summer term of the immediately preceding academic year. In addition to the above five percent, all graduate assistants employed by these institutions shall be granted a fee waiver.

(c) Each graduate or professional school fee waiver entitles the recipient to waiver of the tuition, capital, and other fees as may be prescribed by the governing boards and is for a period of time not to exceed the number of semesters normally required in the recipient's academic discipline.

(d) The governing boards shall make rules governing the award of graduate and professional school fee waivers; the issuance and cancellation of certificates entitling the recipients to the benefits thereof; the use of the fee waivers by the recipients; and the rights and duties of the recipients with respect to the fee waivers. These rules may not be inconsistent with the provisions of this section.

(e) The awarding of graduate and professional school fee waivers shall be entered in the minutes of the meeting of each governing board.

§18B-10-7a. Tuition and fee waivers or adjustments for residents at least sixty-five years old.
(a) Each governing board shall promulgate a rule establishing a reduced tuition and fee program for senior citizens. The rule shall include at least the following:

(1) One option for individuals who attend undergraduate and graduate courses without receiving credit and one option for those who attend undergraduate and graduate courses for credit;

(2) A requirement that the following conditions be met under either option of the program:

(A) The participant is a resident of West Virginia;

(B) The participant is sixty-five years of age or older; and

(C) Classroom space is available;

(3) A method of establishing priority for allowing a participant to attend a class or course;

(4) A determination of whether to require participants to pay special fees, including laboratory fees, if the fees are required of all other students;

(5) A determination of whether to require participants to pay for parking;

(6) Requirements for participants in the program under the no credit option:

(A) A grade or credit may not be given; and

(B) The total tuition and fees charged for each course or class, excluding laboratory and parking fees, may not exceed fifty dollars. After the first day of July, two thousand four, the governing boards may change the maximum fee; and
(7) A requirement for participants in the program under the for credit option that tuition and fee rates may not exceed fifty percent of the normal rates charged to state residents by the institution.

(b) The provisions of this section apply to both classroom-based courses, electronic and internet-based courses, and all other distance education delivery.

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) Effective the first day of July, two thousand four, this section, and any rules adopted by the commission, council, or both, in accordance with this section and article three-a, chapter twenty-nine-a of this code, govern the collection, disposition and use of the capital and auxiliary capital fees authorized by section one of this article. Prior to the first day of July, two thousand four, the statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) Fees for full-time students. — The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher education per semester. For institutions under its jurisdiction, a governing board may fix such fees at higher rates for students who are not residents of this state.

(c) Fees for part-time students. — For all part-time students and for all summer school students, the governing boards shall impose and collect such fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of such fees may be made in the same manner as any other fee collected at state institutions of higher education.
(d) There is created in the state treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from such students pursuant to section one of this article.

The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which such fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital improvement funds established in this section to finance, in whole or in part, together with any federal, state or other grants or contributions, for any one or more of the following projects:

(1) The acquisition of land or any rights or interest therein;

(2) The construction or acquisition of new buildings;

(3) The renovation or construction of additions to existing buildings;

(4) The acquisition of furnishings and equipment for any such buildings; and

(5) The construction or acquisition of any other capital improvements or capital education facilities at such state
institutions of higher education, including any roads, utilities or
other properties, real or personal, or for other purposes neces-
sary, appurtenant or incidental to the construction, acquisition,
financing and placing in operation of such buildings, capital
improvements or capital education facilities, including student
unions, dormitories, housing facilities, food service facilities,
motor vehicle parking facilities and athletic facilities.

(f) The governing boards, in their discretion, may use the
moneys in such special capital improvements funds and special
auxiliary improvement funds to finance the costs of the above
purposes on a cash basis. The commission, when singly or
jointly requested by the governing boards, periodically may
issue revenue bonds of the state as provided in this section to
finance all or part of such purposes and pledge all or any part of
the moneys in such special funds for the payment of the
principal of and interest on such revenue bonds, and for
reserves therefor. Any pledge of such special funds for such
revenue bonds shall be a prior and superior charge on such
special funds over the use of any of the moneys in such funds
to pay for the cost of any of such purposes on a cash basis. Any
expenditures from such special funds, other than for the
retirement of revenue bonds, may be made by the commission
or governing boards only to meet the cost of a predetermined
capital improvements program for one or more of the state
institutions of higher education, in such order of priority as was
agreed upon by the governing board or boards and the commis-
and for which the aggregate revenue collections projected
are presented to the governor for inclusion in the annual budget
bill, and are approved by the Legislature for expenditure.

(g) Such revenue bonds periodically may be authorized and
issued by the commission or governing boards to finance, in
whole or in part, the purposes provided in this section in an
aggregate principal amount not exceeding the amount which the
commission determines can be paid as to both principal and
interest and reasonable margins for a reserve therefor from the moneys in such special funds.

(h) The issuance of such revenue bonds shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission and such revenue bonds shall bear such date or dates; mature at such time or times not exceeding forty years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding one hundred five per centum of the principal amount thereof; and shall have such other terms and provisions as determined by the governing board receiving the proceeds and the commission. Such revenue bonds shall be signed by the governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance thereof, under the great seal of the state, attested by the secretary of state, and the coupons attached thereto shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. Such revenue bonds shall be sold in such manner as the commission or governing board determines is for the best interests of the state.

(i) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in such trust agreements or the resolutions authorizing the issuance of such bonds may enter into valid and legally binding covenants with the holders of such revenue bonds as to the custody, safeguarding and disposition of the proceeds of such revenue bonds, the moneys in such special funds, sinking funds, reserve funds or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under the provisions of this section; as to the maintenance or revision
of the amounts of such fees; as to the extent to which swap
agreements, as defined in section two-h, article two-g, chapter
thirteen of this code shall be used in connection with such
revenue bonds, including such provisions as payment, term,
security, default and remedy provisions as the commission shall
consider necessary or desirable, if any, under which such fees
may be reduced; and as to any other matters or provisions
which are considered necessary and advisable by the commis-
sion or governing boards in the best interests of the state and to
enhance the marketability of such revenue bonds.

(j) After the issuance of any of such revenue bonds, the fees
at the state institutions of higher education pledged to the
payment thereof may not be reduced as long as any of such
revenue bonds are outstanding and unpaid except under such
terms, provisions and conditions as shall be contained in the
resolution, trust agreement or other proceedings under which
such revenue bonds were issued. Such revenue bonds shall be
and constitute negotiable instruments under the uniform
commercial code of this state; shall, together with the interest
thereon, be exempt from all taxation by the state of West
Virginia, or by any county, school district, municipality or
political subdivision thereof; and such revenue bonds may not
be considered to be obligations or debts of the state and the
credit or taxing power of the state may not be pledged therefor,
but such revenue bonds shall be payable only from the revenue
pledged therefor as provided in this section.

(k) Additional revenue bonds may be issued by the com-
mission or governing boards pursuant to this section and
financed by additional revenues or funds dedicated from other
sources. It is the intent of the Legislature to authorize over a
five-year period beginning on the first day of July, two thou-
sand four, additional sources of revenue and funds to effect
such funding for capital improvement.
(l) Funding of systemwide and campus-specific revenue bonds under any other section of this code is hereby continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any revenue bonds issued pursuant to this code shall remain pledged.

(m) Any revenue bonds for state institutions of higher education proposed to be issued under this section or other sections of this code first must be approved by the commission.

(n) Revenue bonds issued pursuant to this code may be issued by the commission or governing boards, either singly or jointly.

(o) Fees pledged for repayment of revenue bonds issued under this section or article twelve-b, chapter eighteen prior to the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission shall have the authority to transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

(p) Effective the first day of July, two thousand four, the capital and auxiliary capital fees authorized by this section and section one of this article are in lieu of any other fees set out in this code for capital and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any other provisions of this code to the contrary, in the event any capital, tuition, registration or auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general bond resolutions of the commission, any of its predecessors or any institution, adopted prior to the effective date of this section,
such fees shall remain in effect in amounts not less than the amounts in effect as of that date, until such time as the revenue bonds payable from any of such fees have been paid or the pledge of such fees is otherwise legally discharged.

§18B-10-9. Authority to excuse students in certain educational programs from payment of enrollment fees.

Whenever the cost of any institute, workshop, special course, or other educational program is wholly financed by a grant from any federal, state or local agency or from any foundation, corporation or other association or person, except for indirect costs of administration and other overhead expenses, such as the cost of providing classrooms and other facilities, the governing board of the state institution of higher education administering the program has the authority to excuse all students enrolled in such program from the payment of tuition and other fees.

§18B-10-11. Fees and money derived from athletic contests.

The governing board of a state institution of higher education may fix and charge admission fees to athletic contests at institutions under its jurisdiction. The governing board may enter into contracts and spend and receive money under such contracts for the student athletic teams of the institutions to contest with other athletic teams inside or outside the state. All money received from such fees and contracts shall be deposited in the auxiliary operating account of the institution and expended for any purpose considered necessary and proper by the governing board.

§18B-10-12. Student activities.

(a) The governing board of a state institution of higher education may make funds available from tuition and fees to
support extracurricular activities of the students as considered necessary.

(b) Each institution shall maintain a level of support for extracurricular activities of the students comparable to that level supported by student activities fees previously authorized by this section.

§18B-10-13. Fees from operation of dormitories, faculty homes, dining halls and cafeterias.

The appropriate governing board of each state institution of higher education shall fix the fees to be charged students and faculty members for rooms, board and meals at the dormitories, faculty homes, dining halls and cafeterias operated by such board at the institution. Such fees shall be commensurate with the complete cost of such services.

All fees collected for such services shall be used first to meet interest, principal and sinking fund requirements due on any outstanding revenue bonds for which the receipts may have been pledged as security and to pay the operating and maintenance costs of the dormitories, faculty homes, dining halls and cafeterias. Any such receipts not needed for these purposes may be expended by the appropriate governing board for any other auxiliary enterprise or educational and general instructional costs.


(a) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell books, stationery and other school and office supplies generally carried in college bookstores.

(b) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases,
include in addition to the purchase price paid by the bookstore a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage and other operating expenses.

(c) Each governing board also shall ensure that bookstores operated at institutions under its jurisdiction meet the additional objective of minimizing the costs to students of purchasing textbooks by adopting policies which may require the repurchase and resale of textbooks on an institutional or a statewide basis and provide for the use of certain basic textbooks for a reasonable number of years.

(d) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in section two, article two, chapter twelve of this code. Subject to the approval of the governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

(e) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

§18B-10-15. Authority of educational institutions to provide special services and programs; collection and disposition of fees therefor.

(a) The governing board of each state institution of higher education may provide special services and special programs at such institutions and may fix and collect special fees or charges
therefor. Such special services and special programs include, but are not limited to, any of the following:

(1) The conduct of music camps and band, orchestra or voice clinics for secondary school students or other youth groups: summer tutoring programs for primary and secondary school students; speech therapy clinics and services; educational and psychological testing programs; student guidance programs; and statistical studies and calculations by an electronic computer service.

(2) Rental of lockers or other storage facilities and the maintenance and operation of parking facilities for use by students, faculty, staff and visitors.

(3) Rental of musical recordings, educational films, slides and other audiovisual aids.

(4) Microfilming or other mechanical reproduction of records and noncopyrighted library reference materials.

(5) Institutes, conferences, workshops, postgraduate and refresher noncredit courses and any other special program or special service customarily provided by institutions of higher education.

(6) Motor pools consisting of motor vehicles for the use of their employees when carrying on the business and affairs of the institutions.

(b) All fees or charges collected for any such special services or programs shall cover the total cost of the service or program.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.
ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-1. Health education loan program; establishment; administration; eligibility and loan cancellation; required report.

(a) For the purposes of this section, vice chancellor of administration means the person employed pursuant to section two, article four, chapter eighteen-b of this code.

(b) There is continued a special revolving fund account under the commission in the state treasury to be known as the health education student loan fund which shall be used to carry out the purposes of this section. The fund consists of:

1. All funds on deposit in the medical student loan fund in the state treasury or which are due or become due for deposit in the fund as obligations made under the previous enactment of this section;
2. Those funds provided pursuant to the provisions of section four, article ten, chapter eighteen-b of this code;
3. Appropriations provided by the Legislature;
4. Repayment of any loans made under this section;
5. Amounts provided by medical associations, hospitals, or other medical provider organizations in this state, or by political subdivisions of the state, under an agreement which requires the recipient to practice his or her health profession in this state or in the political subdivision providing the funds for a predetermined period of time and in such capacity as set forth in the agreement; and
6. Other amounts which may be available from external sources.
Balances remaining in the fund at the end of the fiscal year do not expire or revert. All costs associated with administering this section shall be paid from the health education student loan fund.

(c) The vice chancellor for administration may utilize any funds in the health education student loan fund for the purposes of the medical student loan program. The commission shall give priority for the loans to residents of this state, as defined by the commission. An individual is eligible for loan consideration if the individual:

(1) Demonstrates financial need;

(2) Meets established academic standards;

(3) Is enrolled or accepted for enrollment at one of the aforementioned schools of medicine in a program leading to the degree of medical doctor (M.D.) or doctor of osteopathy (D.O.);

(4) The individual has not yet received one of the degrees provided in subdivision (3) of this subsection; and

(5) Is not in default of any previous student loan.

(d) At the end of each fiscal year, any individual who has received a medical student loan and who has rendered services as a medical doctor or a doctor of osteopathy in this state in a medically underserved area or in a medical specialty in which there is a shortage of physicians, as determined by the division of health at the time the loan was granted, may submit to the commission a notarized, sworn statement of service on a form provided for that purpose. Upon receipt of the statement the commission shall cancel five thousand dollars of the outstanding loan or loans for every full twelve consecutive calendar months of such service.
(e) No later than thirty days following the end of each fiscal year, the vice chancellor for administration shall prepare and submit a report to the commission for inclusion in the statewide report card required under section eight, article one-b, chapter eighteen-b of this code to be submitted to the legislative oversight commission on education accountability established under section eleven, article three-a, chapter twenty-nine-a of this code. At a minimum, the report shall include the following information:

1. The number of loans awarded;
2. The total amount of the loans awarded;
3. The amount of any unexpended moneys in the fund; and
4. The rate of default during the previous fiscal year on the repayment of previously awarded loans.
AN ACT making a supplementary appropriation in the state fund, general revenue to the department of military affairs and public safety - division of juvenile services, fund 0570, fiscal year 2005, organization 0621, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:
That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0570, fiscal year 2005, organization 0621, be supplemented and amended to read as follows:

**TITLE II — APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY**

*62—Division of Juvenile Services*  
*(WV Code Chapter 49)*

**Fund 0570 FY 2005 Org 0621**

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
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<tr>
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<td>2 Donald R. Kuhn</td>
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<td>3 Diagnostic Center</td>
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<td>4 Central Office (R)</td>
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<td>5 BRIM Premium</td>
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<td>7 Davis Center (R)</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 0570, activity 099), Central Office (fund 0570, activity 701), WV Industrial Home for Youth (fund 0570, activity 979), Davis Center (fund 0570, activity 980), Eastern Regional Juvenile Center (fund 0570, activity 981), Northern Regional Juvenile Center (fund 0570, activity 982), North Central Regional Juvenile Center (fund 0570, activity 983), Southern Regional Juvenile Center (fund 0570, activity 984), Tiger Morton Center (fund 0570, activity 985), Donald R. Kuhn Juvenile Center (fund 0570, activity 986), J.M. "Chick" Buckbee Juvenile Center (fund 0570, activity 987), Salem Canine (fund 0570, activity 988), Davis Canine (fund 0570, activity 989), The Academy (fund 0570, activity 990), Mt. Hope Juvenile Center (fund 0570, activity 991) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005, with the exception of fund 0570, fiscal year 2004, activity 979, ($500,000); fund 0570, fiscal year 2004, activity 983, ($100,000); fund 0570, fiscal year 2004, activity 984, ($100,000); fund 0570, fiscal year 2004, activity 986, ($710,257); fund 0570, fiscal year 2004, activity 987, ($200,000); and fund 0570, fiscal year 2004, activity 991, ($100,000) which shall expire on June 30, 2004.

From the above appropriation, on July 1, 2004, the sum of fifty thousand dollars shall be transferred to the department of agriculture - land division 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 also have the authority to transfer between line items appropriated to the individual juvenile centers above.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand five, by amending language with no additional funds being appropriated.

CHAPTER 2

(H. B. 208 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to the public service commission, fund 8623, fiscal year 2004, organization 0926, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand four.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 8623, fiscal year 2004, organization 0926, be supplemented and amended to read as follows:

TITLE II — APPROPRIATIONS

Sec. 3. Appropriations from other funds.

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

The Public Service Commission is authorized to spend up to $560,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to passage of enrolled house bill no. 2715, regular session, 1997.

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 8623, activity 511) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand four, by decreasing an item of appropriation, by amending language and by providing for a new item of appro-
CHAPTER 3

(H. B. 209 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
(By Request of the Executive)

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the bureau of commerce - division of miners' health, safety and training, fund 8709, fiscal year 2005, organization 0314, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor has established the availability of federal funds for a continuing program now available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five, 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 the thirtieth day of June, two thousand five, to fund 8709, fiscal year 2005, organization 0314, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS

2 Sec. 6. Appropriations of federal funds.
BUREAU OF COMMERCE

292—Division of Miners' Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2005 Org 0314

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>096</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during the fiscal year two thousand five.

CHAPTER 4

(H. B. 210 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the department of military affairs and public safety - office of emergency services, fund 8727, fiscal year 2005, organization 0606, all supplementing and amending the appropri-
ation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, 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 the thirtieth day of June, two thousand five, to fund 8727, fiscal year 2005, organization 0606, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II — APPROPRIATIONS

2 Sec. 6. Appropriations of federal funds.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 276—Office of Emergency Services

6 (WV Code Chapter 15)

7 Fund 8727 FY 2005 Org 0606

8  

9  

10 1 Unclassified - Total ................. 096  $ 47,323,204

11 The purpose of this supplementary appropriation bill is to supplement and increase items of appropriation in the aforesaid account for the designated spending unit for expenditure during fiscal year two thousand five.
AN ACT supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by creating Title II, section eight-a to read as follows:

1 Sec. 8a. Appropriations from general revenue surplus accrued.—The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year two thousand five out of surplus funds only, accrued from the fiscal year ending the thirtieth day of June, two thousand four, subject to the terms and conditions set forth in this section.

8 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 four, from the fiscal year ending the thirtieth day of June, two thousand four.

12 In the event that surplus revenues available on the thirty-first day of July, two thousand four, 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; next, to provide the funds necessary for the second
appropriation of this section; and subsequently to provide the
funds necessary for each appropriation in succession before any
funds are provided for the next subsequent appropriation.

314—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2005 Org 0201

Lease Rental Payments -

Surplus ...................... 081 $ 4,536,897

315—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2005 Org 0511

Social Services - Surplus ........ 082 $ 5,000,000

Rural Hospitals Under 150

Beds - Surplus ............... 046 750,000

Total ........................ $ 5,750,000

316—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2005 Org 0506
39 1 Primary Care Centers - Mortgage
40 2 Finance - Surplus ............... 083 $ 350,000

317—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2005 Org 1400

44 1 Soil Conservation Projects -
45 2 Surplus ....................... 269 $ 750,000

318—Adjutant General—

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2005 Org 0603

50 1 Armory Capital Improvements -
51 2 Surplus ....................... 325 $ 2,000,000

319—West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2005 Org 0307

55 1 Local Economic Development
56 2 Assistance - Surplus ......... 266 $ 5,000,000

57 3 Southern West Virginia Career Center -
58 4 Surplus ....................... 591 150,000
59 5 Total .......................... $ 6,150,000

320—Governor’s Office—

Civil Contingent Fund
From the above appropriation to civil contingent fund surplus, $300,000 shall be allocated to Wyoming County and $100,000 shall be allocated to Greenbrier County for flood reparations.

321—West Virginia Development Office—

Division of Tourism

(WV Code Chapter 5B)

322—Tax Division

(WV Code Chapter 11)

323—Governor’s Office—

Governor’s Cabinet on Children and Families

(WV Code Chapter 5)
AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand four, in the amount of nine million dollars from the revenue shortfall reserve fund, fund 2038, organization 0201, and in the amount of six million three hundred fifty-nine thousand one hundred dollars from the state excess lottery revenue fund, fund 7205, organization 0705, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand four, to the governor’s office - civil contingent fund, fund 0105, fiscal year 2004, organization 0100, to the department of health and human resources, division of human services, fund 0403, fiscal year 2004, organization 0511, to the department of military affairs and
public safety, division of corrections - correctional units, fund 0450, fiscal year 2004, organization 0608, and to the department of tax and revenue, tax division, fund 0470, fiscal year 2004, organization 0702.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, two thousand four; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, two thousand four; and

WHEREAS, The Legislature finds that the account balance in the state excess lottery revenue fund, fund 7205, fiscal year 2004, organization 0705, exceeds that which is necessary for the purpose for which the account was established; and

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fifteenth day of June, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand four; and

WHEREAS, It appears from the governor's statement of the state fund, general revenue, and by provisions of this legislation, there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand four; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, fund 2038, fiscal year 2004, organization 0201, be decreased by
expiring the amount of nine million dollars, and the state excess lottery revenue fund, fund 7205, fiscal year 2004, organization 0705, be decreased by expiring the amount of six million three hundred fifty-nine thousand one hundred dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0105, fiscal year 2004, organization 0100, be supplemented and amended by increasing the total appropriation in the existing and new line item as follows:

**TITLE II--APPROPRIATIONS.**

Section 1. Appropriations from general revenue.

**EXECUTIVE**

8—Governor’s Office---

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2004 Org 0100

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Civil Contingent Fund - Surplus (R)</td>
<td>$7,180,000</td>
</tr>
<tr>
<td>2 Stream Restoration - Surplus (R)</td>
<td>$2,000,000</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriation for civil contingent fund - surplus (fund 0105, activity 263), and stream restoration - surplus (fund 0105, activity 078) at the close of the fiscal year two thousand four are hereby
reappropriated for expenditure during the fiscal year two thousand five.

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0403, fiscal year 2004, organization 0511, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

50—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2004 Org 0511

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 Indigent Burials - Surplus</td>
<td>076 $ 290,000</td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand four, to fund 0450, fiscal year 2004, organization 0608, be supplemented and amended by increasing the total appropriation as follows:

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY
56—Division of Corrections—

Correctional Units

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

Fund 0450 FY 2004 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>11 Payments to Federal, County and/or</td>
</tr>
<tr>
<td>2</td>
<td>12 Regional Jails - Surplus ........ 008 $ 7,600,000</td>
</tr>
<tr>
<td>3</td>
<td>And, that the total appropriation for the fiscal year ending</td>
</tr>
<tr>
<td>4</td>
<td>the thirtieth day of June, two thousand four, to fund 0470, fiscal</td>
</tr>
<tr>
<td>5</td>
<td>year 2004, organization 0702, be supplemented and amended</td>
</tr>
<tr>
<td>6</td>
<td>by increasing the total appropriation as follows:</td>
</tr>
</tbody>
</table>

TITLE II--APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TAX AND REVENUE

64--Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2004 Org 0702

<table>
<thead>
<tr>
<th>Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>1</td>
<td>4 Unclassified - Surplus (R) ........ 097 $ 350,000</td>
</tr>
<tr>
<td>2</td>
<td>The purpose of this supplementary appropriation bill is to</td>
</tr>
<tr>
<td>3</td>
<td>expire funds to the unappropriated surplus balance in the state</td>
</tr>
</tbody>
</table>
AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to a new item of appropriation designated to the department of military affairs and public safety - office of the secretary, fund 8876, fiscal year 2005, organization 0601, all supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill.

WHEREAS, The governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:
TITLE II--APPROPRIATIONS

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

274a—Department of Military Affairs and Public Safety—

Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2005 Org 0601

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

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand five, by providing for a new item of appropriation to be established therein to appropriate federal funds for the designated spending unit for expenditure during the fiscal year two thousand five.

CHAPTER 8

(S. B. 2007 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]
AN ACT making a supplementary appropriation of lottery net profits to the state department of education, fund 3951, fiscal year 2005, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 3951, fiscal year 2005, organization 0402, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS

Sec. 4. Appropriations from lottery net profits.

DEPARTMENT OF EDUCATION

229—State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2005 Org 0402

|   | 1  | Safe Schools | 2  | Unclassified | 3  | Technology Infrastructure | 4  | Network | 5  | READS Program | 6  | MATH Program | 7  | Vocational Education | 8  | Equipment Replacement | 9  | Assessment Program | 10 | Employment Programs |
|---|---|-------------|---|-------------|---|---------------------------|---|----------|---|---------------|---|-------------|---|---------------------|---|---------------------|---|---------------------|
|   | 1  | 143         | 2  | 099         | 3  | 351                       | 4  | 351      | 5  | 365           | 6  | 368          | 7  | 393               | 8  | 393             | 9  | 396               | 10 | 401               |
|   |    | $           |    | 3,407,000   |    | 20,500,000                |    | 6,430,943|    | -0-           |    | 300,000      |    | -0-               |    | 878,189          |    | 150,000           |    | 10,000            |
Any unexpended balances remaining in the appropriations for Computer Basic Skills (fund 3951, activity 145), S.U.C.C.E.S.S. (fund 3951, activity 255), Technology Repair and Modernization (fund 3951, activity 298), Technology and Telecommunications Initiative (fund 3951, activity 596), Technology Demonstration Project (fund 3951, activity 639), Educational Development (fund 3951, activity 823) and Computer Study (fund 3951, activity 998) at the close of the fiscal year two thousand four are hereby reappropriated for expenditure during the fiscal year two thousand five.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand five, by amending language with no additional funds being appropriated.
AN ACT making a supplementary appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to the department of military affairs and public safety, West Virginia state police - surplus real property proceeds fund, fund 6516, fiscal year 2005, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 6516, fiscal year 2005, organization 0612, be supplemented and amended to read as follows:

TITLE II--APPROPRIATIONS

Sec. 3. Appropriations from other funds.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

143—West Virginia State Police—

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)
Fund 6516 FY 2005 Org 0612

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>099 $ 454,475</td>
</tr>
<tr>
<td>2</td>
<td>913 63,294</td>
</tr>
<tr>
<td>3</td>
<td>$ 517,769</td>
</tr>
</tbody>
</table>

Contingent upon the purchase of property owned by Shawnee Hills, Inc., and the ARC of the Three Rivers, Inc., and the reimbursement of funding from the regional jail and correctional facility authority for the cost and acquisition of the same properties, from the cash balance available, an amount not to exceed $1,200,000 may be transferred to fund 6519, fiscal year 2005, organization 0612, as reimbursement for funds transferred by the legislative action during the fiscal year two thousand three.

The purpose of this bill is to supplement this account in the budget act for the fiscal year ending the thirtieth day of June, two thousand five, by amending language with no additional funds being appropriated.

CHAPTER 10

(S. B. 2011 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]

AN ACT supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the
budget bill, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by amending Title II, section nine, to read as follows:

Sec. 9. Appropriations from surplus accrued.—The following items are hereby appropriated from the state excess lottery revenue fund and are to be available for expenditure during the fiscal year two thousand five out of surplus funds only, as determined by the director of the lottery, accrued from the fiscal year ending the thirtieth day of June, two thousand four, 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 from the fiscal year ending the thirtieth day of June, two thousand four.

In the event that surplus revenues available from the fiscal year ending the thirtieth day of June, two thousand four, 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 and shall be allocated first to provide the necessary funds to meet the first appropriation of this section; next, to provide the funds necessary for the second appropriation of this section, and, subsequently, to provide the funds necessary for each appropriation in succession before any funds are provided for the next subsequent appropriation.

324—Governor's Office

(WV Code Chapter 5)
Fund 1046 FY 2005 Org 0100

1 1 Publication of Papers and
2 2 Transition Expenses -
3 3 Lottery Surplus ............... 066 $ 325,000

325—Division of Corrections—

Correctional Units

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

Fund 6283 FY 2005 Org 0608

1 1 Payments to Federal, County and/or
2 2 Regional Jails -
3 3 Lottery Surplus ............... 067 $ 3,887,620

326—Tax Division

(WV Code Chapter 11)

Fund 7082 FY 2005 Org 0702

1 1 Remittance Processor -
2 2 Lottery Surplus ............... 054 $ 200,000

327—West Virginia State Police

(WV Code Chapter 15)

Fund 6394 FY 2005 Org 0612

1 1 Handgun Replacement -
2 2 Lottery Surplus ............... 057 $ 400,000

328—Division of Health—

Central Office
(WV Code Chapter 16)

Fund 5219 FY 2005 Org 0506

1 1 Chief Medical Examiner -
2 2 Capital Improvements -
3 3 Lottery Surplus ............. 051 $ 1,050,000

329—Higher Education Policy Commission—

Administration

Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2005 Org 0441

1 1 PROMISE Scholarship -
2 2 Lottery Surplus ............... 077 $ 3,000,000

3 The above appropriation for PROMISE Scholarship -
4 Lottery Surplus (activity 077) shall be transferred to the
5 PROMISE Scholarship Fund (fund 4296, org 0441) established
6 by section seven, article seven, chapter eighteen-c of the code
7 of West Virginia.

330—Workers’ Compensation Commission

(WV Code Chapter 23)

Fund 3460 FY 2005 Org 0322

1 1 Self-Insured Security Pool -
2 2 Lottery Surplus ............... 072 $ 9,000,000
3 1 Total TITLE II, Section 9 -
4 2 Surplus Accrued ............... $17,862,620
The purpose of this supplementary appropriation bill is to supplement, amend, add and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand five.

CHAPTER 11

(S. B. 2013 — By Senators Tomblin, Mr. President, and Sprouse) [By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.] AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the governor’s office - governor’s cabinet on children and families, fund 0104, fiscal year 2005, organization 0100, and the state department of education - state aid to schools, fund 0317, fiscal year 2005, organization 0402, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the fifteenth day of June, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand three; and further included the estimate of revenues for the fiscal year two thousand four, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand four; and further included the estimate of revenue for the fiscal year two thousand five, less regular appropriations for the fiscal year two thousand five; and
WHEREAS, It appears from the governor’s statement of the state fund - general revenue there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0104, fiscal year 2005, organization 0100, be supplemented and increased in the existing line item as follows:

TITLE II--APPROPRIATIONS

Section 1. Appropriations from general revenue.

EXECUTIVE

7—Governor’s Cabinet on Children and Families

(WV Code Chapter 5)

Fund 0104 FY 2005 Org 0100

<table>
<thead>
<tr>
<th>General Activity</th>
<th>Revenue Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 7 Starting Point Centers and</td>
<td>316 $ 430,893</td>
</tr>
<tr>
<td>2 8 Parent Education Services (R)</td>
<td></td>
</tr>
</tbody>
</table>

And, that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, fund 0317, fiscal year 2005, organization 0402, be supplemented and amended to read as follows:


Section 1. Appropriations from general revenue.

**DEPARTMENT OF EDUCATION**

*36--State Department of Education--*

*State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2005 Org 0402

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Other Current Expenses</td>
<td>022</td>
<td>$125,826,312</td>
</tr>
<tr>
<td>2</td>
<td>Professional Educators</td>
<td>151</td>
<td>731,600,242</td>
</tr>
<tr>
<td>3</td>
<td>Service Personnel</td>
<td>152</td>
<td>243,025,520</td>
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<tr>
<td>4</td>
<td>Fixed Charges</td>
<td>153</td>
<td>88,788,405</td>
</tr>
<tr>
<td>5</td>
<td>Transportation</td>
<td>154</td>
<td>25,787,620</td>
</tr>
<tr>
<td>6</td>
<td>Administration</td>
<td>155</td>
<td>3,023,492</td>
</tr>
<tr>
<td>7</td>
<td>Improve Instructional Programs</td>
<td>156</td>
<td>33,000,000</td>
</tr>
<tr>
<td>8</td>
<td>Basic Foundation Allowance</td>
<td>018</td>
<td>1,251,051,591</td>
</tr>
<tr>
<td>9</td>
<td>Less Local Share</td>
<td></td>
<td>(304,271,644)</td>
</tr>
<tr>
<td>10</td>
<td>Total Basic State Aid</td>
<td>10</td>
<td>946,779,947</td>
</tr>
<tr>
<td>11</td>
<td>Early Childhood Collaborative</td>
<td>019</td>
<td>34,760,421</td>
</tr>
<tr>
<td>12</td>
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The purpose of this supplementary appropriation bill is to amend and increase items of appropriations in the aforesaid accounts for the designated spending units for expenditure during the fiscal year two thousand five.
AN ACT to amend and reenact section one, chapter two hundred eighty-six, acts of the Legislature, regular session, two thousand, relating to giving the secretary of administration options on how to dispose of the land, together with the improvements thereon, known as Morris Square in Charleston, Kanawha County; and providing an exception for ownership of said land by the West Virginia Economic Development Authority for purpose of leasing it to the City of Charleston, West Virginia.

Be it enacted by the Legislature of West Virginia:

SALE OF PROPERTY.

§1. Land sale; description.

(a) The secretary of administration is hereby authorized to negotiate a financial proposal for the property described in subsection (b) of this act with the city of Charleston which arrangement shall be in the best financial interest for the state. Any financial proposal shall be funded either in cash or by a purchase money mortgage at a value acceptable to the secretary. The financial proposal must be made within ninety (90) days of the effective date of this section. Any contract, sale or lease shall be approved by the joint committee on government and finance.

(b) The secretary is authorized to sell, grant and convey or lease to the city of Charleston, all of those certain lots or parcels
of land, together with the improvements thereon and the appurtenances thereunto belonging, being known as Lot "A-1" containing 1.118 acres, more or less; and Lot "A-2" containing 0.587 acre, more or less, being situate in the city of Charleston, Charleston East tax district, Kanawha County, West Virginia; which property is more particularly bounded and described in a deed dated October 29, 1996, from the Charleston building corporation to the state building commission of West Virginia, of record in the office of the clerk of the county commission of Kanawha County, West Virginia, in Deed Book 2399 at page 79. Any sale and conveyance of the property is subject to all restrictions, reservations, rights-of-way, easements, utilities, covenants, leases, exclusions and other matters duly of record affecting the property.

(c) If the subject property is not transferred to the city of Charleston pursuant to subsections (a) and (b) of this act, then the secretary shall solicit bids for sale by auction, sell, grant and convey, for good and valuable consideration to the highest responsible bidder, the property described in subsection (b) of this act. Any sale and conveyance of the property is subject to all restrictions, reservations, rights-of-way, easements, utilities, covenants, leases, exclusions and other matters duly of record affecting the property.

(d) The secretary is authorized to contract with an auction company to sell the property. The auction may be oral, silent or on the internet. The cost of the auction, as contracted by the secretary with the auction company, is to be paid from the proceeds of the sale.

(e) The property shall have a minimum bid price which shall be set by the secretary, regardless of the appraised value, for sale and conveyance of the property.

(f) The sale by auction shall take place no less than once a year until the time the property is successfully sold.
(g) The money obtained from the property shall be deposited in a special fund of the department of administration to be known as “the Morris Square property fund” and is to be used for improvements and renovations of the state capitol complex.

(h) Notwithstanding any other provision of law to the contrary, the state, its subdivisions, agencies and instrumentalities, except for the city of Charleston, are prohibited from obtaining any interest, by way of purchase, lease, trade, donation, condemnation, tax sale, or any other means whatsoever in the property described in subsection (b) of this act, or any interest therein, for so long as any building or structure or any portion thereof situate on the property on the date of the enactment of the provisions of this act remains so situated:

Provided, That the West Virginia economic development authority may obtain such interest in any portion of the property as may be necessary for the authority to enter into a lease-purchase bond transaction with the city of Charleston: Provided, however, That no state agency may locate any state government office or other state government operation within said property: Provided further, That any such lease-purchase transaction shall have no recourse to the authority.

(i) Notwithstanding anything in the code of West Virginia, one thousand nine hundred thirty-one, as amended, to the contrary, the provisions of this section prevail.

CHAPTER 13

(H. B. 201 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed June 15, 2004; in effect from passage. Approved by the Governor.]
AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2D-7, relating to creating a special revenue fund in the state treasury designated the security enforcement 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 §15-2D-7, to read as follows:

ARTICLE 2D. DIVISION OF PROTECTIVE SERVICES.


1 There is hereby created in the state treasury a special revenue fund designated the “security enforcement fund.” The money of the fund shall be made available for investment under the provisions of article six, chapter twelve of this code. The fund shall consist of all gifts, grants, bequests, transfers, appropriations or other donations which may be received from any governmental entity or unit or any person, firm, foundation, corporation, association or other entity, and all interest or other return accruing to the fund.

10 The money in the fund shall be used for the operation of the division and for the costs and expenses incurred pursuant to this article. Any balance including accrued interest in the fund at the end of any fiscal year shall not revert to the general fund but shall remain in the fund for those purposes.
DISPOSITION OF BILLS ENACTED

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Regular Session, 2004

HOUSE BILLS

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DISPOSITION OF BILLS ENACTED

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Regular Session, 2004

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DISPOSITION OF BILLS ENACTED

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Regular Session, 2004

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DISPOSITION OF BILLS ENACTED

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Page Two

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**Regular Session, 2004**

*House Bills = 4 Digits*  
*Senate Bills = 2, 3 Digits*

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First Extraordinary Session, 2004

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First Extraordinary Session, 2004

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