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Clerk of the House

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FOREWORD


First Regular Session, 2005

The First Regular Session of the 77th Legislature convened on January 12, 2005, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 9th day of November, 2004, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 9, 2005, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 9, 2005. The Governor issued Proclamations on April 6 and April 15, extending the session for the purpose of considering the Budget bill, and the Legislature adjourned sine die on April 16, 2005.

Bills totaling 2,116 were introduced in the two houses during the session (1,364 House and 752 Senate). The Legislature passed 265 bills, 131 House and 134 Senate.

The Governor vetoed seven House bills (Com. Sub. for H. B. 2381, Authorizing patients or residents of certain health care facilities or homes to designate nonrelatives to receive the same visitation privileges as immediate family members; H. B. 2782, Increasing the number of members a municipality may appoint to a board of park and recreation commission from not less than three to not more than seven; Com. Sub. for H. B. 2966, Creating a statewide thoroughbred breeders program; Com. Sub. for H. B. 3178, Relating to domestic
violence and clarifying when permanent injunctions and other provisions may be granted in final divorce orders; H. B. 3203, Authorizing the closure of certain existing retirement funds for municipal policemen and firemen and establishment of a defined contribution plan in lieu thereof; H. B. 3293, Establishing residential treatment programs for regional jail inmates who are abusers of alcohol and other drugs; and H. B. 3360, Requiring the IS & C Director to create and maintain an information systems disaster recovery system) and nine Senate bills (S. B. 42, Limiting liability for waste tire remediation costs for certain owners of real property; Com. Sub. for S. B. 433, Increasing membership of Environmental Protection Advisory Council; S. B. 513, Relating to tax credits available under Capital Company Act; S. B. 584, Allowing Bureau for Child Support Enforcement enter orders for modification of child support amounts; S. B. 616, Relating to priority of legislative business for members and certain employees of the Legislature; Com. Sub. for S. B. 661, Relating to juvenile proceedings and multidisciplinary teams; S. B. 684, Relating to imposition of tax on privilege of severing natural gas or oil; S. B. 741, Exempting farming equipment and livestock from personal property tax; and S. B. 746, Reducing rate of tax paid on privilege of severing timber after certain date). The Legislature amended and again passed H. B. 2381, H. B. 2782, Com. Sub. for H. B. 3178, S. B. 513, S. B. 584 and S. B. 616, leaving a net total of 255 bills, 127 House and 128 Senate, which became law.

There were 217 Concurrent Resolutions introduced during the session, 104 House and 113 Senate, of which 21 House and 21 Senate were adopted. Twenty House Joint Resolutions and 14 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 42 House Resolutions, and the Senate introduced 50 Senate Resolutions, of which 33 House and 50 Senate were adopted.

The Senate failed to pass 82 House bills passed by the House, and 61 Senate bills failed passage by the House.
First Extraordinary Session, 2005

The Proclamation calling the Legislature into Extraordinary Session at 11:00 A.M., January 24, 2005, contained six items for consideration.

The Legislature passed 4 bills, all of which were Senate bills. Two Joint Resolutions were introduced (one House and one Senate) and one was adopted, S. J. R. 101, Proposing amendment to Constitution designated Pension Bond Amendment. Pursuant to the provisions of S. J. R. 101, a statewide election was held on the Pension Bond Amendment on June 25, 2005, at which election the proposed amendment was defeated by the voters. The House adopted one House Resolution and the Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die January 29, 2005.

Second Extraordinary Session, 2005

The Proclamation calling the Legislature into Extraordinary Session immediately following the conclusion of business and adjournment sine die of the Regular Session, April 16, 2005, contained two items for consideration.

The Legislature passed 6 bills, all of which were House bills. The Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die at 1:17 P.M. that same day.

Third Extraordinary Session, 2005
The Proclamation calling the Legislature into Extraordinary Session at 4:00 P.M., May 16, 2005, contained thirteen items for consideration.

The Legislature passed 10 bills, all of which were Senate bills. The Legislature adopted two Senate concurrent resolutions and the Senate adopted four Senate Resolutions.

The Legislature adjourned the Extraordinary Session sine die at 7:18 P.M., May 17, 2005.

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Third Extraordinary Session, 2004

The Proclamation calling the Legislature into Extraordinary Session at 12:00 Noon, November 15, 2004, contained twenty-two items for consideration.

The Legislature passed 15 bills, 6 House and 9 Senate bills. The Legislature adopted 1 Senate concurrent resolution and the Senate adopted 4 Senate Resolutions.


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These volumes will be distributed as provided by sections thirteen and nineteen, article one, chapter four of the Code of West Virginia.

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

GREGORY M. GRAY
Clerk of the House and
Keeper of the Rolls.
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*Clerk:* Gregory M. Gray, Charleston  
*Sergeant at Arms:* Oce Smith, Fairmont  
*Doorkeeper:* John A. Roberts, Hedgesville

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<td>Moorefield</td>
<td>69th-77th</td>
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<tr>
<td>Forty-ninth</td>
<td>Allen V. Evans (R)</td>
<td>Dorcas</td>
<td>70th-77th</td>
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<td></td>
<td>Robert A. Schadler (R)</td>
<td>Keyser</td>
<td>69th; 70th; 74th-77th</td>
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<td>Ruth Rowan (R)</td>
<td>Points</td>
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<td>Fifty-first</td>
<td>Charles S. Trump IV (R)</td>
<td>Berkeley Springs</td>
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<td>Craig P. Blair (R)</td>
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<td>John Overington (R)</td>
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<td>Robert C. Tabb (D)</td>
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<td>John Doyle (D)</td>
<td>Shepherdstown</td>
<td>66th; 71st-77th</td>
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<td>Fifty-eighth</td>
<td>Locke Wysong (D)</td>
<td>Charles Town</td>
<td>77th</td>
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</table>

(D) Democrats ......................................................... 68
(R) Republicans ...................................................... 32

TOTAL ................................................................. 100
### OFFICERS

**President** — Earl Ray Tomblin, Chapmanville  
**Clerk** — Darrell E. Holmes, Charleston  
**Sergeant at Arms** — Howard Wellman, Bluefield  
**Doorkeeper** — Andrew J. Trail, Charleston

<table>
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<tr>
<th>District</th>
<th>Name</th>
<th>Address</th>
<th>Legislative Service</th>
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<tr>
<td>First</td>
<td>Edwin J. Bowman (D)</td>
<td>Weirton</td>
<td>72nd-77th</td>
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<td>Andy McKenzie (R)</td>
<td>Wheeling</td>
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<td>Second</td>
<td>Larry J. Edgell (D)</td>
<td>New Martinsburg</td>
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<td>Jeffrey V. Kessler (D)</td>
<td>Glen Dale</td>
<td>Appt. 11/97, 73rd; 74th-77th</td>
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<td>Third</td>
<td>Donna J. Boley (R)</td>
<td>St. Marys</td>
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<td>J. Frank Deem (R)</td>
<td>Vienna</td>
<td>(House 52nd-56th); 57th-64th; (House 69th); 72nd-77th</td>
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<td>Karen L. Facemyer (R)</td>
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<td>H. Truman Chafin (D)</td>
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<td>John Pat Fanning (D)</td>
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<td>Jon Blair Hunter (D)</td>
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<td>Sarah M. Minear (R)</td>
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<td>Clark Barnes (R)</td>
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<td>Walt Helmick (D)</td>
<td>Marlinton</td>
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<td>John Yoder (R)</td>
<td>Harpers Ferry</td>
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<td>Dan Foster (D)</td>
<td>Charleston</td>
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<td>Brooks F. McCabe, Jr. (D)</td>
<td>Charleston</td>
<td>74th-77th</td>
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</table>

(D) Democrats ........................................... 21  
(R) Republicans ........................................ 12  

TOTAL ......................................................... 33
COMMITTEES OF THE HOUSE OF DELEGATES
Regular Session, 2005

STANDING

AGRICULTURE AND NATURAL RESOURCES
Beach (Agriculture Chair), Tabb (Agriculture Vice Chair),
Stemple (Natural Resources Chair), Crosier (Natural Resources
Vice Chair), Argento, Ennis, Fragale, Louisos, Martin, Eldridge,
Paxton, Pethtel, Poling, Swartzmiller, Richard Thompson, Wells,
Williams, Anderson, Canterbury, Evans, Hamilton, Leggett,
Overington, Romine and Schoen.

BANKING AND INSURANCE
Ron Thompson (Banking Chair), Perry (Banking Vice Chair),
H. White (Insurance Chair), Hrutkay (Insurance Vice Chair),
Barker, Beach, Butcher, Cann, Ennis, Hartman, Hatfield, Iaquinta,
Marshall, Morgan, Perdue, Spencer, Webster, Azinger, Canterbury,

CONSTITUTIONAL REVISION
Talbott (Chair), Webster (Vice Chair), Argento, Caputo, Craig,
Crosier, Eldridge, Fragale, Houston, Hunt, Kominar, Louisos,
Pino, Spencer, Varner, H. White, Anderson, Armstead, Blair,
Ellem, Lane, Overington, Schoen and Sobonya.

EDUCATION
Campbell (Chair), Williams (Vice Chair), Beach, Crosier,
Eldridge, Fragale, Longstreth, Louisos, Marshall, Paxton, Perry,
Poling, Spencer, Stephens, Tabb, Wells, Wysong, Canterbury,
Duke, Lane, Leggett, Roberts, Stevens, Sumner and Tansill.

FINANCE
Michael (Chair), Doyle (Vice Chair), Boggs, Browning, Cann,
Frederick, Houston, Kominar, Leach, Palumbo, Proudfoot,
Stalnaker, Susman, Ron Thompson, Varner, H. White, Williams.
Anderson, Ashley, Border, Carmichael, Evans, Hall, Wakim and G. White.

**GOVERNMENT ORGANIZATION**
Beane (*Chair*), Ennis (*Vice Chair*), Argento, Barker, Butcher, Ferrell, Hatfield, Hunt, Iaquinta, Manchin, Martin, Miley, Perdue, Swartzmiller, Talbott, Tucker, Yost, Blair, Frich, Porter, Romine, Rowan, Schoen, Trump and Walters.

**HEALTH AND HUMAN RESOURCES**
Perdue (*Chair*), Hatfield (*Vice Chair*), Boggs, Brown, DeLong, Frederick, Hrutkay, Leach, Long, Longstreth, Marshall, Miley, Moore, Pino, Susman, Tucker, Webster, Ashley, Border, Hall, Lane, Rowan, Schadler, Sumner and Wakim.

**INDUSTRY AND LABOR, ECONOMIC DEVELOPMENT AND SMALL BUSINESS**

**JUDICIARY**

**PENSIONS AND RETIREMENT**
Stalnaker (*Cochair*), Manchin (*Vice Cochair*), Browning, Frederick, Williams, Duke and Hall.

**POLITICAL SUBDIVISIONS**
Proudfoot (*Chair*), Susman (*Vice Chair*), Brown, Caputo, Ferrell, Houston, Hunt, Morgan, Palumbo, Perry, Stalnaker, Staton,

**ROADS AND TRANSPORTATION**

Boggs (*Chair*), Butcher (*Vice Chair*), Barker, Craig, Ennis, Ferrell, Kominar, Manchin, Martin, Miley, Paxton, Poling, Stephens, Susman, Rick Thompson, Ron Thompson, Wells, Ellem, Evans, Leggett, Porter, Roberts, Romine, Rowan and Tansill.

**RULES**

Kiss (*Chair*), Amores, Beane, Browning, Campbell, Carmichael, Kominar, Leach, Mahan, Michael, Pino, Staton, Varner, Anderson, Armstead, Border, Hall and Trump.

**VETERANS AFFAIRS AND HOMELAND SECURITY**


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**JOINT COMMITTEES**

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**ENROLLED BILLS**

Browning (*Cochair*), Iaquinta (*Vice Cochair*), Varner and Overington.

**GOVERNMENT AND FINANCE**

Kiss (*Cochair*), Amores, Mahan, Michael, Staton, Hall and Trump.

**GOVERNMENT OPERATIONS**

Beane (*Cochair*), Ennis (*Vice Cochair*), Talbott, Blair and Leggett.
LEGISLATIVE RULE-MAKING REVIEW
Mahan (Cochair), Palumbo (Vice Cochair), Cann, Pino, Armstead and Overington.

RULES
Kiss (Cochair), Staton and Trump.

STATUTORY LEGISLATIVE COMMISSIONS

COMMISSION ON ECONOMIC DEVELOPMENT
Cann (Cochair), Amores, Browning, Craig, Frederick, Kominar, Michael, Poling, Stalnaker, Azinger, Howard and L. White.

COMMISSION ON INTERSTATE COOPERATION
Caputo (Cochair), Tucker (Vice Cochair), Frederick, Varner, Blair and Walters.

COMMISSION ON SPECIAL INVESTIGATIONS
Kiss (Cochair), Michael, Staton, Howard and Trump.

FOREST MANAGEMENT REVIEW COMMISSION
Morgan (Cochair), Hartman (Vice Cochair), Proudfoot, Stemple, Williams and Canterbury.

LEGISLATIVE OVERSIGHT COMMISSION
ON EDUCATION ACCOUNTABILITY
Campbell (Cochair), Beach, Doyle, Perry, Williams and Anderson.

LEGISLATIVE OVERSIGHT COMMISSION
ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Leach (Cochair), Hatfield, Michael, Perdue, Susman and Hall.

LEGISLATIVE OVERSIGHT COMMISSION
ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT
Campbell (Cochair), Frederick, Stalnaker and Walters.
LEGISLATIVE OVERSIGHT COMMITTEE ON
THE REGIONAL JAIL AND CORRECTIONAL
FACILITY AUTHORITY

Perry (Cochair), Leach (Vice Cochair), Pino, Stemple and
Roberts.
STANDING COMMITTEES OF THE SENATE
Regular Session, 2005

STANDING

AGRICULTURE
Edgell (Chair), Love (Vice Chair), Dempsey, Helmick, Hunter, Sharpe, Unger, Barnes, Facemyer, Guills and Weeks.

BANKING AND INSURANCE
Minard (Chair), Jenkins (Vice Chair), Chafin, Fanning, Foster, Helmick, Kessler, Prezioso, Sharpe, Deem, Facemyer, Guills, Lanham and Minear.

CONFIRMATIONS
Love (Chair), Chafin (Vice Chair), Bailey, Bowman, Minard, Plymale, Harrison, McKenzie and Yoder.

ECONOMIC DEVELOPMENT
McCabe (Chair), Oliverio (Vice Chair), Bowman, Fanning, Helmick, Kessler, Plymale, Prezioso, Unger, Caruth, Facemyer, Lanham, McKenzie and Minear.

EDUCATION
Plymale (Chair), Edgell (Vice Chair), Bailey, Bowman, Dempsey, Hunter, Oliverio, Unger, White, Barnes, Boley, Guills, Harrison and Sprouse.

ENERGY, INDUSTRY AND MINING
Sharpe (Chair), Dempsey (Vice Chair), Fanning, Foster, Helmick, Hunter, Jenkins, Kessler, Oliverio, Caruth, Deem, Guills, McKenzie and Weeks.

FINANCE
Helmick (Chair), Sharpe (Vice Chair), Bailey, Bowman, Chafin, Edgell, Love, McCabe, Plymale, Prezioso, Unger, Boley, Facemyer, Guills, Minear, Sprouse and Yoder.

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GOVERNMENT ORGANIZATION
Bowman (Chair), Bailey (Vice Chair), Chafin, Jenkins, Kessler, McCabe, Minard, Plymale, White, Boley, Harrison, Lanham, Minear and Weeks.

HEALTH AND HUMAN RESOURCES
Prezioso (Chair), Unger (Vice Chair), Bailey, Edgell, Foster, Hunter, Jenkins, McCabe, Sharpe, Barnes, Boley, Caruth, Guills and Weeks.

INTERSTATE COOPERATION
Jenkins (Chair), Dempsey (Vice Chair), Minard, Unger, Caruth, Harrison and Yoder.

JUDICIARY
Kessler (Chair), Oliverio (Vice Chair), Chafin, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks.

LABOR
Oliverio (Chair), White (Vice Chair), Edgell, Foster, Hunter, Love, Prezioso, Boley, Harrison, Lanham and Yoder.

MILITARY
Hunter (Chair), Dempsey (Vice Chair), Bailey, Fanning, Minard, Oliverio, Boley, Weeks and Yoder.

NATURAL RESOURCES
Fanning (Chair), White (Vice Chair), Bowman, Dempsey, Helmick, Love, McCabe, Plymale, Prezioso, Barnes, Caruth, Deem, Facemyer and Minear.

PENSIONS
Foster (Chair), McCabe (Vice Chair), Edgell, Plymale, Barnes, Deem and Lanham.

RULES
Tomblin (Chair), Bowman, Chafin, Helmick, Kessler, Prezioso, Sharpe, Boley, McKenzie, Minear and Sprouse.
TRANSPORTATION AND INFRASTRUCTURE
Unger (Chair), Jenkins (Vice Chair), Fanning, Love, Oliverio, White, Deem, Facemyer and McKenzie.

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JOINT COMMITTEES
-------

ENROLLED BILLS
White (Cochair), Bailey, Love, Sprouse and Yoder.

GOVERNMENT AND FINANCE
Tomblin (Cochair), Chafin, Helmick, Kessler, Sharpe, Deem and Sprouse.

GOVERNMENT OPERATIONS
Bowman (Cochair), Bailey (Vice Cochair), Helmick, Boley and Minear.

LEGISLATIVE RULE-MAKING REVIEW
Minard (Cochair), Fanning (Vice Cochair), Prezioso, Unger, Boley and Minear.

PENSIONS AND RETIREMENT
Foster (Cochair), McCabe (Vice Cochair), Edgell, Plymale, Barnes, Deem and Lanham.

RULES
Tomblin (Cochair), Chafin and Sprouse.

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STATUTORY LEGISLATIVE COMMISSIONS
-------

COMMISSION ON ECONOMIC DEVELOPMENT
McCabe (Cochair), Bowman, Chafin, Helmick, Kessler, Oliverio, Plymale, Prezioso, Unger, Facemyer, McKenzie and Minear.
COMMISSION ON INTERSTATE COOPERATION
Jenkins (Cochair), Dempsey (Vice Cochair), Minard, Unger, Caruth, Harrison and Yoder.

COMMISSION ON SPECIAL INVESTIGATIONS
Tomblin (Cochair), Chafin, Sharpe, Boley and Sprouse.

FOREST MANAGEMENT REVIEW COMMISSION
Helmick (Cochair), Love, Plymale, Facemyer and Minear.

LEGISLATIVE OVERSIGHT COMMISSION ON EDUCATION ACCOUNTABILITY
Plymale (Cochair), Bailey, Edgell, Unger, Boley and Harrison.

LEGISLATIVE OVERSIGHT COMMISSION ON HEALTH AND HUMAN RESOURCES ACCOUNTABILITY
Prezioso (Cochair), Hunter, Sharpe, Unger, Boley and Caruth.

LEGISLATIVE OVERSIGHT COMMISSION ON WORKFORCE INVESTMENT FOR ECONOMIC DEVELOPMENT
Unger (Cochair), Kessler, McCabe and Sprouse.

LEGISLATIVE OVERSIGHT COMMITTEE ON THE REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY
Love (Cochair), Dempsey, Hunter, White and McKenzie.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-2-34, relating to requiring a study of the centralized accounting system of the state to determine whether improvements are necessary to obtain optimal function and economical operation of the system, including, but not limited to, whether a transfer of responsibility for administration of the system is warranted or indicated to reach those ends, and for such other related purposes as the Secretary of the Department of Administration, the Secretary of the Department of Revenue, the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Transporta-
tion, the West Virginia Higher Education Policy Commission, the State Treasurer and the Auditor of the state may agree are advisable.

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-2-34, to read as follows:

ARTICLE 2. FINANCE DIVISION.

§5A-2-34. Study of centralized accounting system.

(a) The Legislature finds an examination of administration of the state's centralized accounting system is warranted to determine whether improvements are necessary to obtain optimal function and economical operation of the system, including, but not limited to, whether a transfer of responsibility for administration of the system is warranted or indicated to reach those ends. It is, therefore, the intent of the Legislature that appropriate public officials conduct a study of the centralized accounting system and provide the results of the study and any recommendations indicated for the improvement of the system to the Legislature for its consideration.

(b) The Secretary of the Department of Administration, the Secretary of the Department of Revenue, the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Transportation, the West Virginia Higher Education Policy Commission, the State Treasurer and the Auditor of the state shall conduct a study of the centralized accounting system for the purposes specified in subsection (a) of this section and for such other related purposes as they may agree are advisable. The study shall include the examination of the centralized accounting system by an independent consultant agreed upon by the Secretary of the Department of Administra-
section and the Secretary of the Department of Revenue after consultation with the remainder of the public officials designated in this section to conduct the study. A report of the study and any resulting recommendations made by the public officials designated by this section to conduct the study shall be submitted to the Joint Committee on Government and Finance on or before the first day of December, two thousand five, and shall include the written report and any recommendations of the independent consultant.

CHAPTER 2

(S. B. 691—By Senator Caruth)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §55-3B-3 of the Code of West Virginia, 1931, as amended, relating to termination of tenancy of a factory-built home.

Be it enacted by the Legislature of West Virginia:

That §55-3B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3B. REMEDIES FOR WRONGFUL OCCUPATION OF FACTORY-BUILT HOME SITE.

§55-3B-3. Termination of tenancy.

(a) Except for termination for good cause, the tenancy of a factory-built home site may be terminated by either party only by giving at least three months' notice 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 the tenant or upon
anyone holding under the tenant the leased premises or any part
of the leased premises. 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 the owner or according to the
common law. If the termination is for good cause, no notice
requirements other than those provided in sections four and six
of this article may be imposed.

(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 period set out in subsection (b), section two of
this article, without 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.

CHAPTER 3

(Com. Sub. for H. B. 3174 — By Delegate Amores)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §55-7-11a of the Code of West
Virginia, 1931, as amended, relating to the admissibility of
expressions of apology, sympathy, commiseration, condolence,
compassion or general sense of benevolence made by a healthcare
provider to a patient, or relatives or representatives of the patient;
inadmissability of statements as evidence of admission of
liability; and definition of terms.
Be it enacted by the Legislature of West Virginia:

That §55-7-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-11a. Settlement, release or statement within twenty days after personal injury; disavowal; certain expressions of sympathy inadmissible as evidence.

(a) If a person sustains a personal injury, no person shall within twenty days from the date of the personal injury while the injured person is either: (i) An inpatient in any hospital; or (ii) partially or totally unable to engage in his or her usual trade, profession or occupation:

1. Negotiate or attempt to negotiate a settlement of any claim for such personal injury with or for and on behalf of the injured person;

2. Obtain or attempt to obtain from the injured person a partial or general release of liability for such injury; or

3. Obtain or attempt to obtain any statement, either written or oral, from the injured person for use in negotiating a settlement or obtaining a partial or general release of liability with respect to the personal injury: Provided, That nothing herein shall prohibit a person acting or intending to act for and on behalf of the injured person from obtaining any statement, oral or written, from an injured person upon the express request of the injured person.

Nothing herein shall prevent a person who may be liable for damages on account of the personal injury from making an advance payment of all or any part of his or her liability for the damages; any sum paid during the twenty days by a person...
liable for damages on account of the personal injury is allowed as full credit against any damages which may be finally determined to be due an injured person.

Any settlement, release of liability or statement entered into, obtained or made in violation of this section may be disavowed by the injured person at any time within one hundred eighty days from the date of the personal injury by executing a written statement of disavowal and thereupon forwarding a copy of the same to the person violating this section, in which event the settlement, release or statement may not be admissible in evidence for any purpose in any court or other proceeding relating to the personal injury, if any consideration paid for the settlement of or the general release of liability for the personal injury, at the time of the forwarding of the copy of the written statement of disavowal, is repaid or returned to the person who paid the consideration.

(b) (1) No statement, affirmation, gesture or conduct of a healthcare provider who provided healthcare services to a patient, expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence, to the patient, a relative of the patient or a representative of the patient and which relate to the discomfort, pain, suffering, injury or death of the patient shall be admissible as evidence of an admission of liability or as evidence of an admission against interest in any civil action brought under the provisions of article seven-b, chapter fifty-five of this code, or in any arbitration, mediation or other alternative dispute resolution proceeding related to such civil action.

(2) Terms not otherwise defined in this section have the meanings assigned to them in article seven-b, chapter fifty-five of this code. For purposes of this section, unless the context otherwise requires, “relative” means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister,
56 half-brother, half-sister or spouse’s parents. The term includes
57 said relationships that are created as a result of adoption. In
58 addition, “relative” includes any person who has a family-type
59 relationship with a patient.

CHAPTER 4
(Com. Sub. for H. B. 2011 — By Delegate Long)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.)

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §55-7-23, relating to
removing health care providers’ exposure to liability where, in
certain cases involving prescription drugs and medical devices, a
person has been injured; and exceptions.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §55-7-23, to read as
follows:

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-23. Prescription drugs and medical devices; limiting health
care providers’ liability exposure.

(a) No health care provider, as defined in section two,
article seven-b of this chapter, is liable to a patient or third party
for injuries sustained as a result of the ingestion of a prescrip-
tion drug or use of a medical device that was prescribed or used
by the health care provider in accordance with instructions approved by the U. S. Food and Drug Administration regarding the dosage and administration of the drug, the indications for which the drug should be taken or device should be used, and the contraindications against taking the drug or using the device: Provided, That the provisions of this section shall not apply if: (1) The health care provider had actual knowledge that the drug or device was inherently unsafe for the purpose for which it was prescribed or used or (2) a manufacturer of such drug or device publicly announces changes in the dosage or administration of such drug or changes in contraindications against taking the drug or using the device and the health care provider fails to follow such publicly announced changes and such failure proximately caused or contributed to the plaintiff’s injuries or damages.

(b) The provisions of this section are not intended to create a new cause of action.

CHAPTER 5

(Com. Sub. for S. B. 194 — By Senators McCabe, Yoder, Foster, Sharpe, Jenkins and Barnes)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §31-18D-5, §31-18D-6, §31-18D-7 and §31-18D-9 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Affordable Housing Trust Fund generally; changing the composition of the Board of Directors of the West Virginia Affordable Housing Trust Fund by reducing the
number of members appointed representing nonprofit organizations; adding additional members representing real estate, manufactured housing and homebuilding entities; reducing the number of votes necessary for Board action; providing that the West Virginia Housing Development Fund shall establish best practices for recipients of trust fund moneys; permitting trust fund moneys to be used for initial operational expenses of local governmental programs to reduce substandard housing or inappropriate land use patterns; and eliminating certain restrictions on application procedures for trust fund moneys.

Be it enacted by the Legislature of West Virginia:

That §31-18D-5, §31-18D-6, §31-18D-7 and §31-18D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

CHAPTER 31. CORPORATIONS.

ARTICLE 18D. WEST VIRGINIA AFFORDABLE HOUSING TRUST FUND.

§31-18D-5. Housing Trust Fund Board of Directors.
§31-18D-6. Powers and responsibilities of the Board.
§31-18D-7. Eligible activities; eligible organizations.

§31-18D-5. Housing Trust Fund Board of Directors.

(a) The Affordable Housing Trust Fund has a Board of Directors, which consists of eleven voting members. The members of the Board are responsible for administering the Trust Fund.

(b) The Trust Fund Board of Directors consists of:

1. The Secretary of the Department of Health and Human Resources, ex officio, or his or her designee;
(2) The Executive Director of the West Virginia Development Office, ex officio, or his or her designee;

(3) The Executive Director of the West Virginia Housing Development Fund, ex officio, or his or her designee;

(4) One member representative of the manufactured housing sales industry, with special consideration of three nominees submitted by the West Virginia Manufactured Housing Association;

(5) One member representative of the real estate development or real estate sales industry, with special consideration of three nominees submitted by the West Virginia Association of Realtors;

(6) One member who is an executive director or an officer of a local, community-based not-for-profit organization currently licensed to do business in West Virginia and which is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended, codified in 26 U. S. C. §501 (c)(3), and are organized and operated exclusively for charitable purposes within the meaning of that section, and in accordance with those purposes, provide housing assistance to low or moderate income citizens of this state;

(7) One member representative of the banking industry;

(8) One member who is an officer or member of a municipality or county commission, or his or her designee;

(9) One member who is an executive director of a public housing authority operating in a county or municipality in this state;

(10) One member who is an executive director or officer of a statewide not-for-profit organization which has as one of its
primary missions the provision of housing assistance to low and moderate income citizens of this state, currently licensed to do business in West Virginia and is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended, codified in 26 U. S. C. §501 (c)(3), and is organized and operated exclusively for charitable purposes within the meaning of that section; and

(11) One member representative of the homebuilding industry, with special consideration of three nominees submitted by the Homebuilders Association of West Virginia.

(c) Not more than four of the members, excluding the ex officio members, may belong to the same political party. Except for midterm special appointments made to fill irregular vacancies on the Board, members shall be appointed for terms of three years each. Members are eligible for reappointment. However, no member may serve for more than two consecutive full terms. Except for midterm special appointments made to fill irregular vacancies on the Board, appointment terms shall begin on the first day of July of the beginning year. All appointment terms, special and regular, end on the thirtieth day of June of the final year of the term.

(d) All members of the Board except those who serve ex officio shall be appointed by the Governor, with the advice and consent of the Senate.

(e) 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.

(f) The Board shall annually select its chairperson.
(g) The Board shall meet not less than four times during the fiscal year, and additional meetings may be held upon a call of the chairperson or of a majority of the members. Board members shall be reimbursed for sums necessary to carry out responsibilities of the Board and for reasonable travel expenses to attend Board meetings. The ex officio members may not be reimbursed by the Fund for travel expenses to attend Board meetings.

(h) Six members of the Board is a quorum. No vacancy in the membership of the Board impairs the right of a quorum to exercise all the rights and perform all the duties of the Board. Action may be taken by the affirmative vote of a majority of members present at a properly noticed and legally convened meeting of the Board.

§31-18D-6. Powers and responsibilities of the Board.

(a) The Board shall manage and control the Affordable Housing Trust Fund. In order to carry out the day-to-day management and control of the Trust Fund and effectuate the purposes of this article, the Board may appoint an Executive Director and other staff. The Board shall fix the Executive Director's duties and compensation as well as that of other staff. The Executive Director and other staff serve at the will and pleasure of the Board. The Board may provide for staff payroll and employee benefits in the same manner as the West Virginia Housing Development Fund provides for its employees.

(b) The members of the Board and its officers are not liable personally, either jointly or severally, for any debt or obligation created by the Board.

(c) Members of the Board and its officers and employees shall be provided insurance coverage by the state's Risk and Insurance Management Board to the same extent and in the same manner the coverage is applicable to state government
agencies and appointed state officials and employees. The Board may elect to obtain other forms of insurance coverage it considers reasonable for its operations.

(d) The acts of the Board are solely acts of its corporation and are not those of an agent of the state, nor is any debt or obligation of the Board a debt or obligation of the state.

(e) The Board shall:

(1) Develop and implement comprehensive policies and programs for the use of the Trust Fund that ensures the equitable distribution of moneys from the Trust Fund throughout the various geographic areas of this state and between urban and rural areas of this state;

(2) Develop and implement an application and selection system to identify housing sponsors or providers of affordable housing developments or programs that qualify to receive assistance from the Trust Fund for eligible activities;

(3) Provide funds for technical assistance to prospective applicants;

(4) Monitor services, developments, projects or programs receiving assistance from the Trust Fund to ensure that the developments are operated in a manner consistent with this article and in accordance with the representations made to the Trust Fund Board by the sponsors of the services, developments, projects or programs;

(5) Recommend legislation to further its mission of providing housing for low to moderate income citizens of this state;

(6) Provide funding to increase the capacity of nonprofit community housing organizations to serve their communities;
(7) Research and study housing needs and potential solutions to the substandard quality or lack of affordable housing;

(8) Coordinate programs with other entities when doing so fulfills its mission to provide housing to low to moderate income citizens of this state;

(9) Convene public meetings to gather information or receive public comments regarding housing policy or issues;

(10) Distribute available funds pursuant to policies established by it which may permit the establishment of a permanent endowment; and

(11) Serve as a clearinghouse for information regarding housing services and providers within this state.

(f) The West Virginia Housing Development Fund shall provide office space and staff support services for the Executive Director and the Board, shall act as fiscal agent for the Board and, as such, shall provide accounting services for the Board, invest all funds as directed by the Board, service all investment and loan activities of the Board as requested, and shall make the disbursements of all funds as directed by the Board, and establish best practices for recipient organizations, for which the West Virginia Housing Development Fund shall be reasonably compensated, as determined by the Board.

§31-18D-7. Eligible activities; eligible organizations.

(a) The Board shall use the moneys from the Trust Fund to make, or participate in the making of, loans or grants for eligible activities that shall include, but not be limited to:

(1) Providing funds for new construction, rehabilitation, repair or acquisition of housing to assist low or moderate income citizens including land and land improvements;
(2) Providing matching funds for federal housing moneys requiring a local or state match;

(3) Providing funds for administrative costs for housing assistance programs or nonprofit organizations eligible for funding pursuant to subsection (b) of this section if the grants or loans provided will substantially increase the recipient’s access to housing funds or increase its capacity to supply affordable housing;

(4) Providing loan guarantees and other financial mechanisms to facilitate the provision of housing products or services;

(5) Providing funds for down payments, closing costs, foreclosure prevention, home ownership counseling and security bonds which facilitate the construction, rehabilitation, repair or acquisition of housing by low to moderate income citizens;

(6) Providing risk underwriting products not provided by private sector entities to facilitate broader accessibility of citizens to other federal or state housing funds or loan programs. The products shall be established using professional risk underwriting standards and separate corporate vehicles may be created and capitalized by the Trust Fund to provide the products; and

(7) Providing start-up funds for initial operational expenses of local government programs to reduce substandard housing or inappropriate land use patterns.

(b) Organizations eligible for funding from the Trust Fund include the following: (1) Local governments; (2) local government housing authorities; (3) nonprofit organizations recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as amended, codified
in 26 U. S. C. §501 (c)(3), and which are organized and operated exclusively for charitable purposes within the meaning of that section, and in accordance with those purposes provide assistance to low or moderate income citizens of this state; and (4) regional or statewide housing assistance organizations that have been recognized as exempt under Section 501(c)(3) of the Internal Revenue Code, as amended, and which provide assistance to low and moderate income or low income citizens of this state.


(a) No moneys may be expended from the Trust Fund for projects that discriminate against any buyer or renter because of race, religion, sex, familial status or national origin.

(b) The Board shall forward to the West Virginia Housing Development Fund for its review and information approved requests, applications and proposals for funding containing information as is necessary to permit the West Virginia Housing Development Fund to carry out its duties under this article.

CHAPTER 6

(Com. Sub. for S. B. 670 — By Senators Kessler, Edgell, Helmick, Boley, Bowman, Barnes and Facemyer)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §3-8-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-21A-3,
§19-21A-4, §19-21A-5, §19-21A-6 and §19-21A-7 of said code, all relating to electing supervisors for conservation districts; defining certain terms; authorizing emergency rulemaking; providing that registered voters in the district may vote for supervisors and in referendum; requiring candidate for supervisor file statement; requiring Conservation Committee certify qualified candidates for ballot; providing that candidate may not be on ballot or take office if qualifications not met; and requiring certain reports.

Be it enacted by the Legislature of West Virginia:

That §3-8-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §19-21A-3, §19-21A-4 §19-21A-5, §19-21A-6 and §19-21A-7 of said code be amended and reenacted, all to read as follows:

Chapter
  3. Elections.
  19. Agriculture.

CHAPTER 3. ELECTIONS.

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5. Detailed accounts and verified financial statements required.

1 (a) Every candidate, financial agent, person and association of persons, organization of any kind, including every corporation, directly or indirectly, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection (b), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, advocating or opposing the nomination, election or defeat of any candidate, and the treasurer of every political party committee shall keep detailed accounts of every sum of money
or other thing of value received by him or her, including all
loans of money or things of value, and of all expenditures and
disbursements made, liabilities incurred, by the candidate,
financial agent, person, association or organization or commit-
tee, for political purposes, or by any of the officers or members
of the Committee, or any person acting under its authority or on
its behalf.

(b) Every person or association of persons required to keep
detailed accounts under this section shall file with the officers
hereinafter prescribed a detailed itemized sworn statement,
according to the following provisions and times:

(1) On the last Saturday in March or within six days
thereafter and annually whenever the total of all financial
transactions relating to an election exceed five hundred dollars,
a statement which shall include all financial transactions which
have taken place by the date of that statement, subsequent to
any previous statement filed within the previous five years
under this section;

(2) Not less than ten nor more than seventeen days preced-
ing each primary or other election, a statement which shall
include all financial transactions which have taken place by the
date of the statement, subsequent to the previous statement, if
any;

(3) Not less than twenty-five nor more than thirty-one days
after each primary or other election, a statement which shall
include all financial transactions which have taken place by the
date of the statement, subsequent to the previous statement; and

(4) On the first Saturday in September or within six days
thereafter, preceding the general election day whenever the total
of all financial transactions relating to an election exceed five
hundred dollars or whenever any loans are outstanding, a
statement which shall include all financial transactions which
have taken place by the date of the statement, subsequent to the previous statement.

(c) Every person who shall announce as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person’s candidacy has been made.

(d) For purposes of this section, the term “financial transactions” includes all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on.

(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of article twenty-one-a, chapter nineteen of this code shall only be required to file the reports required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the general election.

CHAPTER 19. AGRICULTURE.

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4. State conservation committee; continuation.
§19-21A-6. Election of supervisors for each district.
§19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.


1 Wherever used or referred to in this article, unless a different meaning clearly appears from the context:
(1) "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state.

(2) "Committee" or "State Conservation Committee" means the agency created in section four of this article.

(3) "District" or "conservation district" means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(4) "Governing body" means the supervisors of any conservation district, town or city, council, city commission, county court or body acting in lieu of a county court, in this state, and the term "governmental division" means any conservation district, town, city or county in this state.

(5) "Land occupier" or "occupier of land" includes any person, firm or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter or tenant.

(6) "Landowners" or "owners of land" includes any person or persons, firm or corporation who shall hold title to three or more acres of any lands lying within a district organized under the provisions of this article.

(7) "Notice" means notice published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for such publication shall be the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in such notice, adjournment may be made, from time to time, without the necessity of renewing such notice for such adjournment dates.
(8) “Petition” means a petition filed under the provisions of subsection (a), section five of this article for the creation of a district.

(9) “Soil conservation”, “erosion control” or “erosion prevention projects”, when used throughout the article, shall denote those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

(10) “State” means the State of West Virginia.

(11) “Supervisor” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(12) “United States” or “agencies of the United States” includes the United States of America, Natural Resources Conservation Service of the United States Department of Agriculture and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(13) “Works of improvement” means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization or disposal of water.

§19-21A-4. State conservation committee; continuation.

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following ten members:

(1) Four citizen members;

(2) The following ex officio members:
(A) The Director of the State Cooperative Extension Service;

(B) The Director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The Committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the Committee as an advisory member.

(d) The Committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The
administrative officer and support staff shall be known as the West Virginia Conservation Agency. The Committee shall determine their qualifications, duties and compensation. The Committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The Committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the Committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the Committee, members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the Committee.

(f) A member of the Committee holds office so long as he or she retains the office by virtue of which he or she is serving on the Committee. A majority of the Committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the Committee may receive no compensation for their services on the Committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the Committee. The Committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and
(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article and facilitate an interchange of advice and experience between the districts and cooperation between them;

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(4) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(5) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(6) Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the State of West Virginia or from other sources and use or expend the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and
(7) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article.

(8) To promulgate emergency and legislative rules to effectuate the provisions of this article as amended and reenacted by the Legislature during the regular session of the Legislature in the year two thousand five.


(a) Any twenty-five owners of land lying within the limits of the territory proposed to be organized into a district may file a petition with the State Conservation Committee asking that a conservation district be organized to function in the territory described in the petition. The petition shall set forth:

(1) The proposed name of the district;

(2) That there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which shall not be required to be given by metes
and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;

(4) A request that the State Conservation Committee define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the Committee determine that a district be created.

Where more than one petition is filed covering neighboring parts of the same region, whether or not these areas overlap, the State Conservation Committee may consolidate all or any such petitions.

(b) Within thirty days after a petition has been filed with the State Conservation Committee, it shall cause notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this article and upon all questions relevant to such inquiries. Notice of the date, place and time of the hearing shall be published no less than fourteen days prior to the hearing as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area is the county or counties where the proposed district is located. All owners of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to the described territory, and all other interested parties shall have the right to attend the hearings and to be heard. If it appears upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which notice of the hearing has been given, the hearing shall be adjourned and notice of further hearing shall be given throughout the entire area considered for inclusion in the
district and another hearing held. After the hearing, if the Committee determines, upon the facts presented at the hearing and other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. Districts thus defined may be a watershed or portion thereof and nothing in this article shall be interpreted to exclude from consideration, small areas often constituting a very small part of a large watershed. The district may be large or small, but in making that determination and in defining the boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and to other conservation districts already organized or proposed for organization under the provisions of this article and other physical, geographical and economic factors as are relevant, having due regard to the legislative determinations set forth in section two of this article.

The territory to be included within the boundaries need not be contiguous. If the Committee determines after the hearing, after consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record its determination and deny the petition. After six months shall have expired from the date of the denial of any petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearings held and determinations made thereon.
(c) After the Committee has made and recorded a determination that there is need, in the interest of the public health, safety and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon conservation districts in this article is administratively practicable and feasible. To assist the Committee in the determination of administrative practicability and feasibility, it is the duty of the Committee to hold a referendum within the proposed district upon the proposition of the creation of the district and to cause due notice of such referendum to be given. The question of the creation of the proposed district shall be submitted to the registered voters of the proposed district at the next primary or general election. All of the provisions of chapter three of this code, unless in conflict with the provisions of this article, apply to voting and elections on the referendum, insofar as practicable.

The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the (counties) of __________, __________, and __________. Against creation of a conservation district of the lands below described and lying in the (counties) of __________, __________, and __________" shall appear, with a square before each proposition and a direction to insert an X mark in the square before one or the other of the propositions as the voter may favor or oppose creation of a district. The ballot shall set forth the boundaries of the proposed districts as determined by the Committee.

(d) The Committee shall pay all expenses for the issuance of notices and conducting hearings. It shall promulgate rules in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the conduct of hearings.
(e) The Committee shall publish the result of the referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the Committee determines that the operation of the district is not administratively practicable and feasible, it shall record its determination and deny the petition. If the Committee shall determine that the operation of the district is administratively practicable and feasible, it shall record the determination and proceed with the organization of the district in the manner hereinafter provided. In making its determination the Committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of landowners eligible to vote in the referendum who have voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within the district and other economic and social factors as may be relevant to the determination, having due regard to the legislative determinations set forth in section two of this article.

(f) If the Committee determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the supervisors elected as provided hereinafter, as the governing body of the district.

(g) The two appointed supervisors shall present to the Secretary of State an application signed by them which shall set forth by recitals: (1) That a petition for the creation of the district was filed with the State Conservation Committee pursuant to the provisions of this article and that the proceedings specified in this article were taken pursuant to the petition; that the application is being filed in order to complete the
organization of the district under this article; and that the Committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal office of the supervisors of the district. The application shall be subscribed and sworn to by each of the supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he or she personally knows the supervisors and knows them to be the officers as affirmed in the application and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the State Conservation Committee, which shall certify by recitals that a petition was filed, notice issued and hearing held as aforesaid; that the Committee did determine that there is need, in the interest of the public health, safety and welfare, for a conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district; that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district; and that thereafter the Committee did determine that the operation of the proposed district is administratively practicable and feasible. The statement shall set forth the boundaries of the district as they have been defined by the Committee.

The Secretary of State shall examine the application and statement and, if he or she finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he or she shall file them and shall record them in an appropriate book of record in his or her office. If the Secretary of State finds that the name proposed for the district is identical with that of any other conservation district of this state.
state, or so nearly similar as to lead to confusion and uncertainty, he or she shall certify that fact to the State Conservation Committee which shall thereupon submit to the Secretary of State a new name for the district, which shall not be subject to defects. Upon receipt of the new name, free of defects, the Secretary of State shall record the application and statement, with the name so modified, in an appropriate book of record in his or her office. The Secretary of State shall make and issue to the supervisors a certificate, under the seal of the state, of the organization of the district and shall record the certificate with the application and statement. The boundaries of the district shall include the territory as determined by the State Conservation Committee as aforesaid, but in no event shall they include any area included within the boundaries of another conservation district organized under the provisions of this article.

(h) After six months has expired from the date of entry of a determination by the State Conservation Committee that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid and action taken thereon in accordance with the provisions of this article.

(i) Petitions for including additional territory within an existing district may be filed with the State Conservation Committee and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for inclusion. The Committee shall prescribe the form for petitions, which shall be as nearly as may be in the form prescribed in this article for petitions to organize a district. Where the total number of landowners in the area proposed for inclusion is less than twenty-five, the petition may be filed when signed by a majority of the landowners of the area and in such case no referendum need be held.
(j) In any suit, action or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding or action of the district, the district shall be deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of the certificate certified by the Secretary of State shall be admissible in evidence in any suit, action or proceeding and shall be proof of the filing and contents thereof.

§19-21A-6. Election of supervisors for each district.

Within thirty days after the date of issuance by the Secretary of State of a certificate of organization of a conservation district, nominating petitions may be filed with the State Conservation Committee to nominate candidates for supervisors of the district. A candidate for supervisor shall own land in the district and have the education, training or experience necessary to carry out the duties required by this article and rules promulgated thereunder. A candidate shall file with the Committee a sworn written statement specifying that he or she meets the requirements of office. A candidate may not be placed on the ballot or be seated as a supervisor unless he or she meets these requirements. The Committee shall provide a list of qualified candidates to the Secretary of State prior to any election for supervisor at the time and in the manner specified by the Secretary.

The Committee shall have authority to extend the time within which nominating petitions may be filed. No nominating petition shall be accepted by the Committee unless it is subscribed by twenty-five or more owners of lands lying within the boundaries of the district and within the boundaries of the county in which the candidate resides. Registered voters in the district may sign more than one nominating petition to nominate more than one candidate for supervisor. All registered
24 voters in the district shall be eligible to vote in the election for
25 two candidates from the county or portion thereof within the
26 boundaries of the district in which they reside. The two
27 candidates in each county who receive the largest number of
28 votes cast in the election shall be elected supervisors for
29 district.

Supervisors shall be elected in the general election to be
30 conducted in the year two thousand eight as nonpartisan
31 candidates. The term of office for supervisor receiving the
32 second highest number of votes in the general election of two
33 thousand eight shall be for two years, commencing on the first
34 day of January, two thousand nine, and ending on the thirty-first
35 day of December, two thousand eleven. Subsequent terms of
36 office for supervisors elected thereafter shall be for four years.
37 Persons currently holding the position of supervisor shall,
38 regardless of the expiration of the currently designated term of
39 office, continue to serve until the two thousand eight election.
40 Unless otherwise provided or in conflict with this article, the
41 provisions of chapter three shall apply to election of supervi-
42 sors.

§19-21A-7. Supervisors to constitute governing body of district; quali-
43 fications and terms of supervisors; powers and duties.

1 (a) The governing body of the district consists of the
2 supervisors, appointed or elected, as provided in this article.
3 The supervisors shall be persons who are by training and
4 experience qualified to perform the specialized skilled services
5 which are required of them in the performance of their duties
6 under this section and shall be legal residents and landowners
7 in the district.

8 (b) The supervisors shall designate a chairperson and may,
9 from time to time, change the designation. On and after the
10 election of supervisors in two thousand eight, term of office of
each supervisor is four years. A supervisor holds office until
his or her successor has been elected or appointed. In case a
new county or portion of a county is added to a district, the
committee may appoint a supervisor to represent it until the
next regular election of supervisors for the district takes place.
If a vacancy occurs among the elected supervisors of a district,
the Committee shall appoint a successor from the same county
to fill the unexpired term. The appointment shall be made from
a name or list of names submitted by the conservation district.

(c) A supervisor is entitled to expenses and a per diem not
to exceed thirty dollars when engaged in the performance of his
or her duties.

(d) The supervisors may, with the approval of the State
Committee, employ a secretary, technical experts and any other
officers, agents and employees, permanent and temporary, as
they may require and shall determine their qualifications, duties
and compensation. The supervisors may delegate to their
chairperson, to one or more supervisors or to one or more
agents, or employees, those administrative powers and duties
they consider proper. The supervisors shall furnish to the State
Conservation Committee, upon request, copies of the ordi-
nances, rules, orders, contracts, forms and other documents they
adopt or employ and any other information concerning their
activities required in the performance of State Conservation
Committee’s duties under this article.

(e) The supervisors shall:

(1) Require the execution of surety bonds for all employees
and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate record of
all proceedings and of all resolutions, rules and orders issued or
adopted; and
(3) Provide for an annual audit of the accounts of receipts and disbursements.

(f) Any supervisor may be removed by the State Conservation Committee upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason.

(g) The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of a district on all questions of program and policy which may affect the property, water supply or other interests of the municipality or county.

CHAPTER 7

(Com. Sub. for H. B. 2663 — By Delegates Beach, Stemple, Proudfoot, Swartzmiller, Williams, Anderson and Schoen)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor April 29, 2005.]

AN ACT to amend and reenact §19-1A-3 and §19-1A-3a of the Code of West Virginia, 1931, as amended, all relating to digging, growing, collecting, gathering, possessing and selling ginseng; defining certain terms; authorizing Division of Forestry to regulate ginseng; providing rule-making authority; establishing ginseng harvest seasons; requiring permits to grow or dig ginseng, or to act as dealer; providing exceptions to the permit requirement; setting forth other permit requirements; requiring records be kept; authorizing certain inspections; requiring ginseng to be certified; providing for denial, suspension or revocation of permit; and establishing civil and criminal penalties.
Be it enacted by the Legislature of West Virginia:

That §19-1A-3 and §19-1A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-3. Division of Forestry; Division Director; duties, powers, dedication of certain moneys; creation of a special revenue account.

§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.

§19-1A-3. Division of Forestry; Division Director; duties, powers, dedication of certain moneys; creation of a special revenue account.

The Division of Forestry heretofore created is hereby continued. And, except as otherwise provided in this article, all powers and duties previously exercised by the Director of Natural Resources under subsection (13), section seven, article one and article three, chapter twenty of this code, except those powers and duties relating solely to wildlife areas as described in section three, article three, chapter twenty of this code, heretofore transferred to the Division of Forestry, are hereby continued in the Division of Forestry, except Kanawha State Forest as hereinafter provided. The Division of Forestry has within its jurisdiction and supervision the state forests, other forests and woodland areas, the protection of forest areas from injury and damage by fire, disease, insects and other pestilences and forces, the management of forest areas for natural resources, conservation and undeveloped recreational activities, administration of the southeastern interstate forest fire protection compact and other compacts and agreements relating to forest management and husbandry, and the administration and enforcement of laws relating to the conservation, development, protection, use and enjoyment of all forest land areas of the state consistent with the provisions of sections one and two of
this article. All moneys collected from the sale of timber
realized through management of the state-owned forests and the
sale of seedlings from the tree nurseries shall be paid into the
State Treasury and shall be credited to a special account within
the Division of Forestry and used exclusively for the purposes
of this article and article three, chapter twenty of this code.

The Division of Forestry has jurisdiction to regulate the
growing, digging, collecting, gathering, possession and sale of
ginseng as provided in section three-a, of this article.

The chief of the Division is the Director of the Division of
Forestry who shall be appointed and qualified as provided in
section five of this article.

The Director of the Division of Forestry shall study means
and methods of implementing the provisions of section fifty-
three, Article VI of the Constitution of West Virginia, relating
to forest lands, and shall prepare and recommend legislation
thereon.

The Division lines within the State Forests between
improved recreation areas under the management of the
Division of Natural Resources and the demonstration forests
under the management of the Division of Forestry, heretofore
established by agreement, are hereby continued with the
exception of Kanawha State Forest where the entire forest will
be managed by and under the jurisdiction of the Division of
Natural Resources for multiple uses and the Division of Natural
Resources shall continue to provide recreational opportunities,
including, but not limited to, mountain-biking trails, hiking
trails, horseback-riding trails and hunting, fishing and trapping
lands. The forest may not be designated as a state park or state
recreation area; however, any sale of timber from Kanawha
State Forest shall continue to be prohibited.
In the event of disagreement over the placement of a Division line or dual occupancy of a building, the disposition shall be decided by the Legislature's Joint Committee on Government and Finance at a regularly scheduled meeting.

§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.

(a) (1) The Legislature finds that ginseng trade must be controlled in order to protect the survival of wild ginseng as evidenced by its listing in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. It is the policy of this state to regulate the commerce in ginseng in a manner that protects the survival of wild ginseng.

(2) For purposes of this section:

(i) “Certified” means the ginseng carries a certificate of origin issued by the Director which allows the export from West Virginia of ginseng legally harvested in this state;

(ii) “Commercial use” means to sell or to use ginseng for financial gain;

(iii) “Cultivated ginseng” means ginseng that is purposefully planted in beds under artificial shade using standard horticultural practices such as mechanical tillage, fertilization, weed control, irrigation and pesticides;

(iv) “Dealer” means a person who purchases ginseng for purposes of commercial use;

(v) “Digger” means a person who digs, collects or gathers wild ginseng by searching woodlands to find the plants;

(vi) “Director” means the Director of the Division of Forestry;
(vii) "Division" means the Division of Forestry;

(viii) "Export" means the movement of ginseng from state to state as well as sending it abroad;

(ix) "Ginseng" means cultivated ginseng, woods grown ginseng, wild simulated ginseng and wild ginseng;

(x) "Green ginseng" means a fresh wild ginseng root that has not been intentionally subjected to a drying process and from which most natural moisture has not been removed by drying.

(xi) "Grower" means a person who purposefully plants and grows cultivated ginseng, woods grown ginseng or wild simulated ginseng for purposes of commercial use: Provided, That a grower does not include a digger who plants wild ginseng seed from the wild ginseng plants he or she digs, collects or gathers;

(xii) "Harvest" means to dig, collect or gather ginseng;

(xiii) "Person" means an individual, corporation, partnership, firm or association;

(xiv) "Rootlets" means woods grown or wild simulated one to two-year old ginseng roots commonly sold as transplants to growers;

(xv) "Wild ginseng" means Panax quinquefolius L. that is not grown or nurtured by a person regardless of the putative origin of the plants: Provided, That wild ginseng may originate from seeds planted by a digger at the same site from which the digger harvests the wild ginseng;

(xvi) "Wild simulated ginseng" means ginseng that is purposefully planted in the woods without a bed being prepared
and without the use of any chemical weed, disease or pest control agents;

(xvii) "Woods grown ginseng" means ginseng that is purposefully planted in beds prepared in the woods in a manner that uses trees to provide necessary shade and which may be grown with the use of chemical or mechanical weed, disease or pest control agents.

(3) (i) The Division of Forestry shall regulate the growing, digging, collecting, gathering, possessing and selling of ginseng.

(ii) The Division may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this section including the amount of any permit fee.

(iii) For purposes of regulating the growing, harvesting and commercial use of ginseng, a Division employee may enter upon any public or private property, other than a dwelling house, at reasonable times, in order to inspect the ginseng operation or records. No person may obstruct or hinder the employee in the discharge of his or her enforcement duties.

(iv) All moneys received from permit fees and civil penalties assessed pursuant to this section shall be credited to the special account within the Division of Forestry to be used for the purposes set forth in section three of this article.

(v) The site plats required to be submitted to the Division and other information identifying the specific location of ginseng plants are not open to public inspection pursuant to article one, chapter twenty-nine-b of this code since they disclose information having a significant commercial value.
The digging season for wild ginseng begins on the first day of September and ends on the thirtieth day of November of each year. It is unlawful for a person to dig, collect, or gather wild ginseng between the first day of December and the thirty-first day of August of the following year.

A person digging, collecting, or gathering wild ginseng upon the enclosed or posted lands of another person shall first obtain written permission from the landowner, tenant or agent, and shall carry the written permission on his or her person while digging, collecting or gathering wild ginseng upon the enclosed or posted lands. It is unlawful to dig, collect, or gather wild ginseng from the property of another without the written permission of the landowner.

A person digging, collecting or gathering wild ginseng shall plant the seeds from the wild ginseng plants at the time and at the site from which the wild ginseng is harvested. It is unlawful to remove wild ginseng seeds from the site of collection.

It is unlawful to dig, collect or gather wild ginseng less than five years old.

No person may rescue wild ginseng plants endangered by ground-disturbing activities unless he or she has first obtained a moving permit from the Division. The person shall provide the reason for moving the plants, the current location of the plants, the proposed new planting site and other information required by the Division.

It is unlawful to plant ginseng or ginseng seed and to dig, collect or gather ginseng on West Virginia public lands.

No person may act as a grower unless he or she has obtained a grower’s permit from the Division.
(2) Prior to planting cultivated, woods grown or wild simulated ginseng, a grower shall:

(i) Submit to the Director a plat of the exact planting location prepared by a licensed surveyor or a registered forester as defined in article nineteen, chapter thirty of this code, along with information verifying the name of the landowner: Provided, That if the grower is not the landowner, the grower shall also submit written permission from the landowner to grow and harvest cultivated, woods grown or wild simulated ginseng on that property;

(ii) Obtain a written determination from the Director certifying that the planting area is free from wild ginseng; and

(iii) Submit other information required by the Division.

(3) A grower shall keep accurate and complete records on each ginseng planting on forms provided by the Division. The records shall be available for inspection by a Division employee and shall be submitted to the Division at intervals established by rule by the Division. A grower shall maintain records for a period of not less than ten years. The information required to be kept shall include:

(i) The origin of ginseng seed, rootlets or plants;

(ii) The location of purposefully planted cultivated, wild simulated and woods grown ginseng and a site plat of the planting;

(iii) The original of the Director’s determination that the site was free from wild ginseng at the time of planting;

(iv) The date each site was planted;

(v) The number of pounds of seeds planted, or the number and age of rootlets, or both; and
(vi) Other information required by the Division.

(4) A grower may harvest cultivated ginseng on or after the effective date of this section throughout the year.

(5) A grower may harvest wild simulated and woods grown ginseng from the first day of September through the thirtieth day of November of each year.

(6) It is unlawful for a person to dig, collect or gather wild simulated and woods grown ginseng between the first day of December and the thirty-first day of August.

(7) It is unlawful to dig, collect and gather wild simulated and woods grown ginseng less than five years old.

(8) A grower shall comply with the certification procedures set forth in subdivision (f) of this section.

(d) (1) No person may act as a dealer unless he or she has obtained a dealer's permit from the Division.

(2) A dealer shall keep accurate and complete records on his or her ginseng transactions on forms provided by the Division. A dealer is required to maintain a record of all persons, including a digger, grower and dealer, involved in each purchase or sale transaction and shall include the name, address, permit number, and a copy of each ginseng certification issued by the Division. All records shall be available for inspection by a Division employee. A dealer shall maintain records for a period of not less than ten years. In addition, a dealer is required to report the following information to the Division monthly:

(i) The date of the transaction;

(ii) The type of ginseng, whether wild, cultivated, woods grown or wild simulated ginseng;
(iii) Whether the ginseng is dried or green at the time of the transaction;

(iv) The weight of the ginseng;

(v) The county from which the ginseng was harvested;

(vi) The identification number from the state ginseng certification; and

(vii) Other information required by the Division.

(3) A dealer shall include a West Virginia export certificate, numbered by the Division, with each shipment of ginseng transported out-of-state.

(4) No dealer may import out-of-state ginseng into this state unless the ginseng is accompanied by a valid export certificate issued by the state of origin. A dealer must return uncertified ginseng to the state of origin within fifteen calendar days.

(5) It is unlawful to include false information on any certificate or record required to be completed or maintained by this section. All ginseng harvested in West Virginia must be certified by the Director before being transported or shipped out-of-state.

(e) (1) No person may dig wild ginseng, or act as a grower, or act as a dealer unless he or she has been issued the appropriate permit by the Division. A person must obtain a separate permit for each activity. Permit applications shall be made on forms provided by the Division. The application for a permit shall be accompanied by the applicable permit fee. The Division shall assign a permit number to each person granted a permit and it shall keep records of the permits issued.

(2) Permits expire on the thirty-first day of December of each year and must be renewed annually. Renewal forms will
be mailed to current permit holders. The failure to receive a renewal form does not relieve the permit holder of the obligation to renew. The Division may require a late fee when renewal is received more than sixty days after the expiration of the current permit.

(3) The permit holder shall notify the Division of any changes in the information on the permit.

(f)(1) All ginseng harvested in this state shall be certified as to type, whether wild, cultivated, woods grown or wild simulated, and to its origin, weight and lawful harvest. Other information may be required for ginseng to be certified by the Division to comply with the Convention on International Trade in Endangered Species of Wild Fauna and Flora to allow for its export: Provided, That live one and two-year old cultivated, woods grown or wild simulated rootlets sold by growers for propagation purposes within the United States are not regarded as harvested and are exempt from the certification requirement. All ginseng, except cultivated ginseng, must be certified or weight receipted by the first day of April of the year following harvest: Provided, however, That no ginseng may be certified between the first day of January through the thirty-first day of March unless the person requesting certification displays a valid permit. It is unlawful for a person to have in his or her possession uncertified wild ginseng from the first day of April through the thirty-first day of August.

(2) The Director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code designed to implement the ginseng certification process.

(g)(1) The Division may, by order entered in accordance with the provisions of article five, chapter twenty-nine-a, deny, suspend or revoke the permit of a grower or dealer and may invalidate an export certificate completed by a dealer when the
Division finds that a grower or dealer has violated any provision of this section or a legislatively approved rule.

(2) The Division may assess a civil penalty against a person who violates any provision of this section or a provision of a legislatively approved rule. The Division may assess a monetary penalty of not less than one hundred dollars nor more than five hundred dollars.

(h) (1) Any person violating a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars for the first offense, and for each subsequent offense, shall be fined not less than five hundred dollars nor more than one thousand dollars, or confined in jail not more than six months, or both. The court, in imposing the sentence of a person convicted of an offense under this section, shall order the person to forfeit all ginseng involved in the offense.

(2) It is the duty of the prosecuting attorney of the county in which the violation occurred to represent the Division, to institute proceedings, and to prosecute the person charged with the violation.

CHAPTER 8

(H. B. 2650 — By Delegates Beach, Stemple, Proudfoot, Swartzmiller, Williams, Anderson and Schoen)

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-2F-1, §19-2F-2, §19-
2F-3, §19-2F-4, §19-2F-5, §19-2F-6, §19-2F-7, §19-2F-8, §19-2F-9, §19-2F-10 and §19-2F-11, all relating to beef industry self-improvement assessment program; stating purpose; defining terms; requiring petition to conduct referendum; requiring a public hearing on referendum; requiring notice of referendum; conducting referendum; authorizing subsequent referendum; continuing Beef Industry Council; establishing qualifications, appointment and terms of members; establishing powers and duties of Council; requiring collection and remittance of assessment; authorizing refunds; establishing penalties; and continuing program.

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 §19-2F-1, §19-2F-2, §19-2F-3, §19-2F-4, §19-2F-5, §19-2F-6, §19-2F-7, §19-2F-8, §19-2F-9, §19-2F-10 and §19-2F-11, all to read as follows:

ARTICLE 2F. BEEF INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§19-2F-1. Purpose.
§19-2F-3. Petition for referendum; public hearing; notice.
§19-2F-5. Subsequent referendums.
§19-2F-6. Beef Industry Council; appointment; terms; qualification of members; removal of members; officers; meetings; expenses.
§19-2F-7. Powers and duties of the council; rule-making authority.
§19-2F-10. Penalties.
§19-2F-11. Continuation of program.

§19-2F-1. Purpose.

The purpose of this article is to promote and stimulate, through research, education, advertising and other methods, the
increased and efficient production, distribution, sale and use of cattle and beef products by providing a means and procedure for financing a promotional program for the West Virginia cattle industry through activities of the West Virginia Beef Industry Council.


As used in this article:

(1) "Council" means the West Virginia Beef Industry Council.

(2) "Commissioner" means the Commissioner of the West Virginia Department of Agriculture.

(3) "Person" means an individual, partnership, corporation, association, fiduciary, or other group of persons acting together whether organized or not.

(4) "Producer" means any person in the business of raising, breeding or growing cattle or calves for beef production.

§19-2F-3. Petition for referendum; public hearing; notice.

(a) Producers may petition the Commissioner to conduct a referendum of West Virginia producers authorizing the levying of an assessment for the purposes set forth in this article: Provided, That no referendum may be held until the provisions of 7 U.S.C. §2901 et seq., the federal beef research and information program, have terminated.

(b) The Commissioner, when petitioned by no less than fifty producers, must hold a public hearing no more than forty-five days after receipt of the petition to decide whether a referendum should be held to establish an assessment on the
sale of beef and dairy cattle, the amount of the assessment and
the duration of the assessment. The Commissioner shall give no
less than fifteen days notice of the public hearing including the
date, time and place of the public hearing. If a majority of those
present vote in favor of holding the referendum, including the
amount and duration of the proposed assessment, the Commis-
sioner shall notify the Council to schedule and hold a referen-
dum on the proposed assessment.


(a) The Council shall notify producers of the date, hours
and polling places for voting in the referendum, along with the
amount and duration of the proposed assessment, the manner of
collecting the assessment and the general purposes for which
the assessment will be expended. The notice must be published
no less than three times in two newspapers of general circula-
tion within this state and the Council may give notice of the
referendum in other publications and at places the Council
considers appropriate.

(b) The Council shall provide ballots and polling places in
each county. All cattle producers who may be subject to the
proposed assessment are eligible to vote in the referendum upon
presentation of proof showing them to be bona fide cattle
producers subject to the assessment. The referendum is decided
by a majority of the votes cast.

(c) The Commissioner shall canvass, tabulate and publicly
announce the results of the referendum no later than five days
after the end of the election. The Commissioner must preserve
all ballots for one year after the date of the referendum.

(d) All expense and costs necessary to conduct a referen-
dum are borne by the Council.
§19-2F-5. Subsequent referendums.

(a) In the event that a referendum conducted pursuant to the provisions of this article fails to receive a majority of the affirmative votes cast, the Council is authorized to conduct a subsequent referendum under the provisions of section four of this article no earlier than twelve months after the date on which the last referendum was held without complying with the requirements set forth in section three of this article, so long as the amount and duration of the assessment are not increased.

(b) In the event that an assessment is in effect and set to expire, the Council is authorized to conduct a subsequent referendum under the provisions of section four of this article during the last year of the assessment without complying with the requirements set forth in section three of this article, so long as the amount and duration of the subsequent assessment are not increased.

§19-2F-6. Beef Industry Council; appointment; terms; qualification of members; removal of members; officers; meetings; expenses.

(a) The West Virginia Beef Industry Council is hereby continued. The members of the Council in office on the date this section becomes effective shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

(b) (1) Commencing with the Council terms beginning on the first day of July, two thousand five, the Council shall consist of nine members appointed for terms of three years by the Governor with the advice and consent of the Senate. Six members of the Council must be beef cattle producers, one member must be a dairy cattle producer, one member must be
12 a representative of a public livestock market and one member
13 must be a meat packer or meat processor.

14 (2) Each member of the Council, at the time of his or her
15 appointment, must have been engaged in his or her representa-
16 tive occupation for a period of not less than five years immedi-
17 ately preceding the appointment and each member must be a
18 United States citizen and a resident of this state during the
19 appointment term.

20 (3) In making appointments to the Council, the Governor
21 shall consider proposed member recommendations made by
22 West Virginia organizations and groups concerned with or
23 engaged in beef production.

24 (4) No member may serve more than two consecutive full
25 terms and any member having served two full terms may not be
26 appointed for one year after completion of his or her second full
27 term. A member continues to serve until his or her successor
28 has been appointed and qualified.

29 (5) The Governor may remove any member of the Council
30 for neglect of duty, incompetency or official misconduct.

31 (c) The Council elects a chair, a secretary and a treasurer
32 from its membership each for a term of two years. The Council
33 meets as often as necessary at the time and place designated by
34 the chair or by call of a majority of the Council members. All
35 Council meetings shall be held in accordance with the provi-
36 sions of article nine-a, chapter six of this code. All decisions of
37 the Council are determined by a majority of the members
38 appointed.

39 (d) The Board shall reimburse each member’s expenses for
40 room, meals and mileage in the same manner and amount as
state employees receive for travel. No member may receive any other salary or compensation for his or her services.

§19-2F-7. Powers and duties of the council; rule-making authority.

(a) The Council has the authority to:

1. Receive and disburse funds as prescribed in this article to be used for the purposes of this article;
2. Enter into contracts;
3. Hire and discharge employees, prescribe their duties and fix their compensation;
4. Accept grants, gifts and contributions for expenditure consistent with the purposes of this article;
5. Sue and be sued as a council without individual liability of the members for acts of the Council when the Council is acting within the scope of the powers conferred by this article;
6. Cooperate with other state or federal agencies and organizations engaged in work or activities consistent with the purposes of this article;
7. Conduct public relations and education programs for increasing beef production and improving beef marketing practices;
8. Conduct or contract for scientific research with any accredited college or university which will aid in implementing the purposes of this article; and,
(9) Prepare and submit an annual report of its activities and fiscal accounting to the Commissioner no later than the fifteenth day of January of each year.

(b) The Council may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to implement the provisions of this article.


(a) Upon approval of an assessment, the Council shall notify all known livestock markets, packers, buying stations, order buyers, livestock dealers or other persons purchasing cattle, including dairy cattle, that they are required to deduct the amount of the assessment stipulated in the authorizing referendum from the sale settlement beginning on the date designated in the notice.

(b) The assessment approved by referendum is deducted by all livestock markets, packers, buying stations, order buyers, livestock dealers or other persons purchasing cattle, including dairy cattle, on each cattle purchase from the sale settlement. The purchasers remit the assessments within thirty days of the date of the sale settlement to the treasurer of the Council.

(c) The Council must keep accurate records of the amount of assessments received, the date on which they were received and the name of the person making the remittance. The records must be preserved for at least five years.


Any producer against whom an assessment is made and deducted from the proceeds of sale, if dissatisfied with the assessment, has the right to demand and receive from the
treasurer of the Council a refund of the total amount of assess-
ment collected from the producer if the demand is made in
writing to the Council within thirty days of the date the assess-
ment was deducted from the sale proceeds. The demand for
refund must contain the name and address of the producer, the
date of purchase, the number of head sold, the amount of the
assessment, the name and address of the collecting agent, the
date of sale and the invoice number. The refund is made upon
determination that the assessment was paid by the producer.

§19-2F-10. Penalties.

When a person required to collect the assessment in
accordance with section eight of this article fails to do so or
fails to remit it to the treasurer of the Council within thirty days,
the Council certifies that fact to the Commissioner. The
Commissioner notifies the person in writing that he or she has
fifteen days to begin the collection of the assessment, or to
remit previously collected assessments to the Council’s
treasurer or to submit a written justification for the failure to
collect or remit the assessment. If the Commissioner determines
that person was required to remit the assessment and if payment
is not made within the fifteen-day period, the Commissioner
may revoke the person’s license to engage in cattle purchasing
activities in the state. Persons having their license revoked
under this section are not eligible for license-reinstatement for
a period of three years.

§19-2F-11. Continuation of program.

Pursuant to the provisions of article ten, chapter four of this
code, the beef industry self-improvement assessment program
shall continue to exist until the first day of July, two thousand
eight, unless sooner terminated, continued or reestablished.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-16-4a, relating to prohibiting political subdivisions from regulating seeds.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §19-16-4a, to read as follows:

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-4a. Local laws prohibited.

1  (a) No political subdivision may regulate the registration, packaging, labeling, sale, storage, distribution, transportation or any other use of seeds.

4  (b) No political subdivision may adopt or continue in effect any local laws, ordinances or regulations relating to the regulating, registration, packaging, labeling, sale, storage, distribution, transportation or any other use of seeds.

8  (c) Local laws, ordinances or regulations in violation of this section are void and unenforceable.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60-1-5b; to amend and reenact §60-4-2, §60-4-3 and §60-4-15 of said code; to amend said code by adding thereto a new section, designated §60-4-3a; and to amend and reenact §60-6-1 and §60-6-2 of said code, all relating to creating and licensing mini-distilleries; allowing the tasting and limited retail sales of liquor produced by a mini-distillery at the licensed premise; establishing requirements and limitations for licensees for sales and free samples of liquor products; requiring a portion of all retail sales to be distributed to certain retailers; and establishing a licensure fee.

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 §60-1-5b; that §60-4-2, §60-4-3 and §60-4-15 be amended and reenacted; that said code be amended by adding thereto a new section, designated §60-4-3a; and that §60-6-1 and §60-6-2 of said code be amended and reenacted, all to read as follows:

Article
4. Licenses.
ARTICLE 1. GENERAL PROVISIONS.

§60-1-5b. Mini-distilleries defined.

For the purpose of this chapter: "mini-distillery” means an establishment where in any year no more than twenty thousand gallons of alcoholic liquor is manufactured with no less than twenty-five percent of raw agricultural products being produced by the owner of the mini-distillery on the premises of that establishment, and no more than twenty-five percent of raw agricultural products originating from any source outside this state: Provided, That the maximum allotted production amounts shall not exceed the annual incremental production limitations provided for pursuant to section three-a of this article: Provided, however, That a distillery licensed and operating as of the effective date of this section that applies for designation by the Commissioner as a mini-distillery is eligible to be licensed as a mini-distillery without compliance with the requirements for the percentage use of on-premises grown and in-state raw agricultural products.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.
§60-4-3. To whom licensed manufacturer may sell.
§60-4-3a. Special mini-distillery license to manufacture and sell.
§60-4-15. Amount of license fees.

§60-4-2. Licenses for manufacture.

The Commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued to the following classes of manufacturing establishments:

1. (1) Distilleries, in which only alcoholic liquors other than wine or beer is manufactured;

2. (2) Wineries, in which only wines are manufactured;
(3) Breweries, in which beer is manufactured;

(4) Bottling plants, in which beer only is bottled;

(5) Industrial plants, in which alcohol is distilled, manufactured, or otherwise produced for scientific, chemical, mechanical, or industrial purposes;

(6) Farm wineries, in which only wines are manufactured and from which the wine so manufactured may be served or sold or both served and sold in accordance with the provisions of this chapter; and

(7) Mini-distilleries.

§60-4-3. To whom licensed manufacturer may sell.

(a) A person who is licensed to manufacture alcoholic liquors in this state may sell liquors in this state only to the West Virginia Alcohol Beverage Control Commissioner, and to wholesalers and retailers licensed as provided in this chapter: *Provided,* That a holder of a farm winery license may sell wines and a holder of a mini-distillery license may sell alcoholic liquors manufactured by it in this state in accordance with the provisions of section two, article six of this chapter. Hours of retail sale by a farm winery or mini-distillery is subject to regulation by the Commissioner. The Commissioner may not promulgate any rule which prohibits the holder of a farm winery license from the advertising of a particular brand or brands of wine produced by it, and the price of the wine: *Provided, however,* That price may not be advertised in medium of electronic communication subject to the jurisdiction of the Federal Communications Commission. A manufacturer may sell alcoholic liquors outside of the state.

§60-4-3a. Special mini-distillery license to manufacture and sell.
(a) Sales of liquor- An operator of a mini-distillery may offer liquor for retail sale to customers from the mini-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to section one, article six of this chapter, customers are prohibited from consuming any liquor on the premises of the mini-distillery.

(b) Retail sales- Every licensed mini-distillery shall comply with the provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six of article three-a of this chapter, and the provisions of article three and four of this chapter applicable to liquor retailers and distillers.

(c) Payment of taxes and fees- The mini-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the Commissioner.

(d) Payments to market zone retailers- Each mini-distillery shall submit to the Commissioner ten percent of the gross sales price or each retail liquor sale for the value of all sales at the mini-distillery each month. This collection shall be distributed by the Commissioner, at least quarterly, to each market zone retailer located in the mini-distillery’s market zone, proportionate to each market zone retailer’s annual gross prior years pre-tax value sales.

(e) Limitations on licensees - No mini-distillery may sell more than three thousand gallons of product at the mini-distillery location the initial two years of licensure. The mini-distillery may increase sales at the mini-distillery location by two thousand gallons following the initial twenty-four month period of licensure, and may increase sales at the mini-distillery location each subsequent twenty-four month period by two thousand gallons, not to exceed ten thousand gallons a year of total sales at the mini-distillery location. No licensed mini-
distillery may produce more than twenty thousand gallons per
calendar year at the mini-distillery location. No more than one
mini-distillery license may be issued to a single person or
entity.

§60-4-15. Amount of license fees.

A person to whom a license is issued under the provisions
of this chapter shall pay annually to the Commissioner a license
fee as follows, for:

1. Distilleries, one thousand five hundred dollars;
2. Wineries, one thousand five hundred dollars;
3. Breweries, two hundred fifty dollars;
4. Bottling plants, one hundred dollars;
5. Wholesale druggists, fifty dollars;
6. Institutions, ten dollars;
7. Industrial use, fifty dollars;
8. Industrial plants producing alcohol, two hundred fifty
dollars;
9. Retail druggists, ten dollars;
10. Farm wineries, fifty dollars;
11. Mini-distilleries, fifty dollars.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.
§60-6-2. When lawful to manufacture and sell wine and cider.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.
1 The provisions of this chapter may not prevent:

2 (1) A person from keeping and possessing alcoholic liquors
3 in his or her residence for the personal use of himself or herself,
4 his or her family, his or her employee or his or her guests if the
5 alcoholic liquors have been lawfully acquired by him or her;

6 (2) A person, his or her family, or employee from giving or
7 serving such alcoholic liquors to guests in the residence, when
8 the gift or service is not for the purpose of evading the provi-
9 sions of this chapter;

10 (3) The holder of a farm winery license from serving
11 complimentary samples of its wine in moderate quantities for
12 tasting at the winery premises; and

13 (4) The holder of a mini-distillery license from serving
14 complimentary samples of its alcoholic liquor in moderate
15 quantities for tasting at the distillery.

§60-6-2. When lawful to manufacture and sell wine and cider.

1 The provisions of this chapter may not prevent:

2 (1) A person from manufacturing wine at his or her
3 residence for consumption at his or her residence as permitted
4 by section one of this article;

5 (2) A person from manufacturing and selling unfermented
6 cider;

7 (3) A person from manufacturing and selling cider made
8 from apples produced by him or her within this state to persons
9 holding distillery licenses, if the manufacture and sale is under
10 the supervision and regulation of the Commissioner;

11 (4) A person from manufacturing and selling wine made
12 from fruit produced by him or her within this state to persons
holding winery licenses, if the manufacture and sale is under the supervision and regulation of the Commissioner;

(5) The holder of a farm winery license from selling wine produced by it directly to consumers at the winery and at one off-farm winery location or to any other person who is licensed under this chapter to sell wine either at wholesale or at retail: Provided, That the winery may ship wines from the farm winery without the bonding requirements of a transporter: Provided, however, That notwithstanding any other provisions of law to the contrary, an individual or licensee in a state which affords the wineries of this state equal reciprocal shipping privileges may ship for personal use and not for resale not more than two cases of wine per month to any adult resident in this state. For purposes of this subdivision, "wine" includes dessert wines manufactured exclusively by natural fermentation and port, sherry and Madeira wines having an alcoholic content of not more than twenty-two percent alcohol by volume and which have been matured in wooden barrels or casks; and

(6) The holder of a mini-distillery license from selling alcoholic liquor for off premises consumption sold retail at the distillery.

CHAPTER 11

(H. B. 2960 — By Mr. Speaker, Mr. Kiss, and Delegates Ashley, Argento, Boggs, Stemple, Michael, Campbell, Stalnaker, Schadler and Hall)

[Passed April 6, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 18, 2005.]
AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to permitting licensed restaurants to sell sealed bottles of wine produced by a West Virginia winery for consumption off the premises.

Be it enacted by the Legislature of West Virginia:

That §60-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. SALE OF WINES.

*§60-8-3. Licenses; fees; general restrictions.

1 (a) Except as to farm wineries as defined by section five-a, article one of this chapter, no person may engage in business in the capacity of a distributor, retailer or private wine restaurant without first obtaining a license from the Commissioner, nor shall a person continue to engage in any such activity after his or her license has expired, been suspended or revoked. No person may be licensed simultaneously as a distributor and a retailer, as a distributor and a private wine restaurant, or as a retailer and a private wine restaurant.

10 (b) The Commissioner shall collect an annual fee for licenses issued under this article, as follows:

12 (1) Twenty-five hundred dollars per year for a distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers or delivers wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five hundred dollars as herein provided.

*CLERK’S NOTE: This section was also amended by H. B. 2266 (Chapter 12), which passed subsequent to this act.
(2) One hundred fifty dollars per year for a retailer’s license.

(3) Fifty dollars per year for a wine tasting license.

(4) Fifty dollars for each sales representative of or employed by a licensed distributor.

(5) Two hundred fifty dollars per year for a private wine restaurant license, and each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of two hundred fifty dollars as herein provided.

(6) Twenty-five dollars per year for a West Virginia wine retailer’s license, and each separate retail outlet from which a West Virginia wine retailer sells West Virginia wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five dollars as herein provided. The holder of such a license may sell no wines except those produced by West Virginia Farm Wineries as defined by section five-a, article one of this chapter. Except for the amount of the license fee and the restriction to sales of West Virginia wines, a West Virginia wine retailer is subject to all other provisions of this article which are applicable to a retailer as defined in section two of this article.

c) The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following year, and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

d) No retailer may be licensed as a private club as provided by article seven of this chapter.
(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code: Provided, That a delicatessen, a caterer or party supply store which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: Provided, however, That any delicatessen, caterer or party supply store licensed in both such capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A retailer under this article may also hold a wine tasting license authorizing such retailer to serve complimentary samples of wine in moderate quantities for tasting. Such retailer shall organize a winetaster’s club, which has at least fifty duly elected or approved dues paying members in good standing. Such club shall meet on the retailer’s premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer’s license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h) The Commissioner may issue a special license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county Commission. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefor shall be two hundred fifty dollars regardless of the term of the license
unless the applicant is the manufacturer of said wine on a farm winery as defined in section five-a, article one of this chapter, in which event the fee shall be twenty-five dollars. The application for such license shall contain such information as the Commissioner may reasonably require and shall be submitted to the Commissioner at least thirty days prior to the first day when wine is to be sold at such festival or fair. A farm winery licensed under this subsection may exhibit, conduct tastings, not to exceed a reasonable serving, and may sell wine only for consumption off the premises of such festival or fair. A special license issued other than to a farm winery may be issued to a "wine club" as defined hereinbelow. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words "wine club". The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided for in this subsection until the wine club has at least fifty dues paying members who have been enrolled and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subsection may sell wine only to its members, and in portions not to exceed eight ounces per serving. Such sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to such premises or area. A wine club licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.

A license issued under the provisions of this subsection and the licensee holding such license shall be subject to all other provisions of this article and the rules, regulations and orders of the Commissioner relating to such special license: Provided, That the Commissioner may by rule, regulation, or order
provide for certain waivers or exceptions with respect to such
provisions, rules, regulations, or orders as the circumstances of
each such festival or fair may require, including, without
limitation, the right to revoke or suspend any license issued
pursuant to this section prior to any notice or hearing notwith-
standing the provisions of section twelve of this article:
Provided, however, That under no circumstances shall the
provisions of subsection (c) or (d), section twenty of this article
be waived nor shall any exception be granted with respect
thereto.

A license issued under the provisions of this subsection and
the licensee holding such license shall not be subject to the
provisions of subsection (g) of this section.

(i) A license to sell wine granted to a private wine restau-
rant under the provisions of this article entitles the operator to
sell and serve wine, for consumption on the premises of the
licensee, when such sale accompanies the serving of food or a
meal to its members and their guests in accordance with the
provisions of this article: Provided, That a licensed restaurant
may offer for sale off the premises, sealed bottles of wine
produced by a West Virginia farm winery. Such licensees are
authorized to keep and maintain on their premises a supply of
wine in such quantities as may be appropriate for the conduct
of operations thereof. Any sale of wine so made shall be subject
to all restrictions set forth in section twenty of this article. A
private wine restaurant may also be licensed as a Class A retail
dealer in nonintoxicating beer as provided by article sixteen,
chapter eleven of this code.

(j) With respect to subsections (h) and (i) of this section, the
Commissioner shall promulgate legislative rules in accordance
with the provisions of chapter twenty-nine-a of this code with
regard to the form of the applications, the suitability of both the
applicant and location of the licensed premises and such other
(k) The Commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to allow restaurants to serve West Virginia wine with meals, but not to sell the wine by the bottle. Each restaurant so licensed shall be charged a fee less than that charged for a wine license to a retail outlet, such fees to be set forth in the afore-mentioned rules promulgated pursuant to this subsection.

(l) The Commissioner shall establish guidelines to permit West Virginia wines to be sold in state stores.

(m) Farm wineries as defined in section one-a of this article may advertise off premises as provided in section seven, article twenty-two, chapter seventeen and in any other media, including, but not limited to, newspaper, radio, television, magazines and direct mail solicitation.

CHAPTER 12

(Com. Sub. for H. B. 2266 — By Delegates Doyle, Hatfield and Amores)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to imposing a one hundred dollar per year fee for licenses allowing wine sampling events by wine retailers; restrictions on wine sampling events; allowing licensed restaurants to offer sealed bottles of wine produced by a West
Virginia farm winery for sale off the premises; authorizing a special license to allow the sale and serving of wine by nonprofit charitable organizations and associations for certain purposes during one-day events; and authorizing special licenses for heritage fairs and festivals allowing the sale, serving and sampling of wine from a West Virginia farm winery.

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

That §60-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. SALE OF WINES.**

*§60-8-3. Licenses; fees; general restrictions.*

(a) Except as to farm wineries as defined by section five-a, article one of this chapter, no person may engage in business in the capacity of a distributor, retailer or private wine restaurant without first obtaining a license from the Commissioner, nor shall a person continue to engage in any such activity after his or her license has expired, been suspended or revoked. No person may be licensed simultaneously as a distributor and a retailer, as a distributor and a private wine restaurant, or as a retailer and a private wine restaurant.

(b) The Commissioner shall collect an annual fee for licenses issued under this article, as follows:

(1) Twenty-five hundred dollars per year for a distributor’s license and each separate warehouse or other facility from which a distributor sells, transfers or delivers wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five hundred dollars as herein provided;

*CLERK’S NOTE:* This section was also amended by H. B. 2960 (Chapter 11), which passed prior to this act.
(2) One hundred fifty dollars per year for a retailer's license;

(3) Fifty dollars per year for a wine tasting license;

(4) Fifty dollars for each sales representative of or employed by a licensed distributor;

(5) Two hundred fifty dollars per year for a private wine restaurant license, and each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of two hundred fifty dollars as herein provided;

(6) Twenty-five dollars per year for a West Virginia wine retailer's license, and each separate retail outlet from which a West Virginia wine retailer sells West Virginia wine shall be separately licensed and there shall be collected with respect to each such location the annual license fee of twenty-five dollars as herein provided. The holder of such a license may sell no wines except those produced by West Virginia farm wineries as defined by section five-a, article one of this chapter. Except for the amount of the license fee and the restriction to sales of West Virginia wines, a West Virginia wine retailer is subject to all other provisions of this article which are applicable to a retailer as defined in section two of this article;

(7) One hundred dollars per year for a wine sampling license issued for a retailer under subsection (n) of this section; and

(8) No fee shall be charged for a special one-day license under subsection (o) of this section or for a heritage fair and festival license under subsection (p) of this section.

(c) The license period shall begin on the first day of July of each year and end on the thirtieth day of June of the following
year, and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by article seven of this chapter.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code: Provided, That a delicatessen, a caterer or party supply store which is a grocery store as defined in section two of this article and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: Provided, however, That any delicatessen, caterer or party supply store licensed in both such capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A retailer under this article may also hold a wine tasting license authorizing such retailer to serve complimentary samples of wine in moderate quantities for tasting. Such retailer shall organize a winetaster’s club, which has at least fifty duly elected or approved dues paying members in good standing. Such club shall meet on the retailer’s premises not more than one time per week and shall either meet at a time when the premises are closed to the general public, or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer’s license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.
(h) The Commissioner may issue a special license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. Such special license shall be issued for a term of no longer than ten consecutive days and the fee therefor shall be two hundred fifty dollars regardless of the term of the license unless the applicant is the manufacturer of said wine on a farm winery as defined in section five-a, article one of this chapter, in which event the fee shall be twenty-five dollars. The application for such license shall contain such information as the Commissioner may reasonably require and shall be submitted to the Commissioner at least thirty days prior to the first day when wine is to be sold at such festival or fair. A farm winery licensed under this subsection may exhibit, conduct tastings, not to exceed a reasonable serving, and may sell wine only for consumption off the premises of such festival or fair. A special license issued other than to a farm winery may be issued to a “wine club” as defined hereinbelow. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words “wine club.” The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided in this subsection until the wine club has at least fifty dues paying members who have been enrolled and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subsection may sell wine only to its members, and in portions not to exceed eight ounces per serving. Such sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to such premises or area. A wine club licensee under the provisions of this subsection shall be authorized to serve complimentary samples of wine in moderate quantities for tasting.
A license issued under the provisions of this subsection and the licensee holding such license shall be subject to all other provisions of this article and the rules and orders of the Commissioner relating to such special license: Provided, That the Commissioner may by rule, regulation, or order provide for certain waivers or exceptions with respect to such provisions, rules, regulations, or orders as the circumstances of each such festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of section twelve of this article: Provided, however, that under no circumstances shall the provisions of subsection (c) or (d), section twenty of this article be waived nor shall any exception be granted with respect thereto.

A license issued under the provisions of this subsection and the licensee holding such license shall not be subject to the provisions of subsection (g) of this section.

(i) A license to sell wine granted to a private wine restaurant under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when such sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: Provided, That a licensed private wine restaurant may offer for sale for consumption off the premises, sealed bottles of wine produced by a West Virginia farm winery. Such licensees are authorized to keep and maintain on their premises a supply of wine in such quantities as may be appropriate for the conduct of operations thereof. Any sale of wine so made shall be subject to all restrictions set forth in section twenty of this article. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by article sixteen, chapter eleven of this code.
(j) With respect to subsections (h), (i), (n) and (o) of this section, the Commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code with regard to the form of the applications, the suitability of both the applicant and location of the licensed premises and such other legislative rules deemed necessary to carry the provisions of such subsections into effect.

(k) The Commissioner shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to allow restaurants to serve West Virginia wine with meals, but not to sell the wine by the bottle. Each restaurant so licensed shall be charged a fee less than that charged for a wine license to a retail outlet, such fees to be set forth in the aforementioned rules promulgated pursuant to this subsection.

(l) The Commissioner shall establish guidelines to permit West Virginia wines to be sold in state stores.

(m) Farm wineries as defined in section one-a of this article may advertise off premises as provided in section seven, article twenty-two, chapter seventeen and in any other media, including, but not limited to, newspaper, radio, television, magazines and direct mail solicitation.

(n) A retailer under this article may also hold a wine sampling license authorizing the retailer to conduct special wine sampling events at a licensed retail location during regular hours of business. The retailer may serve up to three complimentary samples of wine, consisting of no more than one ounce each, to any one consumer in one day. Persons serving the complimentary samples must be twenty-one years of age and duly employed by the licensed retailer, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events must be duly licensed by the Commissioner. No licensee, employee, or representative may furnish, give or serve compli-
mentary samples of wine to any person less than twenty-one years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The retailer shall notify and secure permission from the Commissioner for all wine sampling events one month prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees must purchase all wines used during these events from a West Virginia farm winery or a licensed West Virginia distributor.

(o) The Commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine when raising money for athletic, charitable, educational or religious purposes. The license application shall contain information as the Commissioner may reasonably require and shall be submitted to the Commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a licensed retailer, distributor or West Virginia farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto.

(p) The Commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving and sampling of wine from a West Virginia farm winery. The license application shall contain information required by the Commissioner and shall be submitted to the Commissioner at least thirty days prior to the event. Wines used during these events may be donated by or purchased from a West Virginia farm winery. Under no circumstances may the provision of subsection (c), section twenty of this article be waived nor may any exception be granted with respect thereto. The Commissioner shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to implement the provisions of this subsection.
AN ACT to amend and reenact §11-16-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60-3A-24 of said code, all relating to underage possession of nonintoxicating beer and alcoholic liquor; and conforming state law to federal requirements by providing that violation by a person under the age of eighteen constitutes a status offense instead of a misdemeanor.

Be it enacted by the Legislature of West Virginia:

That §11-16-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60-3A-24 of said code be amended and reenacted, all to read as follows:

Chapter
11. Taxation.
60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-19. Unlawful acts of persons; criminal penalties.

(a)(1) Any person eighteen or over but under the age of twenty-one years who purchases, consumes, sells, possesses or
serves nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed five hundred dollars or shall be incarcerated in jail for a period not to exceed seventy-two hours, or both fined and imprisoned or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year. Any person under the age of eighteen years who purchases, consumes, sells, possesses or serves nonintoxicating beer is guilty of a status offense as that term is defined in section four, article one, chapter forty-nine of this code and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in section eleven, article five of said chapter.

(2) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of any licensee, which may include the sale or delivery of nonintoxicating beer as defined in this article. Further, nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is less than eighteen but at least sixteen years of age from being employed by a licensee whose principal business is the sale of food or consumer goods or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family-oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores and convenience stores: Provided, That such person shall not sell or deliver nonintoxicating beer.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing nonintoxicating beer when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conduct-
(b) Any person under the age of twenty-one years who, for the purpose of purchasing nonintoxicating beer, misrepresents his or her age or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own or who illegally attempts to purchase nonintoxicating beer is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed fifty dollars or shall be imprisoned in jail for a period not to exceed seventy-two hours, or both such fine and imprisonment or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who shall knowingly buy for, give to or furnish nonintoxicating beer to anyone under the age of twenty-one to whom they are not related by blood or marriage is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or shall be imprisoned in jail for a period not to exceed ten days, or both such fine and imprisonment.

(d)(1) Any person who at any one time transports into the state for their personal use, and not for resale, more than six and seventy-five hundredths gallons of nonintoxicating beer, upon which the West Virginia barrel tax has not been imposed, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars and have all the untaxed nonintoxicating beer in their possession at the time of the arrest confiscated, or imprisoned for ten days in jail, or both fined and imprisoned.

(2) If the Congress of the United States repeals the mandate established by the Surface Transportation Assistance Act of
1982 relating to national uniform drinking age of twenty-one as found in section six of Public Law 98-363, or a court of competent jurisdiction declares the provision to be unconstitutional or otherwise invalid, it is the intent of the Legislature that the provisions contained in this section and section eighteen of this article which prohibit the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than twenty-one years of age shall be null and void and the provisions therein shall thereafter remain in effect and apply to the sale, furnishing, giving, purchase or ownership of nonintoxicating beer to or by a person who is less than nineteen years of age.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.


(a)(1) Any person who is eighteen or over but under the age of twenty-one years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed five hundred dollars or shall be incarcerated in jail for a period not to exceed seventy-two hours, or both fined and imprisoned or, in lieu of such fine and incarceration, may, for the first offense, be placed on probation for a period not to exceed one year. Any person who is under eighteen years who purchases, consumes, sells, serves or possesses alcoholic liquor is guilty of a status offense, as that term is defined in section four, article one, chapter forty-nine of this code and, upon adjudication therefor, shall be referred to the Department of Health and Human Resources for services, as provided in section eleven, article five of said chapter.
(2) Nothing in this article, nor any rule or regulation of the Commissioner, shall prevent or be deemed to prohibit any person who is at least eighteen years of age from serving in the lawful employment of a licensee which includes the sale and serving of alcoholic liquor.

(3) Nothing in this subsection shall prohibit a person who is at least eighteen years of age from purchasing or possessing alcoholic liquor when he or she is acting upon the request of or under the direction and control of any member of a state, federal or local law-enforcement agency or the West Virginia Alcohol Beverage Administration while the agency is conducting an investigation or other activity relating to the enforcement of the alcohol beverage control statutes and the rules and regulations of the Commissioner.

(b) Any person under the age of twenty-one years who, for the purpose of purchasing liquor from a retail licensee, misrepresents his or her age or who for such purpose presents or offers any written evidence of age which is false, fraudulent or not actually his or her own or who illegally attempts to purchase liquor from a retail licensee is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed fifty dollars or imprisoned in jail for a period not to exceed seventy-two hours, or both fined and imprisoned or, in lieu of such fine and imprisonment, may, for the first offense, be placed on probation for a period not exceeding one year.

(c) Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or imprisoned in jail for a period not to exceed ten days, or both fined and imprisoned.
(d) No person while on the premises of a retail outlet may consume liquor or break the seal on any package or bottle of liquor. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined an amount not to exceed one hundred dollars or imprisoned in jail for a period not to exceed ten days, or both fined and imprisoned.

CHAPTER 14

(Com. Sub. for H. B. 2980 — By Mr. Speaker, Mr. Kiss, and Delegates DeLong, Pino, Varner, Pethtel, Cann and Amores)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §21-10-4, §21-10-5 and §21-10-6 of the Code of West Virginia, 1931, as amended, relating to the regulation of amusement rides and amusement attractions; providing for oversight and review of special inspectors; increasing annual permit fee; requiring Division of Labor to set qualifications and process for certification of special inspectors by legislative rule; authorizing annual certification fee; allowing suspension or revocation of certifications; and allowing inspections by special inspectors.

Be it enacted by the Legislature of West Virginia:

That §21-10-4, §21-10-5 and §21-10-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
§21-10-4. Inspection and permit fees.

(a) The Division shall charge inspection and permit fees. The annual permit fee is one hundred dollars for each ride or attraction. The annual inspection fee, if an inspection is to be done by the Division, is one hundred dollars for each ride or attraction. The annual inspection fee, if an inspection is to be done by the Division, is due at the time of application for the annual permit. The Division shall waive the inspection fee for any ride or attraction whose owner provides proof of nonprofit business status or for any ride or attraction whose owner provides proof that an inspection has been completed within the last year by a certified special inspector as provided in section six of this article.

(b) The Division may charge additional inspection fees equal to the annual inspection fee for additional inspections required as the result of the condemnation of a device for safety standards violations and for inspections required as a result of accidents involving serious or fatal injury. If any owner or operator requires an inspection as the result of a violation of the permitting requirements of section six of this article, the Division shall charge the owner or operator seventy-five dollars per hour in addition to the established inspection fee, including travel time.

(c) All fees received shall be deposited in a special revenue account in the State Treasury known as the "Amusement Rides and Amusement Attractions Safety Fund". The Division may use moneys from the fund for the purpose of enforcement of the provisions of this article. Expenditures are not authorized from
collections, but are to be made only in accordance with approp-
riation by the Legislature and in accordance with the provi-
sions of article three, chapter twelve of this code and upon
fulfillment of the provisions of article two, chapter eleven-b of
this code.

(d) No inspection fee may be charged public agencies.

(e) The Division shall issue, and the owner, operator or both
of the amusement rides and amusement attractions shall visibly
display to the public, inspection stickers denoting and signify-
ing that the inspection and permit fee authorized by this section
has been paid or waived.

§21-10-5. Inspectors.

(a) The Division may hire or contract with inspectors to
inspect amusement rides and amusement attractions. The
Division is responsible for oversight and review of the activities
of special inspectors and may hire or contract with inspectors
to review the activities of special inspectors.

(b) The Division shall certify all special inspectors who are
employed by insurance providers that write insurance policies
for amusement rides and amusement attractions required by
section twelve of this article. The Division may suspend or
revoke any certification of a special inspector upon a showing
of good cause. The Division shall propose rules for legislative
approval in accordance with the provisions of article three,
chapter twenty-nine-a of this code providing an application
process and minimum qualifications for certification of special
inspectors. The Division may charge an annual certification fee
not to exceed fifty dollars.

§21-10-6. Permits; application; annual inspection.

No operator or owner may knowingly permit the operation
of an amusement ride or amusement attraction without a permit
issued by the Division. Each year and at least fifteen days
before the first time the amusement ride or amusement attrac-
tion is made available in this state for public use, an operator or
owner shall apply for a permit to the Division on a form
furnished by the Division and containing any information the
Division may require. The Division shall, upon application and
within ten days of the first time the ride or attraction is made
available in this state for public use, inspect all amusement
rides and amusement attractions. The Division shall inspect all
stationary rides and attractions at least once every year. The
Division may inspect all mobile amusement rides and amuse-
ment attractions each time they are disassembled and reassem-
bled for use in this state. The Division may conduct inspections
at any reasonable time without prior notice: Provided, That in
lieu of performing its own inspection, the Division may accept
inspection reports from special inspectors certified by the
Division.

CHAPTER 15
(S. B. 235 — By Senators Edgell, Bailey, Dempsey,
Love, Facemyer and Guills)

[Passed April 8, 2005; in effect ninety days from passage.]  
[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §19-9-7a, relating to
National Animal Identification System; requiring state participa-
tion in the program; providing rule-making authority; and
exempting premises and animal identification data from disclo-
sure pursuant to the Freedom of Information Act.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §19-9-7a, to read as follows:

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.


West Virginia shall be a participating state in the United States Department of Agriculture’s National Animal Identification System. The Commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the collection of farm premises and animal identification data.

The premises and animal identification data collected by the Commissioner in accordance with the requirements of the National Animal Identification System are specifically exempt from disclosure under the provisions of article one, chapter twenty-nine-b of this code.

CHAPTER 16

(Com. Sub. for H. B. 2005 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 16, 2005; in effect from passage.]
[Approved by the Governor with deletions on April 22, 2005.]

AN ACT making appropriations of public money out of the treasury in accordance with section fifty-one, article VI of the constitution.
Be it enacted by the Legislature of West Virginia:

Title

I. General Provisions.
II. Appropriations.
III. Administration.

TITLE I—GENERAL PROVISIONS.

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

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

“Governor” shall mean the governor of the State of West Virginia.

“Code” shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year two thousand six” shall mean the period from the first day of July, two thousand five, through the thirtieth day of June, two thousand six.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected
by the state except as provided in section two, article two, chapter twelve of the code or as otherwise provided.

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

"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated "from collections," the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by article two, chapter eleven-b of the code.

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

"Personal services" shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit.

Unless otherwise specified, appropriations for "personal services" shall include salaries of heads of spending units.

"Annual increment" shall mean funds appropriated for "eligible employees" and shall be disbursed only in accordance with article five, chapter five of the code.

Funds appropriated for "annual increment" shall be transferred to "personal services" or other designated items only as required.
“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be transferred by each spending unit from its “personal services” line item or its “unclassified” line item or other appropriate line item to its “employee benefits” line item. If there is no appropriation for “employee benefits,” such costs shall be paid by each spending unit from its “personal services” line item, its “unclassified” line item or other appropriate line item. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of article two, chapter eleven-b of the code.

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

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

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

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

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

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

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

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by section twelve, article three, chapter twelve of the code.

From appropriations made to the spending units of state government, upon approval of the governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.
Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: Provided, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: Provided, however, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: Provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer funds appropriated to "personal services" and "employee benefits" to other lines within the same account and no funds from other lines shall be transferred to the "personal services" line: And provided further, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by chapter five-f of the code shall have the authority to transfer general revenue funds appropriated to "annual increment" to other general revenue accounts within the same department, bureau or commission for the purpose of providing an annual increment in accordance with article five, chapter five of the code: And provided further, That if the Legislature by subsequent enactment consolidates agencies, boards or functions, the secretary or other appropriate agency head may transfer the funds formerly appropriated to such agency, board or function in order to implement such consolidation. No funds may be transferred from a special revenue account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the state road fund for the office of the secretary of the department
of transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

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

Sec. 4. Method of expenditure.—Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of article three, chapter twelve of the code or according to any law detailing a procedure specifically limiting that article.

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

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SECTION 10. State improvement fund appropriations.
SECTION 11. Specific funds and collection accounts.
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SECTION 13. Sinking fund deficiencies.
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*SECTION 17. Reimbursement Limits:

1 Section 1. Appropriations from general revenue.—From
2 the state fund, general revenue, there are hereby appropriated
3 conditionally upon the fulfillment of the provisions set forth in
4 article two, chapter eleven-b of the code the following amounts,
5 as itemized, for expenditure during the fiscal year two thousand
6 six.

*CLERK'S NOTE: The Governor struck out Section 17 heading to correspond with
his action striking out Section 17 on page 272.
### LEGISLATIVE

#### I—Senate

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<td>Expenses of Members (R)</td>
</tr>
<tr>
<td>913</td>
<td>BRIM Premium (R)</td>
</tr>
<tr>
<td></td>
<td>Total</td>
</tr>
</tbody>
</table>

The appropriations for the senate for the fiscal year 2005 are to remain in full force and effect and are hereby reappropriated to June 30, 2006. Any balances so reappropriated may be transferred and credited to the fiscal year 2006 accounts.

Upon the written request of the clerk of the senate, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The clerk of the senate, with the approval of the president, is authorized to draw his or her requisitions upon the auditor,
payable out of the Current Expenses and Contingent Fund of
the senate, for any bills for supplies and services that may have
been incurred by the senate and not included in the appropria-
tion bill, for supplies and services incurred in preparation for
the opening, the conduct of the business and after adjournment
of any regular or extraordinary session, and for the necessary
operation of the senate offices, the requisitions for which are to
be accompanied by bills to be filed with the auditor.

The clerk of the senate, with the written approval of the
president, or the president of the senate shall have authority to
employ such staff personnel during any session of the Legisla-
ture as shall be needed in addition to staff personnel authorized
by the senate resolution adopted during any such session. The
clerk of the senate, with the written approval of the president,
or the president of the senate shall have authority to employ
such staff personnel between sessions of the Legislature as shall
be needed, the compensation of all staff personnel during and
between sessions of the Legislature, notwithstanding any such
senate resolution, to be fixed by the president of the senate. The
clerk is hereby authorized to draw his or her requisitions upon
the auditor for the payment of all such staff personnel for such
services, payable out of the appropriation for Compensation and
Per Diem of Officers and Employees or Current Expenses and
Contingent Fund of the senate.

For duties imposed by law and by the senate, the clerk of
the senate shall be paid a monthly salary as provided by the
senate resolution, unless increased between sessions under the
authority of the president, payable out of the appropriation for
Compensation and Per Diem of Officers and Employees or
Current Expenses and Contingent Fund of the senate.

The distribution of the blue book shall be by the office of
the clerk of the senate and shall include seventy-five copies for
each member of the Legislature and two copies for each
classified and approved high school and junior high school and one copy for each elementary school within the state.

2—House of Delegates

<table>
<thead>
<tr>
<th>Fund 0170 FY 2006 Org 2200</th>
<th>Item Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Compensation of Members (R)</td>
<td>003</td>
<td>$2,270,000</td>
</tr>
<tr>
<td>2 Compensation and Per Diem of Officers and Employees (R)</td>
<td>005</td>
<td>600,000</td>
</tr>
<tr>
<td>4 Current Expenses and Contingent Fund (R)</td>
<td>021</td>
<td>4,221,162</td>
</tr>
<tr>
<td>6 Expenses of Members (R)</td>
<td>399</td>
<td>1,190,000</td>
</tr>
<tr>
<td>7 BRIM Premium (R)</td>
<td>913</td>
<td>29,864</td>
</tr>
<tr>
<td>8 Total</td>
<td></td>
<td>$8,311,026</td>
</tr>
</tbody>
</table>

The appropriations for the house of delegates for the fiscal year 2005 are to remain in full force and effect and are hereby reappropriated to June 30, 2006. Any balances so reappropriated may be transferred and credited to the fiscal year 2006 accounts.

Upon the written request of the clerk of the house of delegates, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The clerk of the house of delegates, with the approval of the speaker, is authorized to draw his or her requisitions upon the auditor, payable out of the Current Expenses and Contingent Fund of the house of delegates, for any bills for supplies and services that may have been incurred by the house of delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the house of delegates’ offices, the requisitions for which are to be accompanied by bills to be filed with the auditor.
The speaker of the house of delegates, upon approval of the house committee on rules, shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the house resolution, and the compensation of all personnel shall be as fixed in such house resolution for the session, or fixed by the speaker, with the approval of the house committee on rules, during and between sessions of the Legislature, notwithstanding such house resolution. The clerk of the house is hereby authorized to draw requisitions upon the auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the house of delegates.

For duties imposed by law and by the house of delegates, including salary allowed by law as keeper of the rolls, the clerk of the house of delegates shall be paid a monthly salary as provided in the house resolution, unless increased between sessions under the authority of the speaker, with the approval of the house committee on rules, and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the house of delegates.

3—Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2006 Org 2300

1 Joint Committee on
2 Government and Finance (R) ....... 104 $6,745,189
3 Legislative Printing (R) ............. 105 800,000
4 Legislative Rule-Making
5 Review Committee (R) ............. 106 155,000
6 Legislative Computer System (R) .... 107 900,000
The appropriations for the joint expenses for the fiscal year 2005 are to remain in full force and effect and are hereby reappropriated to June 30, 2006. Any balances so reappropriated may be transferred and credited to the fiscal year 2006 accounts.

Upon the written request of the clerk of the senate, with the approval of the president of the senate, and the clerk of the house of delegates, with the approval of the speaker of the house of delegates, and a copy to the legislative auditor, the auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The appropriation for the Tax Reduction and Federal Funding Increased Compliance (TRAFFIC) (fund 0175, activity 642) is intended for possible general state tax reductions or the offsetting of any reductions in federal funding for state programs.

**JUDICIAL**

*4—Supreme Court—*

*General Judicial*

Fund 0180 FY 2006 Org 2400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services (R)</td>
<td>001</td>
<td>$46,597,298</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment (R)</td>
<td>004</td>
<td>525,000</td>
</tr>
</tbody>
</table>
The appropriations to the supreme court of appeals for the fiscal years 2002, 2004 and 2005 are to remain in full force and effect and are hereby reappropriated to June 30, 2006. Any balances so reappropriated may be transferred and credited to the fiscal year 2006 accounts.

This appropriation shall be administered by the administrative director of the supreme court of appeals, who shall draw requisitions for warrants in payment in the form of payrolls, making deductions therefrom as required by law for taxes and other items.

The appropriation for the Judges’ Retirement System is to be transferred to the consolidated public retirement board, in accordance with the law relating thereto, upon requisition of the administrative director of the supreme court of appeals.

**EXECUTIVE**

*5—Governor’s Office*

(WV Code Chapter 5)

Fund 0101 FY 2006 Org 0100

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,380,000</td>
</tr>
<tr>
<td>002</td>
<td>Salary of Governor</td>
<td>002</td>
<td>95,000</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>004</td>
<td>15,000</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>010</td>
<td>745,994</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>933,431</td>
</tr>
<tr>
<td>123</td>
<td>National Governors’ Association</td>
<td>123</td>
<td>70,200</td>
</tr>
<tr>
<td>#</td>
<td>Appropriation</td>
<td>Code</td>
<td>Amount</td>
</tr>
<tr>
<td>----</td>
<td>---------------------------------------</td>
<td>------</td>
<td>------------</td>
</tr>
<tr>
<td>7</td>
<td>Southern States Energy Board</td>
<td>124</td>
<td>28,732</td>
</tr>
<tr>
<td>8</td>
<td>Southern Governors’ Association</td>
<td>314</td>
<td>5,740</td>
</tr>
<tr>
<td>9</td>
<td>Pharmaceutical Cost</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Management Council</td>
<td>796</td>
<td>500,000</td>
</tr>
<tr>
<td>11</td>
<td>Special Income Tax Refund</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Reserve Fund—Transfer</td>
<td>797</td>
<td>0</td>
</tr>
<tr>
<td>13</td>
<td>21st Century Government Initiative</td>
<td>798</td>
<td>0</td>
</tr>
<tr>
<td>14</td>
<td>BRIM Premium</td>
<td>913</td>
<td>254,751</td>
</tr>
<tr>
<td>15</td>
<td>Total</td>
<td></td>
<td>$5,028,848</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, activity 099), Publication of Papers and Transition Expenses (fund 0101, activity 465), and Publication of Papers and Transition Expenses—Surplus (fund 0101, activity 359) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

6—Governor’s Office—

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2006 Org 0100

<table>
<thead>
<tr>
<th>#</th>
<th>Appropriation</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified—Total (R)</td>
<td>096</td>
<td>$577,774</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0102, activity 096) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

To be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.
7—Governor’s Office—

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2006 Org 0100

1 Business & Economic Development
2 Stimulus .......................... 586  $ 4,000,000
3 Civil Contingent Fund (R) ........... 614  4,000,000
4 Total ................................ $ 8,000,000

Any unexpended balances remaining in the appropriations for Stream Restoration—Surplus (fund 0105, activity 078), Civil Contingent Fund—Total (fund 0105, activity 114), Civil Contingent Fund—Total—Surplus (fund 0105, activity 238), Civil Contingent Fund— Surplus (fund 0105, activity 263), Civil Contingent Fund (fund 0105, activity 614) and Business and Economic Development Stimulus—Surplus (fund 0105, activity 084) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

From this appropriation there may be expended, at the discretion of the governor, an amount not to exceed one thousand dollars as West Virginia’s contribution to the interstate oil compact commission.

The above appropriation is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the governor’s office.

8—Auditor’s Office—

General Administration
### Fund 0116 FY 2006 Org 1200

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,087,640</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Auditor</td>
<td>002</td>
<td>$75,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>$37,265</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$769,039</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified</td>
<td>099</td>
<td>$623,326</td>
</tr>
<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$15,781</td>
</tr>
<tr>
<td>7</td>
<td>Total</td>
<td></td>
<td>$3,608,051</td>
</tr>
</tbody>
</table>

### Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2006 Org 1300

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$1,727,893</td>
</tr>
<tr>
<td>2</td>
<td>Salary of Treasurer</td>
<td>002</td>
<td>$75,000</td>
</tr>
<tr>
<td>3</td>
<td>Annual Increment</td>
<td>004</td>
<td>$25,000</td>
</tr>
<tr>
<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$567,996</td>
</tr>
<tr>
<td>5</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$866,756</td>
</tr>
<tr>
<td>6</td>
<td>Abandoned Property Program</td>
<td>118</td>
<td>$286,134</td>
</tr>
<tr>
<td>7</td>
<td>Tuition Trust Fund (R)</td>
<td>692</td>
<td>$149,530</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium (R)</td>
<td>913</td>
<td>$38,832</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$3,737,141</td>
</tr>
</tbody>
</table>

10 Any unexpended balances remaining in the appropriations for Unclassified (fund 0126, activity 099) and Tuition Trust Fund (fund 0126, activity 692) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

### Department of Agriculture

(WV Code Chapter 19)
APPROPRIATIONS

Fund 0131 FY 2006 Org 1400

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Fiscal Year Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 3,596,423</td>
</tr>
<tr>
<td>Salary of Commissioner</td>
<td>002</td>
<td>75,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>77,138</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>1,366,618</td>
</tr>
<tr>
<td>Animal Identification Program</td>
<td>039</td>
<td>200,810</td>
</tr>
<tr>
<td>State Farm Museum</td>
<td>055</td>
<td>110,000</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>788,483</td>
</tr>
<tr>
<td>Gypsy Moth Program (R)</td>
<td>119</td>
<td>960,095</td>
</tr>
<tr>
<td>Huntington Farmers Market</td>
<td>128</td>
<td>50,000</td>
</tr>
<tr>
<td>Black Fly Control (R)</td>
<td>137</td>
<td>428,982</td>
</tr>
<tr>
<td>Donated Foods Program</td>
<td>363</td>
<td>50,000</td>
</tr>
<tr>
<td>Predator Control</td>
<td>470</td>
<td>140,000</td>
</tr>
<tr>
<td>Bee Research</td>
<td>691</td>
<td>32,421</td>
</tr>
<tr>
<td>Microbiology Program (R)</td>
<td>785</td>
<td>154,031</td>
</tr>
<tr>
<td>Moorefield Agriculture Center (R)</td>
<td>786</td>
<td>1,089,333</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>165,115</td>
</tr>
<tr>
<td>WV Food Banks</td>
<td>969</td>
<td>100,000</td>
</tr>
<tr>
<td>Logan Farmers Market</td>
<td>501</td>
<td>40,000</td>
</tr>
<tr>
<td>Seniors’ Farmers’ Market Nutrition Coupon</td>
<td>970</td>
<td>60,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 9,484,449</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0131, activity 099), Gypsy Moth Program (fund 0131, activity 119), Black Fly Control (fund 0131, activity 137), Microbiology Program (fund 0131, activity 785) and Moorefield Agriculture Center (fund 0131, activity 786) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

A portion of the Unclassified appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.
From the above appropriation for WV Food Banks (activity 969), the full appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

11—West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2006 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2006</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$464,113</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>8,150</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>183,779</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>331,251</td>
</tr>
<tr>
<td>5</td>
<td>Soil Conservation Projects (R)</td>
<td>120</td>
<td>2,699,352</td>
</tr>
<tr>
<td>6</td>
<td>Maintenance of Flood</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Control Projects (R)</td>
<td>522</td>
<td>2,183,997</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>8,853</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td>$5,879,495</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0132, activity 099), Soil Conservation Projects (fund 0132, activity 120), Soil Conservation Projects—Surplus (fund 0132, activity 269) and Maintenance of Flood Control Projects (fund 0132, activity 522) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

12—Department of Agriculture—

Meat Inspection

(WV Code Chapter 19)

Fund 0135 FY 2006 Org 1400

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>FY 2006</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$624,338</td>
</tr>
</tbody>
</table>
Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

13—Department of Agriculture—

Agricultural Awards

(WV Code Chapter 19)

Fund 0136 FY 2006 Org 1400

<table>
<thead>
<tr>
<th>Program</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Programs &amp; Awards for 4-H</td>
<td></td>
</tr>
<tr>
<td>Clubs and FFA/FHA</td>
<td>577</td>
</tr>
<tr>
<td>Commissioner’s Awards and Programs</td>
<td>737</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

14—Attorney General

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

Fund 0150 FY 2006 Org 1500

<table>
<thead>
<tr>
<th>Program</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services (R)</td>
<td>001</td>
</tr>
<tr>
<td>Salary of Attorney General</td>
<td>002</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>Employee Benefits (R)</td>
<td>010</td>
</tr>
<tr>
<td>Unclassified (R)</td>
<td>099</td>
</tr>
<tr>
<td>Better Government Bureau</td>
<td>740</td>
</tr>
<tr>
<td>Phone System</td>
<td>532</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the above appropriations for Personal Services (fund 0150, activity 001), Employee Benefits (fund 0150, activity 010) and Unclassified (fund 0150, activity 099) at the close of the fiscal year 2005 are
hereby reappropriated for expenditure during the fiscal year 2006.

When legal counsel or secretarial help is appointed by the attorney general for any state spending unit, this account shall be reimbursed from such spending units specifically appropriated account or from accounts appropriated by general language contained within this bill: Provided, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the attorney general: Provided, however, That if the spending unit and the attorney general are unable to agree on the amount and terms of the reimbursement, the spending unit and the attorney general shall submit their proposed reimbursement rates and terms to the Governor for final determination. *No spending unit governed by the reimbursement limits specified in Title II, Section 17 may exceed the respective limit of reimbursement specified therein.

15—Secretary of State

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2006 Org 1600

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$607,425</td>
</tr>
<tr>
<td>Salary of Secretary of State</td>
<td>002</td>
<td>70,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>11,950</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>236,436</td>
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<tr>
<td>Unclassified (R)</td>
<td>099</td>
<td>123,325</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>43,229</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$1,092,365</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, activity 099) and Administrative Law Division Improvements (fund 0155, activity 880) at the

*CLERK'S NOTE: The Governor struck language on line 27 through 29.*
close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

16—State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2006 Org 1601

| Unclassified—Total | 096 | $10,275 |

DEPARTMENT OF ADMINISTRATION

17—Department of Administration—

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2006 Org 0201

| Unclassified | 099 | $256,810 |
| Pay Equity Reserve | 364 | 250,000 |
| Lease Rental Payments | 516 | 16,000,000 |
| Design-Build Board | 540 | 19,068 |
| BRIM Premium | 913 | 13,397 |
| Total | | $16,539,275 |

The appropriation for Lease Rental Payments shall be disbursed as provided by chapter thirty-one, article fifteen, section six-b of the code.

18—Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2006 Org 0205

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

19—Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2006 Org 0209

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2006</th>
<th>Amount</th>
</tr>
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<tr>
<td>Personal Services</td>
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<td>Annual Increment</td>
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<td>775</td>
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<td>28,782</td>
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<td>099</td>
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<td>Total</td>
<td></td>
<td>$1,183,527</td>
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</table>

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, activity 125) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

20—Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2006 Org 0211

<table>
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<tr>
<th>Description</th>
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<tr>
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<td>099</td>
<td>491,263</td>
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</table>
5 Fire Service Fee ................... 126 14,000
6 BRIM Premium .................... 913 116,535
7 Total .............................. $ 1,396,820

21-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2006 Org 0213

1 Personal Services .................. 001 $ 620,344
2 Annual Increment .................. 004 11,432
3 Employee Benefits .................. 010 200,333
4 Unclassified ........................ 099 106,000
5 BRIM Premium ..................... 913 4,241
6 Total .............................. $ 942,350

7 The division of highways shall reimburse the Unclassified
8 appropriation (fund 2031, activity 099) within the division of
9 purchasing for all actual expenses incurred pursuant to the
10 provisions of section thirteen, article two-a, chapter seventeen
11 of the code.

22-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2006 Org 0217

1 Unclassified-Total .................. 096 $ 29,295

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

23-Education and State Employees’ Grievance Board

(WV Code Chapter 18)

Fund 0220 FY 2006 Org 0219
### Ch. 16 | APPROPRIATIONS

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<tr>
<th></th>
<th>Item</th>
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#### 24-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2006 Org 0220

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<td>2</td>
<td>BRIM Premium</td>
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#### 25-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2006 Org 0221

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<td>4</td>
<td>Unclassified</td>
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<td>Appointed Counsel Fees and Public Defender Corporations</td>
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<td>Public Defender Corporation (R)</td>
<td>352</td>
<td>13,727,936</td>
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<td>7</td>
<td>Appointed Counsel-Public Defender Conflicts</td>
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<td>2,100,000</td>
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<td>8</td>
<td>Appointed Counsel Fees (R)</td>
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<td>11,185,417</td>
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<td>9</td>
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<td>Total</td>
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<td>$28,069,348</td>
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Any unexpended balances remaining in the above appropriations for Public Defender Corporations (fund 0226, activity 352), and Appointed Counsel Fees (fund 0226, activity 788) at
the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

26-Committee for the Purchase of Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2006 Org 0224

1 Unclassified-Total 096 $ 5,046

27-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2006 Org 0225

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

28-West Virginia Prosecuting Attorneys Institute

Fund 0557 FY 2006 Org 0228

1 Forensic Medical Examinations (R) 683 $ 140,612
2 Federal Funds/Grant Match (R) 749 $ 83,772
3 Total 140,612 $ 224,384

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, activity 683) and Federal Funds/Grant Match (fund 0557, activity 749) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.
### 29-Children’s Health Insurance Agency

**(WV Code Chapter 5)**

**Fund 0588 FY 2006 Org 0230**

<table>
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<td>Unclassified-Total (R)</td>
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<td>Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 0588, activity 096) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.</td>
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### DEPARTMENT OF COMMERCE

#### 30-Division of Forestry

**(WV Code Chapter 19)**

**Fund 0250 FY 2006 Org 0305**

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<td>Employee Benefits</td>
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<td>Aerial Tanker</td>
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<td>Unclassified</td>
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<td>BRIM Premium</td>
<td>254,311</td>
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</table>

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

### 31-Department of Commerce-

**Office of the Secretary**

**(WV Code Chapter 19)**
### Appropriations

**Fund 0606 FY 2006 Org 0305**

<table>
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<th>Description</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$400,000</td>
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</table>

**32-Geological and Economic Survey**

*(WV Code Chapter 29)*

**Fund 0253 FY 2006 Org 0306**

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<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>205,000</td>
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<tr>
<td>5</td>
<td>Mineral Mapping System (R)</td>
<td>207</td>
<td>1,552,028</td>
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<td>6</td>
<td>Geoscience Education Program</td>
<td>541</td>
<td>25,000</td>
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<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>35,375</td>
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<td>Total</td>
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<td>$3,503,347</td>
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Any unexpended balances remaining in the appropriations for Mineral Mapping System (fund 0253, activity 207) and Geographic Information System (fund 0253, activity 214) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

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

**33-West Virginia Development Office**

*(WV Code Chapter 5B)*

**Fund 0256 FY 2006 Org 0307**

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<th>Item</th>
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<td>Appropriations</td>
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<td>----------------------------------------------------------</td>
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<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010 755,225</td>
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<td>4</td>
<td>ARC-WV Home of Your Own Alliance</td>
<td>048 40,000</td>
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<td>5</td>
<td>Southern WV Career Center</td>
<td>071 191,750</td>
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<td>6</td>
<td>Secretary of Commerce</td>
<td>079 0</td>
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<td>7</td>
<td>Unclassified</td>
<td>099 2,493,845</td>
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<td>8</td>
<td>Partnership Grants (R)</td>
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<td>9</td>
<td>National Youth Science Camp</td>
<td>132 200,000</td>
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<td>10</td>
<td>Local Economic Development</td>
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<td>11</td>
<td>Partnerships (R)</td>
<td>133 1,870,000</td>
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<td>12</td>
<td>ARC Assessment</td>
<td>136 167,308</td>
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<td>13</td>
<td>Institute for Software Research</td>
<td>217 76,213</td>
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<td>14</td>
<td>Mid-Atlantic Aerospace Complex (R)</td>
<td>231 176,783</td>
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<td>15</td>
<td>Guaranteed Work Force Grant (R)</td>
<td>242 2,247,000</td>
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<td>16</td>
<td>Mingo County Surface Mine Project</td>
<td>296 125,000</td>
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<td>17</td>
<td>Small Business Financial Assistance (R)</td>
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<td>Robert C. Byrd Institute for Advanced/</td>
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<td>19</td>
<td>Flexible Manufacturing-Technology</td>
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<td>20</td>
<td>Outreach and Programs for</td>
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<td>21</td>
<td>Environmental and Advanced Technologies</td>
<td>367 519,800</td>
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<td>22</td>
<td>Advantage Valley</td>
<td>389 74,300</td>
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<td>23</td>
<td>Chemical Alliance Zone</td>
<td>390 38,300</td>
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<tr>
<td>24</td>
<td>WV High Tech Consortium</td>
<td>391 159,570</td>
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<td>25</td>
<td>Charleston Farmers Market</td>
<td>476 100,000</td>
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<td>26</td>
<td>Industrial Park Assistance (R)</td>
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<td>27</td>
<td>Leverage Technology and Small</td>
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<td>28</td>
<td>Business Development Program (R)</td>
<td>525 642,284</td>
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<td>29</td>
<td>International Offices (R)</td>
<td>593 690,644</td>
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<td>30</td>
<td>WV Manufacturing</td>
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<td>31</td>
<td>Extension Partnership</td>
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<td>32</td>
<td>Small Business Work Force (R)</td>
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<td>33</td>
<td>Polymer Alliance</td>
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<td>34</td>
<td>National Institute of Chemical Studies</td>
<td>805 70,500</td>
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<td>35</td>
<td>Local Economic Development</td>
<td>819 4,775,000</td>
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<tr>
<td>36</td>
<td>Development Assistance (R)</td>
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</tbody>
</table>
39 Community College
40 Workforce Development (R) ...... 878 1,000,000
41 BRIM Premium ..................... 913 28,316
42 Hardwood Alliance Zone ............ 992 42,600
43 Total .............................. $22,700,109

Any unexpended balances remaining in the appropriations for Tourism—Unclassified—Surplus (fund 0256, activity 075), Partnership Grants (fund 0256, activity 131), Local Economic Development Partnerships (fund 0256, activity 133), Mid-Atlantic Aerospace Complex (fund 0256, activity 231), Guaranteed Work Force Grant (fund 0256, activity 242), Local Economic Development Assistance—Surplus (fund 0256, activity 266), Small Business Financial Assistance (fund 0256, activity 360), Industrial Park Assistance (fund 0256, activity 480), Leverage Technology and Small Business Development Program (fund 0256, activity 525), International Offices (fund 0256, activity 593), Small Business Work Force (fund 0256, activity 735), Local Economic Development Assistance (fund 0256, activity 819), Community College Workforce Development (fund 0256, activity 878) and Economic Development Assistance (fund 0256, activity 900) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

The above appropriation to Local Economic Development Partnerships shall be used by the West Virginia development office for the award of funding assistance to county and regional economic development corporations or authorities participating in the certified development community program developed under the provisions of section three, article two, chapter five-b of the code. The West Virginia development office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed thirty-four thousand dollars per county served by an economic development corporation or authority.
From the above appropriation for the Community College Workforce (activity 878), $200,000 shall be expended on the Mining Training Program in Southern West Virginia.

34-Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2006 Org 0308

<table>
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<tr>
<th>Code</th>
<th>Description</th>
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35-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2006 Org 0310

<table>
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<th>Description</th>
<th>001</th>
<th>004</th>
<th>010</th>
<th>099</th>
<th>564</th>
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<td>Gypsy Moth Suppression Program –</td>
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<tr>
<td>7</td>
<td>Litter Control Conservation Officers</td>
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<td>151,471</td>
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</tr>
<tr>
<td>8</td>
<td>Upper Mud River Flood Control</td>
<td>654</td>
<td>179,090</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>9</td>
<td>Law Enforcement</td>
<td>806</td>
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</tr>
<tr>
<td>10</td>
<td>BRIM Premium</td>
<td>913</td>
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<td>Total</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$11,457,826</td>
</tr>
</tbody>
</table>

*CLERK'S NOTE: The Governor struck language on line 73 through line 75.
Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the division of natural resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

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

(WV Code Chapter 22)

**Fund 0277 FY 2006 Org 0314**

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
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</tr>
</thead>
<tbody>
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<td>Personal Services</td>
<td>001</td>
<td>$4,048,256</td>
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<tr>
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<td>004</td>
<td>70,600</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>1,551,243</td>
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<td>Unclassified</td>
<td>099</td>
<td>147,893</td>
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<tr>
<td>WV Diesel Equipment Commission</td>
<td>712</td>
<td>38,034</td>
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<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>72,573</td>
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<td><strong>Total</strong></td>
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</table>

### 37-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

**Fund 0280 FY 2006 Org 0319**

<table>
<thead>
<tr>
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<th>Code</th>
<th>Amount</th>
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<tr>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
<td>004</td>
<td>650</td>
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<td>Employee Benefits</td>
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<td>Unclassified</td>
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<td><strong>Total</strong></td>
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<td><strong>$169,981</strong></td>
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</table>

### 38-Coal Mine Safety and Technical Review Committee

(WV Code Chapter 22)

**Fund 0285 FY 2006 Org 0320**

<table>
<thead>
<tr>
<th>Category</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$0</td>
</tr>
</tbody>
</table>
2 Coal Forum .................................. 664 25,000
3 Unclassified .................................. 099 63,352
4 Total ........................................ $ 88,352

DEPARTMENT OF EDUCATION

39-State Department of Education-

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2006 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<td>004</td>
<td>3,550</td>
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<td>Employee Benefits</td>
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<td>1,802,151</td>
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<td>$2,107,089</td>
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</table>

40-State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2006 Org 0402

<table>
<thead>
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<th>Item Description</th>
<th>Code</th>
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<tbody>
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<td>Employee Benefits</td>
<td>010</td>
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<td>Unclassified</td>
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<td>$999,281</td>
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</table>

41-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2006 Org 0402

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,820,637</td>
</tr>
</tbody>
</table>
2 Annual Increment ........................................ 004 34,124
3 Employee Benefits ........................................ 010 974,408
4 Unclassified (R) ........................................ 099 3,000,000
5 34/1000 Waiver ........................................ 139 400,000
6 Increased Enrollment ................................... 140 6,000,000
7 Safe Schools ........................................... 143 2,000,000
8 Teacher Mentor (R) .................................... 158 400,000
9 National Teacher Certification (R) ................... 161 0
10 Technology Repair and Modernization ............ 298 1,000,000
11 HVAC Technicians ..................................... 355 431,654
12 Early Retirement Notification Incentive .......... 366 150,000
13 FBI Checks ............................................ 372 98,811
14 Teacher Reimbursement ................................ 573 150,000
15 Foreign Student Education (R) ....................... 636 82,020
16 State Teacher of the Year ............................ 640 38,401
17 Principals Mentorship .................................. 649 50,000
18 Allowance for Work Based Learning .............. 744 60,000
19 Professional Development ............................ 801 0
20 Marshall University Graduate College Writing Project .............. 807 25,000
21 BRIM Premium ........................................ 913 387,388
22 Regional Education Service Agencies ............. 972 4,000,000
23 Sparse Population ..................................... 973 525,000
25 Educational Program Allowance .................... 996 250,000
26 Low Student Enrollment Allowance ............... 615 450,000
27 HI-Y Youth in Government ........................... 616 100,000
28 Total .................................................. $23,427,443
29
The above appropriation includes the state board of education and their executive office.

Any unexpended balances remaining in the appropriations for Collaborative Resource Allocation (fund 0313, activity 041), Educational Achievement Incentive (fund 0313, activity 042), Unclassified (fund 0313, activity 099), Teacher Mentor
(fund 0313, activity 158), National Teacher Certification (fund 0313, activity 161), and Foreign Student Education (fund 0313, activity 636) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

From the above appropriation for Sparse Population Allocation (activity 973), funding shall be provided in the same manner as in Fiscal Year 2005. It shall be available to those counties whose population falls at or below 2.5 students per square mile and which have more than 650 square miles for transportation purposes.

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

From the above appropriation for Low Student Enrollment Allowance, funds shall be allocated to county boards of education in accordance with the provisions of §18-9A-22 of the Code of West Virginia.

42-State Department of Education-

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2006 Org 0402

1 Special Education-Counties ............... 159  $ 7,271,757
2 Special Education-Institutions .......... 160  3,284,258
3 Education of Juveniles Held in
4 Predispositional Juvenile
5 Detention Centers ..................... 302  525,783

* CLERK'S NOTE: The Governor struck language on line 45 through line 49.
6 Education of Institutionalized
7 Juveniles and Adults ............... 472 12,112,963
8 Total ........................................ $23,194,761

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

12 *From the above appropriation for Education of Institution-
13 alized Juveniles and Adults (activity 472), funding shall be
14 provided to Beckley and Burlington Centers at an amount no
15 less than the allocations disbursed during Fiscal Year 2004.

43-State Department of Education-

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2006 Org 0402

1 Other Current Expenses .............. 022 $127,927,592
2 Professional Educators .......... 151 743,578,038
3 Service Personnel .................. 152 247,804,912
4 Fixed Charges ...................... 153 90,810,678
5 Transportation ...................... 154 43,629,447
6 Administration ..................... 155 3,086,703
7 Improve Instructional Programs ...... 156 33,000,000
8 Basic Foundation Allowances .... 1,289,837,370
9 Less Local Share ................... (323,422,629)
10 Total Basic State Aid .............. 966,414,741
11 Public Employees’ Insurance Matching 012 203,360,957
12 Early Childhood Collaborative .... 018 0
13 Teachers’ Retirement System ...... 019 355,243,000
14 School Building Authority ........ 453 23,345,748
15 Total ........................................ $1,548,364,446

*CLERK’S NOTE: The Governor struck language on line 12 through line 15.
### 44-State Board of Education - Vocational Division

(WV Code Chapters 18 and 18A)

**Fund 0390 FY 2006 Org 0402**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
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<td>$904,580</td>
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<td>Annual Increment</td>
<td>004</td>
<td>17,277</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>348,305</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>1,210,000</td>
</tr>
<tr>
<td>Wood Products-Forestry</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vocational Program</td>
<td>146</td>
<td>56,220</td>
</tr>
<tr>
<td>Albert Yanni Vocational Program</td>
<td>147</td>
<td>124,263</td>
</tr>
<tr>
<td>Vocational Aid</td>
<td>148</td>
<td>14,789,753</td>
</tr>
<tr>
<td>Adult Basic Education</td>
<td>149</td>
<td>3,229,263</td>
</tr>
<tr>
<td>Program Modernization</td>
<td>305</td>
<td>725,000</td>
</tr>
<tr>
<td>Technical and Secondary Program</td>
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<td></td>
</tr>
<tr>
<td>Improvement Staff</td>
<td>330</td>
<td>262,450</td>
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<tr>
<td>GED Testing</td>
<td>339</td>
<td>294,825</td>
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<tr>
<td>Aquaculture Support</td>
<td>769</td>
<td>80,827</td>
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<tr>
<td>Total</td>
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<td>$22,042,763</td>
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</table>

### 45-State Board of Education - Division of Educational Performance Audits

(WV Code Chapters 18 and 18A)

**Fund 0573 FY 2006 Org 0402**

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<td>Employee Benefits</td>
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<td>104,408</td>
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<td>Unclassified</td>
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<td>141,264</td>
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<tr>
<td>Total</td>
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<td>$603,622</td>
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</table>
### West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

**Fund 0320 FY 2006 Org 0403**

| 1 | Personal Services .................. 001 | $7,150,943 |
| 2 | Annual Increment .................... 004 | 5,750 |
| 3 | Employee Benefits .................. 010 | 2,783,013 |
| 4 | Unclassified ......................... 099 | 1,613,470 |
| 5 | BRIM Premium ........................ 913 | 77,209 |
| 6 | Total .................................. | $11,630,385 |

---

### DEPARTMENT OF EDUCATION AND THE ARTS

(WV Code Chapter 5F)

**Fund 0294 FY 2006 Org 0431**

| 1 | Unclassified (R) .................... 099 | $782,985 |
| 2 | Center for Professional Development (R) 115 | 1,300,000 |
| 3 | Center for Professional Development-Principals’ Academy (R) 415 | 395,618 |
| 4 | Governor’s Honor Academy .............. 478 | 390,450 |
| 5 | Teacher Education Partnerships *(R) 576 | 0 |
| 6 | Hospitality Training .................. 600 | 400,000 |
| 7 | Energy Express ........................ 861 | 450,000 |
| 8 | Professional Development Collaborative 629 | 800,000 |
| 9 | CPD-Math Initiative .................. 517 | 300,000 |
| 10 | BRIM Premium .......................... 913 | 4,509 |
| 11 | Total .................................. | $4,823,562 |

* **CLERK’S NOTE:** The Governor struck language on line 6.
Any unexpended balances remaining in the appropriations for Unclassified (fund 0294, activity 099), Center for Professional Development (fund 0294 activity 115), Center for Professional Development-Principals’ Academy (fund 0294, activity 415) *and Teacher Education Partnerships (fund 0294, activity 576) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

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

48-Division of Culture and History
(WV Code Chapter 29)

Fund 0293 FY 2006 Org 0432

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$ 1,017,198</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$ 470,000</td>
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</tr>
<tr>
<td>Culture and History Programming</td>
<td>732</td>
<td>$ 292,945</td>
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<tr>
<td>Marshall Artists Series</td>
<td>518</td>
<td>$ 60,000</td>
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<tr>
<td>BRIM Premium</td>
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<td>$ 60,781</td>
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<tr>
<td>Total</td>
<td></td>
<td>$ 4,239,749</td>
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</tr>
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</table>

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment—Surplus (fund 0293, activity 677) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

*CLERK’S NOTE: The Governor struck language on line 17 and line 18.
The Unclassified appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the division of culture and history and in accordance with the provisions of chapter five-a, article three, and chapter twelve of the code.

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

49-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2006 Org 0433

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$916,543</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>229,809</td>
</tr>
<tr>
<td>5</td>
<td>Services to Blind and Handicapped</td>
<td>181</td>
<td>38,456</td>
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<tr>
<td>6</td>
<td>BRIM Premium</td>
<td>913</td>
<td>30,294</td>
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<td>7</td>
<td>Total</td>
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<td>$1,610,491</td>
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</tbody>
</table>

50-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2006 Org 0439

<table>
<thead>
<tr>
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<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$2,928,839</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>65,100</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>1,036,338</td>
</tr>
</tbody>
</table>
These funds may be transferred to special revenue accounts for matching college, university, city, county, federal and/or other generated revenues.

The Educational Broadcasting Authority is to continue assistance to the Allegheny Mountain Radio/WVNR.

51-State Board of Rehabilitation -
Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2006 Org 0932

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Activity</th>
<th>FY 2006</th>
<th>FY 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$6,439,836</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>134,049</td>
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<tr>
<td>3</td>
<td>Independent Living Services</td>
<td>009</td>
<td>24,000</td>
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<td>4</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,776,615</td>
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<tr>
<td>5</td>
<td>Workshop Development</td>
<td>163</td>
<td>1,816,149</td>
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<tr>
<td>6</td>
<td>Supported Employment</td>
<td></td>
<td></td>
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<tr>
<td>7</td>
<td>Extended Services</td>
<td>206</td>
<td>119,032</td>
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<tr>
<td>8</td>
<td>Ron Yost Personal Assistance Fund (R)</td>
<td>407</td>
<td>340,000</td>
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<tr>
<td>9</td>
<td>Employment Attendant Care Program</td>
<td>598</td>
<td>179,000</td>
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</tr>
<tr>
<td>10</td>
<td>Capital Outlay, Repairs and Equipment</td>
<td>589</td>
<td>0</td>
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</tr>
<tr>
<td>11</td>
<td>BRIM Premium</td>
<td>913</td>
<td>80,139</td>
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</tr>
<tr>
<td>12</td>
<td>Total</td>
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<td>$11,908,820</td>
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</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for the Ron Yost Personal Assistance Fund (fund 0310, activity 407) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.
Any unexpended balance remaining in the appropriation for Technology-Related Assistance Revolving Loan Fund for Individuals with Disabilities (fund 0310, activity 766) is hereby reappropriated for expenditure during the fiscal year 2006 and may be transferred to a special account for the purpose of disbursement or loan.

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION

52-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2006 Org 0311

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<tr>
<td>Annual Increment</td>
<td>004</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>$ 21,971</td>
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<tr>
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<td>099</td>
<td>$ 44,870</td>
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</tbody>
</table>

53-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2006 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 3,050,647</td>
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</tbody>
</table>

*Clerk's Note:* The Governor struck language on line 23 through line 29.
Ch. 16] APPROPRIATIONS 141

2 Annual Increment ................. 004 52,532
3 Employee Benefits ................. 010 1,112,025
4 West Virginia’s Contribution to the
5 Interstate Commission on
6Potomac River Basin ............... 091 38,493
7 West Virginia’s Contribution to the
8Ohio River Valley Water
9Sanitation Commission ............ 092 109,992
10Unclassified ....................... 099 1,284,533
11Dam Safety ......................... 607 202,425
12Office of Water Resources
13Non-Enforcement Activity ....... 855 1,100,525
14BRIM Premium ..................... 913 34,431
15Welch DEP Office Continuing
16Operation ......................... 993 79,115
17Total ........................ $ 7,064,718

54-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2006 Org 0325

1 Unclassified ....................... 099 $ 103,810
2 BRIM Premium ..................... 913 3,124
3 Total ........................ $ 106,934

DEPARTMENT OF HEALTH AND
HUMAN RESOURCES

55-Department of Health and Human Resources-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2006 Org 0501

1 Unclassified-Total .................. 096 $ 138,695
### Appropriations

**56-Division of Health**

**Central Office**

(WV Code Chapter 16)

Fund **0407 FY 2006 Org 0506**

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<td>Women’s Right to Know</td>
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<td>Pediatric Dental Services</td>
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<td>Vaccine for Children</td>
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<td>Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (R)</td>
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<td>29</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 0407, fiscal year 1997, activity 099) and Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, activity 575) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

From the Unclassified line item, $50,000 shall be expended for the West Virginia Aids Coalition.

From the Maternal and Child Health Clinics, Clinicians, and Medical Contracts and Fees line item, $400,000 shall be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund.

Included in the above appropriation for Primary Care Centers-Mortgage Finance is $50,000 for the mortgage payment for the Lincoln Primary Care Center, Inc.; $53,140 for the mortgage payment for the Monroe Health Center; $42,564 for the mortgage payment for Roane County Family Health Care, Inc.; $25,000 for the mortgage payment for the Tug River Health Association, Inc.; $48,000 for the mortgage payment for the Primary Care Systems (Clay); $10,800 for the mortgage payment for the Belington Clinic; $30,000 for the mortgage payment for the Tri-County Health Clinic; $15,000 for the mortgage payment for Valley Health Care (Randolph); $58,560 for the mortgage payment for Valley Health Systems, Inc. (Woman's Place and Harts Health Clinic); $46,958 for the
mortgage payment for Ritchie County Primary Care Association, Inc.; $8,000 for the mortgage payment for Northern Greenbrier Health Clinic; $12,696 for the mortgage payment for the Women's Care, Inc. (Putnam); $25,000 for the mortgage payment for the Preston-Taylor Community Health Centers, Inc.; $20,000 for the mortgage payment for the North Fork Clinic (Pendleton); $40,000 for the mortgage payment for the Pendleton Community Care; $27,000 for the mortgage payment for South Branch Health Facility (Upper Tract); $38,400 for the mortgage payment for Clay-Battelle Community Health Center; $33,600 for the mortgage payment for Mountaineer Health Clinic in Paw Paw; $13,000 for the mortgage payment for the St. George Medical Clinic; and $54,000 for the mortgage payment for the Shenandoah Valley Medical Systems, Inc.

57-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 0525 FY 2006 Org 0506

<table>
<thead>
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<th>Item</th>
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<td>Special Olympics</td>
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<td>Behavioral Health Program-</td>
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<td>Unclassified (R)</td>
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<td>Colin Anderson Community</td>
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<td>Renaissance Program</td>
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Any unexpended balances remaining in the appropriations for Behavioral Health Program-Unclassified (fund 0525,
activity 219) and Colin Anderson Community Placement (fund 0525, activity 803) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006, with the exception of fund 0525, fiscal year 2001, activity 219; fund 0525, fiscal year 2000, activity 803; and fund 0525, fiscal year 2001, activity 803, which shall expire on June 30, 2005.

The secretary of the department of health and human resources, prior to the beginning of the fiscal year, shall file with the legislative auditor and the department of revenue an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation for Institutional Facilities Operations. The secretary shall also, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of revenue an itemized report of expenditures made during the preceding six-month period.

From the Colin Anderson Community Placement (fund 0525, activity 803) funds may be both expended for the community placement costs of the Colin Anderson clients and transferred to the Medical Services Program Fund to pay the Medicaid state share of the Medicaid cost of Colin Anderson clients in the community.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health-hospital services revenue account (fund 5156, activity 335) and tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2005, the sum of one hundred sixty 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.
Additional funds have been appropriated in fund 5124, fiscal year 2006, organization 0506 and fund 5156, fiscal year 2006, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

58-Division of Health-

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2006 Org 0506

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

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

59-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2006 Org 0510

1 Personal Services ....................... 001 $ 667,467
2 Annual Increment ......................... 004 16,000
3 Employee Benefits ....................... 010 227,238
4 Unclassified ............................. 099 258,760
5 BRIM Premium ............................ 913 20,668
6 Total ..................................... $ 1,190,133
### Ch. 16] APPROPRIATIONS

#### 60-Division of Human Services

(WV Code Chapters 9, 48 and 49)

**Fund 0403 FY 2006 Org 0511**

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<td>16,731,576</td>
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<td>Medical Services Contracts and Office of Managed Care</td>
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<td>Social Services</td>
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<td>Family Preservation Program</td>
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<td>Family Resource Networks</td>
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<td>Domestic Violence Legal Services Fund</td>
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<td>150,000</td>
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<tr>
<td>James “Tiger” Morton Catastrophic Illness Fund</td>
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<td>Child Protective Services Case Workers</td>
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<td>Medical Services Trust Fund Transfer</td>
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<td>Child Welfare System</td>
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<td>Commission for the Deaf and Hard of Hearing</td>
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<td>Child Support Enforcement</td>
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<td>Medicaid Auditing</td>
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<td>Child Care-Maintenance of Effort and Match</td>
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<td>Grants for Licensed Domestic Violence Programs and Statewide Prevention</td>
<td>750</td>
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Any unexpended balances remaining in the appropriations for Indigent Burials (fund 0403, activity 851) and Medical Services (fund 0403, activity 189) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

The above appropriation for James "Tiger" Morton Catastrophic Illness Fund (activity 455) shall be transferred to the James "Tiger" Morton Catastrophic Illness Fund (fund 5454) as provided by chapter sixteen, article five-q, of the code.

From the above appropriation for Medical Services (fund 0403, activity 189) an amount not to exceed $15,000,000 may be transferred to the Division of Health—Tobacco Settlement Expenditure Fund—Institutional Facilities Operations (fund 5124, activity 335) in order to offset any cash flow shortfalls that may occur due to the timing of deposits into the Tobacco Settlement Expenditure Fund. Any funds so transferred from fund 0403 to fund 5124 shall be reimbursed to fund 0403 no later than June 1, 2006.

The above appropriation for Domestic Violence Legal Services Fund (activity 384) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the department of health and human resources shall have the authority to transfer funds within the above account: Provided, That no more than five percent of the funds appropriated to one line item may be transferred to other line items: Provided, however, That no funds from other line items shall be transferred to the personal services line item.
From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (activity 750), $500,000 shall be divided equally and distributed among the thirteen (13) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV).

Any unexpended balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (activity 750), shall be distributed according to the formula established by the Family Protection Services Board.

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

The above appropriation for Family Resource Networks (activity 274) is to be subject to the control and oversight of the Governor’s Cabinet on Children and Families and may only be administered and disbursed by the Division of Human Services upon the delegation of this authority to the Division of Human Services by the Governor’s Cabinet on Children and Families as provided by West Virginia Code §5-26-4(4) for the benefit of family resource networks, early parent education services and starting points centers.

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

61-Department of Military Affairs and Public Safety-

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2006 Org 0601

1 Unclassified (R) ...................... 099 $ 530,697
Any unexpended balance remaining in the appropriation for Unclassified (fund 0430, activity 099) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

62-Adjutant General-

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2006 Org 0603

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<td>Mountaineer ChalleNGe Academy</td>
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<td>7</td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, activity 099) and Armory Capital Improvements—Surplus (fund 0433, activity 325) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

Should the appropriation for College Education Fund (fund 0433, activity 232) be insufficient to cover such costs, the remainder of such cost may be transferred from Unclassified (fund 0433, activity 099).

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

63-Adjutant General-

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2006 Org 0603

1 Unclassified—Total .................. 096 $ 200,000

64-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2006 Org 0605

1 Personal Services .................... 001 $ 155,149
2 Annual Increment .................... 004 1,744
3 Employee Benefits ................... 010 142,202
4 Unclassified ........................ 099 146,298
5 Salaries of Members of West Virginia Parole Board ................. 227 225,000
6 BRIM Premium ....................... 913 16,670
8 Total ................................ 687,063

65-Office of Emergency Services

(WV Code Chapter 15)

Fund 0443 FY 2006 Org 0606

1 Personal Services .................... 001 $ 0
2 Annual Increment .................... 004 0
3 Employee Benefits ................... 010 0
4 Unclassified ........................ 099 0
5 Federal Emergency Management  
6 Agency Match (R) .............. 188 0  
7 Radiological Emergency Preparedness  . 554 25,600  
8 Federal Funds/Grant Match ........... 749 634,748  
9 Early Warning Flood System .......... 877 325,584  
10 BRIM Premium ................... 913 16,771  

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Any unexpended balances remaining in the appropriations for Federal Emergency Management Agency Match (fund 0443, activity 188), Flood Reparations (fund 0443, activity 400) and Homeland Security Grant Match—Surplus (fund 0443, activity 957) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

66-Division of Corrections-

Central Office

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

Fund 0446 FY 2006 Org 0608

<p>| | | |</p>
<table>
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<td>Annual Increment</td>
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<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
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</table>

5 Total $ 582,785

Any unexpended balance remaining in the appropriation for Management Information System (fund 0446, activity 398) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

67-Division of Corrections-

Correctional Units
Fund 0450 FY 2006 Org 0608

1 Unclassified ........................... 099 $ 896,204
2 Employee Benefits ...................... 010 356,824
3 Charleston Work Release .............. 456 858,707
4 Beckley Correctional Center .......... 490 888,822
5 Huntington Work Release .............. 495 719,188
6 Anthony Center ......................... 504 4,117,209
7 Huttonsville Correctional Center ...... 514 14,872,913
8 Northern Correctional Facility ....... 534 6,030,738
9 Inmate Medical Expenses .............. 535 15,951,767
10 Pruntytown Correctional Center ...... 543 5,875,422
11 Payments to Federal, County and/or  
   Regional Jails ......................... 555 17,168,500
12 Corrections Academy .................... 569 1,031,825
13 Martinsburg Correctional Center ...... 663 3,389,500
14 Parole Services ......................... 686 1,997,657
15 Special Services ....................... 687 2,097,684
16 Stephens Correctional Facility ...... 791 3,709,125
17 St. Mary’s Correctional Facility .... 881 10,846,087
18 Denmar Correctional Facility ......... 882 3,669,851
19 Ohio County Correctional Facility .... 883 1,190,321
20 Mt. Olive Correctional Facility ...... 888 16,802,229
21 Lakin Correctional Facility .......... 896 7,502,797
22 BRIM Premium ........................... 913 1,413,956
23 Total .................................... $121,387,326

Any unexpended balance remaining in the appropriation for  
Inmate Medical Expenses—Surplus(fund 0450, activity 846) at  
the close of the fiscal year 2005 is hereby reappropriated for  
expenditure during the fiscal year 2006.

The commissioner of corrections shall within fifteen days  
after the close of each six-month period of said fiscal year, file
with the legislative auditor and the department of revenue an
itemized report of expenditures made during the preceding
six-month period. Such report shall include the total of expendi-
tures made for personal services, annual increment, current
expenses (inmate medical expenses and other), repairs and
alterations and equipment. The commissioner of corrections
shall also have the authority to transfer between line items
appropriated to the individual correctional units above and may
transfer funds from the individuals units to Payments to
Federal, County and/or Regional Jails (fund 0450, activity 555)
or the Inmate Medical Expenses (fund 0450, activity 535).

From the above appropriation to Unclassified, on July 1,
2005, the sum of three hundred 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.

68-West Virginia State Police
(WV Code Chapter 15)

Fund 0453 FY 2006 Org 0612

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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>199,150</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>6,856,622</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>6,413,158</td>
</tr>
<tr>
<td>Vehicle Purchase</td>
<td>451</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Barracks Maintenance and Construction (R)</td>
<td>494</td>
<td>500,000</td>
</tr>
<tr>
<td>Trooper Class (R)</td>
<td>521</td>
<td>3,815,177</td>
</tr>
<tr>
<td>Barracks Lease Payments</td>
<td>556</td>
<td>440,088</td>
</tr>
<tr>
<td>Communications and Other Equipment (R)</td>
<td>558</td>
<td>1,013,285</td>
</tr>
<tr>
<td>Trooper Retirement Fund</td>
<td>605</td>
<td>9,554,158</td>
</tr>
</tbody>
</table>
Any unexpended balances remaining in the appropriations for Barracks Maintenance and Construction (fund 0453, activity 494), Trooper Class (fund 0453, activity 521) and Communications and Other Equipment (fund 0453, activity 558) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

*From the above appropriation for Barracks Maintenance and Construction, the sum of $250,000 shall be utilized for the construction of a new detachment in Calhoun County, provided that the Calhoun County Board of Education is willing to donate the land for the site to the State Police, and provided further that any site preparation needed on the site shall be completed as part of the donation:

69-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 0456 FY 2006 Org 0613

1 Personal Services .................. 001 $ 926,723
2 Annual Increment .................. 004 30,130
3 Employee Benefits .................. 010 408,326
4 Unclassified ...................... 099 80,517
5 Veterans’ Field Offices ............. 228 175,985
6 Veterans’ Nursing Home ............ 286 1,640,500
7 Veterans’ Toll Free Assistance Line . 328 5,000
8 Veterans’ Reeducation Assistance (R) . 329 211,604
9 Veterans’ Grant Program (R) ....... 342 150,000

*CLERK’S NOTE: The Governor struck language on line 24 through line 30.
10 Memorial Day Patriotic Exercise ........ 697  20,000
11 BRIM Premium .......................... 913  27,978
12 Total .................................... $ 3,676,763

Any unexpended balances remaining in the appropriations for Veterans’ Reeducation Assistance (fund 0456, activity 329), Veterans’ Grant Program (fund 0456, activity 342), Women’s Veterans’ Monument (fund 0456, activity 385) and Veterans’ Monuments (fund 0456, activity 817) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

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

70—Division of Veterans’ Affairs—

Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2006 Org 0618

1 Personal Services ...................... 001 $ 668,646
2 Annual Increment ....................... 004 15,100
3 Employee Benefits ..................... 010 328,781
4 Unclassified ............................ 099 36,735
5 Total .................................. $ 1,049,262

71—Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2006 Org 0619

1 Safe Schools Hotline—Total ............ 093 $ 200,000
72-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 0546 FY 2006 Org 0620

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services</td>
<td>001 $236,236</td>
</tr>
<tr>
<td>2  Annual Increment</td>
<td>004 3,645</td>
</tr>
<tr>
<td>3  Employee Benefits</td>
<td>010 81,958</td>
</tr>
<tr>
<td>4  Unclassified</td>
<td>099 129,583</td>
</tr>
<tr>
<td>5  Community Corrections</td>
<td>561 800,000</td>
</tr>
<tr>
<td>6  Statistical Analysis Program</td>
<td>597 48,607</td>
</tr>
<tr>
<td>7  BRIM Premium</td>
<td>913 1,725</td>
</tr>
<tr>
<td>8  Total</td>
<td>$1,301,754</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Community Corrections—Surplus(fund 0546, activity 060) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

73-Division of Juvenile Services

(WV Code Chapter 49)

Fund 0570 FY 2006 Org 0621

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Robert L. Shell Juvenile Center (R)</td>
<td>267 $1,912,727</td>
</tr>
<tr>
<td>2  Central Office (R)</td>
<td>701 2,170,145</td>
</tr>
<tr>
<td>3  Southern WV Youth Diagnostic Center</td>
<td>792 1,889,284</td>
</tr>
<tr>
<td>4  Gene Spadaro Juvenile Center</td>
<td>793 1,906,673</td>
</tr>
<tr>
<td>5  BRIM Premium</td>
<td>913 40,079</td>
</tr>
<tr>
<td>6  WV Industrial Home for Youth (R)</td>
<td>979 10,468,312</td>
</tr>
<tr>
<td>7  Davis Center (R)</td>
<td>980 2,276,827</td>
</tr>
<tr>
<td>8  Eastern Regional Juvenile Center (R)</td>
<td>981 1,396,110</td>
</tr>
<tr>
<td>9  Northern Regional Juvenile Center (R)</td>
<td>982 1,195,265</td>
</tr>
<tr>
<td>10 North Central Regional Juvenile Center (R)</td>
<td>983 1,692,967</td>
</tr>
</tbody>
</table>
12 Southern Regional Juvenile Center (R) . 984 1,753,346
13 Tiger Morton Center (R) ............... 985 1,872,226
14 Donald R. Kuhn Juvenile Center (R) . 986 1,685,623
15 J.M. "Chick" Buckbee
16 Juvenile Center (R) .................... 987 1,833,967
17 Salem Canine (R) ....................... 988 88,491
18 Davis Canine (R) ....................... 989 84,451
19 The Academy (R) ....................... 990 129,722
20 Total .................................. $32,396,215

21 Any unexpended balances remaining in the appropriations
22 for Unclassified (fund 0570, activity 099), Robert L. Shell
23 Juvenile Center (fund 0570, activity 267), Donald R. Kuhn
24 Diagnostic Center (fund 0570, activity 283) Central Office
25 (fund 0570, activity 701), WV Industrial Home for Youth (fund
26 0570, activity 979), Davis Center (fund 0570, activity 980),
27 Eastern Regional Juvenile Center (fund 0570, activity 981),
28 Northern Regional Juvenile Center (fund 0570, activity 982),
29 North Central Regional Juvenile Center (fund 0570, activity
30 983), Southern Regional Juvenile Center (fund 0570, activity
31 984), Tiger Morton Center (fund 0570, activity 985), Donald R.
32 Kuhn Juvenile Center (fund 0570, activity 986), J.M. "Chick"
33 Buckbee Juvenile Center (fund 0570, activity 987), Salem
34 Canine (fund 0570, activity 988), Davis Canine (fund 0570, activity 989), The Academy (fund 0570, activity 990), and Mt.
35 Hope Juvenile Center (fund 0570, activity 991) at the close of
36 the fiscal year 2005 are hereby reappropriated for expenditure
37 during the fiscal year 2006.
38
39 From the above appropriation to Unclassified, on July 1,
40 2005, the sum of fifty thousand dollars shall be transferred to
41 the department of agriculture-land division as advance payment
42 for the purchase of food products; actual payments for such
43 purchases shall not be required until such credits have been
44 completely expended.
The director of juvenile services shall also have the
authority to transfer between line items appropriated to the
individual juvenile centers above.

74-Division of Protective Services
(WV Code Chapter 5F)

Fund 0585 FY 2006 Org 0622

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$915,411</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>9,650</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>363,998</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>514,518</td>
</tr>
<tr>
<td>5</td>
<td>BRIM Premium</td>
<td>913</td>
<td>8,043</td>
</tr>
<tr>
<td>6</td>
<td>Total</td>
<td></td>
<td>$1,811,620</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations
for Equipment (fund 0585, activity 070) and Unclassified (fund
0585, activity 099) at the close of the fiscal year 2005 are
hereby reappropriated for expenditure during the fiscal year
2006.

DEPARTMENT OF REVENUE

75-Office of the Secretary
(WV Code Chapter 11)

Fund 0465 FY 2006 Org 0701

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>$625,283</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for
Unclassified—Total (fund 0465, activity 096) at the close of the
fiscal year 2005 is hereby reappropriated for expenditure during
the fiscal year 2006.
### 76-Tax Division

(WV Code Chapter 11)

**Fund 0470 FY 2006 Org 0702**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services (R)</td>
<td>001</td>
<td>$12,070,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>259,060</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits (R)</td>
<td>010</td>
<td>4,503,968</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>5,925,469</td>
</tr>
<tr>
<td>5</td>
<td>GIS Development Project (R)</td>
<td>562</td>
<td>150,000</td>
</tr>
<tr>
<td>6</td>
<td>Remittance Processor (R)</td>
<td>570</td>
<td>381,015</td>
</tr>
<tr>
<td>7</td>
<td>Multi State Tax Commission</td>
<td>653</td>
<td>77,958</td>
</tr>
<tr>
<td>8</td>
<td>BRIM Premium</td>
<td>913</td>
<td>13,819</td>
</tr>
<tr>
<td>9</td>
<td>Total</td>
<td></td>
<td><strong>$23,381,289</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Personal Services (fund 0470, activity 001), Employee Benefits (fund 0470, activity 010), Tax Technology Upgrade (fund 0470, activity 094), Unclassified-Surplus (fund 0470, activity 097), Unclassified (fund 0470, activity 099), Tax Technology Upgrade-Surplus (fund 0470, activity 450) GIS Development Project (fund 0470, activity 562) and Remittance Processor (fund 0470, activity 570) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

### 77-State Budget Office

(WV Code Chapter 11B)

**Fund 0595 FY 2006 Org 0703**

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>$1,052,333</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified—Total(fund 0595, activity 096) at the close of the
fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

78-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2006 Org 0709

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>$ 650,564</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified—Total (fund 0593, activity 096) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

79-Division of Professional and Occupational Licenses-

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2006 Org 0933

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$ 20,000</td>
</tr>
</tbody>
</table>

DEPARTMENT OF TRANSPORTATION

80-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2006 Org 0804

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$ 2,929,840</td>
</tr>
<tr>
<td>2</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$ 242,974</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$ 3,172,814</td>
</tr>
</tbody>
</table>
From the above appropriation, $30,000 shall be expended for improvements at the Duffield Station and $20,000 shall be expended for the Potomac Eagle Railroad.

81-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2006 Org 0805

<table>
<thead>
<tr>
<th>Fund/Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$1,258,342</td>
</tr>
<tr>
<td>Federal Funds/Grant Match</td>
<td>1,000,000</td>
</tr>
<tr>
<td>Total</td>
<td>$2,258,342</td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 0510, activity 099), Grant Match (fund 0510, activity 388) and Federal Funds/Grant Match (fund 0510, activity 749) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

82-Public Port Authority

(WV Code Chapter 17)

Fund 0581 FY 2006 Org 0806

<table>
<thead>
<tr>
<th>Fund/Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$430,217</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>7,139</td>
</tr>
<tr>
<td>Total</td>
<td>$437,356</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 0581, activity 096) and Unclassified (fund 0581, activity 099) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

*CLERK'S NOTE: The Governor struck language on line 4 through line 6.
### Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2006 Org 0807

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Fund 0582 FY 2006</th>
<th>Unexpended Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>099</td>
<td>Unclassified (R)</td>
<td>$1,364,594</td>
<td>$1,469,852</td>
</tr>
<tr>
<td>234</td>
<td>Civil Air Patrol</td>
<td>$105,258</td>
<td>$105,258</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$1,469,852</strong></td>
<td></td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified (fund 0582, activity 099) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

From the above appropriation for Unclassified, the sum of $110,000 shall be distributed equally to each of the eleven local Civil Air patrol Squadrons.

### Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2006 Org 0508

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Fund 0420 FY 2006</th>
<th>Unexpended Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$125,099</td>
<td></td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>$2,550</td>
<td></td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>$58,773</td>
<td></td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td>$348,931</td>
<td></td>
</tr>
<tr>
<td>202</td>
<td>Silver Haired Legislature</td>
<td>$15,000</td>
<td></td>
</tr>
<tr>
<td>203</td>
<td>Area Agencies Administration</td>
<td>$78,685</td>
<td></td>
</tr>
<tr>
<td>565</td>
<td>Alzheimers Respite Care</td>
<td>$0</td>
<td></td>
</tr>
<tr>
<td>643</td>
<td>Roger Tompkins Alzheimers Respite Care</td>
<td>$250,000</td>
<td></td>
</tr>
<tr>
<td>913</td>
<td>BRIM Premium</td>
<td>$7,539</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>$886,577</strong></td>
<td></td>
</tr>
</tbody>
</table>
## HIGHER EDUCATION

85-West Virginia Council for Community and Technical College Education-

**Control Account**

(WV Code Chapter 18B)

Fund 0596 FY 2006 Org 0420

<table>
<thead>
<tr>
<th>Institution</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>New River Community and Technical College of Bluefield State College</td>
<td>358</td>
<td>$4,070,750</td>
</tr>
<tr>
<td>West Virginia Council for Community and Technical Education (R)</td>
<td>392</td>
<td>704,000</td>
</tr>
<tr>
<td>Eastern West Virginia Community and Technical College</td>
<td>412</td>
<td>1,967,728</td>
</tr>
<tr>
<td>Fairmont State Community and Technical College</td>
<td>421</td>
<td>7,707,985</td>
</tr>
<tr>
<td>Shepherd Community and Technical College</td>
<td>434</td>
<td>2,353,772</td>
</tr>
<tr>
<td>West Virginia State Community and Technical College</td>
<td>445</td>
<td>3,015,577</td>
</tr>
<tr>
<td>Southern West Virginia Community and Technical College</td>
<td>446</td>
<td>7,675,626</td>
</tr>
<tr>
<td>West Virginia Northern Community and Technical College</td>
<td>447</td>
<td>5,823,188</td>
</tr>
<tr>
<td>West Virginia University - Parkersburg</td>
<td>471</td>
<td>8,209,692</td>
</tr>
<tr>
<td>West Virginia University Institute for Technology Community and Technical College</td>
<td>486</td>
<td>3,216,857</td>
</tr>
<tr>
<td>Marshall Community and Technical College</td>
<td>487</td>
<td>5,338,983</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$50,084,158</td>
</tr>
</tbody>
</table>


Any unexpended balances remaining in the appropriation for the West Virginia Council for Community and Technical Education (fund 0596, activity 392) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

* Included in the above appropriation for Southern West Virginia Community and Technical College is $373,774 for the Marshall University—Southern WV Community and Technical College 2+2 Program, $98,912 for delivery of the associate degree nursing program to Eastern WV Community and Technical College, and $25,000 for the Appleread Program.

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

86-Higher Education Policy Commission-
Administration-
Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2006 Org 0441

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>FY 2006 Org 0441</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,891,511</td>
</tr>
<tr>
<td>WVNET</td>
<td>169</td>
<td>1,851,198</td>
</tr>
<tr>
<td>PROMISE Scholarship—Transfer</td>
<td>800</td>
<td>0</td>
</tr>
<tr>
<td>VISTA E-Learning</td>
<td>519</td>
<td>300,000</td>
</tr>
<tr>
<td>BRIM Premium</td>
<td>913</td>
<td>66,509</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$4,109,218</td>
</tr>
</tbody>
</table>

*CLERK'S NOTE: The Governor struck language on line 30 through line 35.
Any unexpended balances remaining in the appropriations for Vice Chancellor for Health Sciences-Rural Health Initiative Program and Site Support (fund 0589, activity 595), Vice Chancellor for Health Sciences-Rural Health Residency Program (fund 0589, activity 601) and HEAPS Grant Program (fund 0589, activity 867) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

87-Higher Education Policy Commission-

System-

Control Account

(WV Code Chapter 18B)

Fund 0586 FY 2006 Org 0442

1 WVU School of Health Science -
2 Eastern Division .................. 056  $ 1,560,000
3 Marshall Medical School .......... 173  8,795,407
4 WVU—School of Health Sciences ... 174  7,476,474
5 WVU School of Health Sciences -
6 Charleston Division .............. 175  2,000,236
7 Primary Health Education Medical School
8 Program Support (R) ............. 177  2,111,012
9 Bluefield State College .......... 408  4,511,024
10 Concord University ............... 410  8,607,893
11 Fairmont State University ...... 414  11,253,604
12 Glenville State College ......... 428  5,355,866
13 Shepherd University ............ 432  8,681,863
14 West Liberty State College ...... 439  8,358,965
15 West Virginia State University .. 441  9,063,413
16 Marshall University ............. 448  40,655,161
17 Marshall University Medical School
18 BRIM Subsidy .................. 449  931,452
19 West Virginia University .................. 459 100,876,348
20 West Virginia University School of Medicine BRIM Subsidy .......... 460 1,558,840
21 West Virginia University Institute for Technology .................. 479 5,992,241
22 West Virginia University—Potomac State .............................. 994 4,459,074
23 State Priorities-Brownfield Professional Development .................. 531 800,000
24 Total ........................................ $233,048,873

Any unexpended balances remaining in the appropriations for Primary Health Education Medical School Program Support (fund 0586, activity 177), Jackson’s Mill (fund 0586, activity 461) and Jackson’s Mill-Surplus (fund 0586, activity 842) at the close of fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

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

* Included in the above appropriation for WVU—School of Health Sciences is $511,105 for the WVU Charleston Division Poison Control Hotline. This amount shall be enhanced by an allocation for the director’s salary as well as in-kind assistance.

* CLERK’S NOTE: The Governor struck language on line 46 through line 79.
These amounts shall be allocated equally among the four quarters of the fiscal year for disbursement to the WVU Charleston Division Poison Control Hotline. Also included is $800,000 for the Blanchette Rockefeller Project.

Included in the above appropriation for West Virginia University is $34,500 for the Marshall and WVU Faculty and Course Development International Study Project, $246,429 for the WVU Law School—Skills Program, $147,857 for the WVU Coal and Energy Research Bureau, $19,714 for the WVU College of Engineering and Mineral Resources—Diesel Training—Transfer, $165,000 for the WVU-Sheep Study/Potomac Equine Program, $500,000 for the Mining Engineering Program, $150,000 for the Center for Multiple Sclerosis Program, $500,000 for Reedsville Farm, $100,000 for the WVU-Soil Testing Program, $100,000 for a veterinarian, and $100,000 for the rifle team.

Included in the above appropriation for Marshall Medical School is $417,351 for the Marshall University Forensic Lab and $175,061 for the Marshall University Center for Rural Health.

Included in the above appropriation for Marshall University is $181,280 for the Marshall University-Southern WVCTC 2+2 Program and $795,597 for the Marshall University Autism Training Center.

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

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

Included in the above appropriation for WVU-Potomac State is $500,000 for maintenance, repairs and equipment.
The institutions operating from special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

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

88-Higher Education Policy Commission-

Health Sciences-

Control Account

(WV Code Chapter 18B)

Fund 0590 FY 2006 Org 0477

Any unexpended balances remaining in the appropriations for Primary Health Education Medical School Program Support (fund 0590, activity 177), WVU Charleston Division-Poison Control Hot Line (fund 0590, activity 510), Capital Outlay and Equipment (fund 0590, activity 542) and Rural Health Initiative Site Support Program (fund 0590, activity 853) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

89-Higher Education Policy Commission--

Legislative--

Funding Priorities
Any unexpended balances remaining in the appropriations for Higher Education—Special Projects (fund 0591, activity 488), Independently Accredited Community and Technical College Development (fund 0591, activity 491) and Research Challenge (fund 0591, activity 502) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

The above appropriation shall be allocated only to the State’s post-secondary institutions with compacts approved by the Higher Education Policy Commission or West Virginia Council for Community and Technical College Education, as stated in §18B-1A-5.

Sec. 2. Appropriations from state road fund.-From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in article two, chapter eleven-b of the code the following amounts, as itemized, for expenditure during the fiscal year two thousand six.

DEPARTMENT OF TRANSPORTATION

90-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20 and 24A)
<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>$13,232,017</td>
</tr>
<tr>
<td>004</td>
<td>210,425</td>
</tr>
<tr>
<td>010</td>
<td>5,684,394</td>
</tr>
<tr>
<td>099</td>
<td>17,772,772</td>
</tr>
<tr>
<td></td>
<td>$36,899,608</td>
</tr>
</tbody>
</table>

91-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2006 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>040</td>
<td>$50,000,000</td>
</tr>
<tr>
<td>237</td>
<td>249,700,000</td>
</tr>
<tr>
<td>272</td>
<td>50,000,000</td>
</tr>
<tr>
<td>273</td>
<td>30,000,000</td>
</tr>
<tr>
<td>275</td>
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<tr>
<td>276</td>
<td>15,000,000</td>
</tr>
<tr>
<td>277</td>
<td>44,500,000</td>
</tr>
<tr>
<td>278</td>
<td>80,000,000</td>
</tr>
<tr>
<td>279</td>
<td>300,700,000</td>
</tr>
<tr>
<td>280</td>
<td>170,000,000</td>
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<tr>
<td>281</td>
<td>25,000,000</td>
</tr>
<tr>
<td>282</td>
<td>1,755,000</td>
</tr>
<tr>
<td>345</td>
<td>4,566,000</td>
</tr>
<tr>
<td>345</td>
<td>$1,023,221,000</td>
</tr>
</tbody>
</table>

16 The above appropriation for PSC Weight Enforcement (activity 345) shall be transferred to the Public Service Commission Fund (fund 8623).
The above appropriations are to be expended in accordance with the provisions of chapters seventeen and seventeen-c of the code.

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

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

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

*From the above appropriation, $125,000 is for King Coal Highway Authority, $125,000 is for Coal Field Expressway Authority, $100,000 is for Coal Heritage Highway Authority, $100,000 is for Coal Heritage Area Authority, $25,000 is for Little Kanawha River Parkway, $50,000 is for Midland Trail Scenic Highway Association, 57,000 is for Shawnee Parkway

*CLERK'S NOTE: The Governor struck language on line 44 through line 58.
50 Authority, $100,000 is for Corridor G Highway Authority and
51 $125,000 is for Corridor H Authority.

52 Additionally, the department shall assist the Federal
53 Government in the construction, engineering and financing of
54 an access road to the Beckley Veterans Administration Medical
55 center and participate, along with local and federal government-
56 tal entities, on the design, engineering and financing of the
57 building of the Raleigh County Emergency Services Authority’s
58 911 Center.

59 Total TITLE II, Section 2-
60 State Road Fund ............... $ 1,060,326,063

1 Sec. 3. Appropriations from other funds.-From the funds
2 designated there are hereby appropriated conditionally upon the
3 fulfillment of the provisions set forth in article two, eleven-b of
4 the code the following amounts, as itemized, for expenditure
5 during the fiscal year two thousand six.

LEGISLATIVE

92-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2006 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Other Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001 $214,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004 5,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010 73,500</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099 55,500</td>
</tr>
<tr>
<td>Economic Loss Claim</td>
<td></td>
</tr>
<tr>
<td>Payment Fund (R)</td>
<td>334 2,921,500</td>
</tr>
<tr>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>

$ 3,269,500
Any unexpended balance remaining in the appropriation for Economic Loss Claim Payment Fund (fund 1731, activity 334) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

EXECUTIVE

93-Chief Technology Officer Administration Fund

(WV Code Chapter 5)

Fund 1028 FY 2006 Org 0100

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$1,872,961</td>
</tr>
<tr>
<td>EPSCoR</td>
<td>571</td>
<td>$150,000</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,022,961</td>
</tr>
</tbody>
</table>

94-Auditor's Office

Land Operating Fund

(WV Code Chapters 11A, 12 and 36)

Fund 1206 FY 2006 Org 1200

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$239,629</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>$7,500</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>$86,381</td>
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<tr>
<td>Unclassified</td>
<td>099</td>
<td>$503,416</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$836,926</td>
</tr>
</tbody>
</table>

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to pay the direct expenses relating to land sales as provided in chapter eleven-a of the West Virginia Code.
The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by law.

95-Auditor’s Office-

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2006 Org 1200

1 Personal Services ....................... 001 $ 1,061,298  
2 Annual Increment ....................... 004 14,700  
3 Employee Benefits ...................... 010 342,940  
4 Unclassified ........................... 099 1,402,017  
5 Total ................................. $ 2,820,955  

96-Auditor’s Office-

Technology Support and Acquisition

(WV Code Chapter 12)

Fund 1233 FY 2006 Org 1200

1 Unclassified-Total ...................... 096 $ 747,368  
2 Fifty percent of the deposits made into this fund shall be transferred to the Treasurer’s Office-Technology Support and Acquisition(fund 1329, org 1300) for expenditure for the purposes described in West Virginia Code § 12-3-10c.

97-Auditor’s Office-

Purchasing Card Administration Fund

(WV Code Chapter 12)
<table>
<thead>
<tr>
<th>Fund 1234 FY 2006 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified-Total</td>
</tr>
</tbody>
</table>

98-Auditor’s Office-
Office of the Chief Inspector
(WV Code Chapter 6)

<table>
<thead>
<tr>
<th>Fund 1235 FY 2006 Org 1200</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services</td>
</tr>
<tr>
<td>2  Annual Increment</td>
</tr>
<tr>
<td>3  Employee Benefits</td>
</tr>
<tr>
<td>4  Unclassified</td>
</tr>
<tr>
<td>5  Total</td>
</tr>
</tbody>
</table>

99-Treasurer’s Office-
Technology Support and Acquisition
(WV Code Chapter 12)

<table>
<thead>
<tr>
<th>Fund 1329 FY 2006 Org 1300</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Unclassified-Total</td>
</tr>
</tbody>
</table>

100-Department of Agriculture-
Agriculture Fees Fund
(WV Code Chapter 19)

<table>
<thead>
<tr>
<th>Fund 1401 FY 2006 Org 1400</th>
</tr>
</thead>
<tbody>
<tr>
<td>1  Personal Services</td>
</tr>
<tr>
<td>2  Annual Increment</td>
</tr>
<tr>
<td>3  Employee Benefits</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>---</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

101-Department of Agriculture-

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2006 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>50,304</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>800</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>14,128</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>977,000</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>1,042,232</td>
</tr>
</tbody>
</table>

102-Department of Agriculture-

General John McCausland Memorial Farm

(WV Code Chapter 19)

Fund 1409 FY 2006 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>80,133</td>
</tr>
</tbody>
</table>

2 The above appropriation shall be expended in accordance with article twenty-six, chapter nineteen of the code.

103-Department of Agriculture-

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2006 Org 1400

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>1,028,903</td>
</tr>
</tbody>
</table>
104-Department of Agriculture-

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2006 Org 1400

1 Unclassified-Total ................. 096 $ 3,040,000

105-Attorney General-

Antitrust Enforcement

(WV Code Chapter 47)

Fund 1507 FY 2006 Org 1500

1 Personal Services .................. 001 $ 250,000
2 Annual Increment .................. 004 $ 1,814
3 Employee Benefits ................. 010 $ 79,912
4 Unclassified ...................... 099 $ 134,930
5 Total .............................. $ 466,656

106-Attorney General-

Preneed Funeral Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2006 Org 1500

1 Unclassified-Total ................. 096 $ 227,284

107-Attorney General-

Preneed Funeral Guarantee Fund
### 108–Secretary of State–

**Service Fees and Collection Account**

(WV Code Chapters 3, 5, and 59)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Activity</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td></td>
<td>$1,050,500</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td></td>
<td>$10,300</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td></td>
<td>$307,907</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td></td>
<td>$1,135,306</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$2,504,013</td>
</tr>
</tbody>
</table>

### 109–Secretary of State–

**State Election Fund**

(WV Code Chapter 3)

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>Activity</th>
<th>Budgeted Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>Unclassified-Total</td>
<td></td>
<td>$775,000</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 1614, activity 096) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

**DEPARTMENT OF ADMINISTRATION**

### 110–Office of the Secretary–

**Tobacco Settlement Fund**
### Tobacco Settlement Fund-Transfer

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>902</td>
<td>Tobacco Settlement Fund-Transfer</td>
<td></td>
<td>$25,400,000</td>
</tr>
</tbody>
</table>

The above appropriation for Tobacco Settlement Fund-Transfer shall be transferred to the Division of Health (fund 5124, org 0506) for expenditure.

### Division of Information Services and Communications

#### (WV Code Chapter 5A)

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td></td>
<td>$10,317,242</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td></td>
<td>142,300</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td></td>
<td>3,110,197</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified</td>
<td></td>
<td>3,955,058</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$17,524,797</td>
</tr>
</tbody>
</table>

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

There is hereby appropriated from this fund, in addition to the above appropriation, the necessary amount for the expenditure of funds other than personal services or employee benefits to enable the division to provide information processing services to user agencies. These services include, but are not limited to, data processing equipment, office automation and telecommunications.

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

112-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2006 Org 0222

1 Personal Services ....................... 001 $ 2,586,137
2 Annual Increment ....................... 004 58,190
3 Employee Benefits ..................... 010 886,773
4 Unclassified ........................... 099 974,157
5 Total ..................................... $ 4,505,257

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

113-WV Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2006 Org 0228

1 Unclassified-Total (R) ............... 096 $ 542,537

2 Any unexpended balance remaining in the appropriation for
3 Unclassified-Total (fund 2521, activity 096) at the close of the
4 fiscal year 2005 is hereby reappropriated for expenditure during
5 the fiscal year 2006, except for fund 2521, activity 096 (fiscal
6 year 2004) which shall expire on June 30, 2005.

DEPARTMENT OF COMMERCE

114-Division of Forestry
1 Personal Services .................. 001 $ 343,845
2 Annual Increment ................... 004 7,450
3 Employee Benefits .................. 010 121,372
4 Unclassified ........................ 099 257,078
5 Total ............................. $ 729,745

115-Division of Forestry-
Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2006 Org 0305

1 Unclassified-Total .................. 096 $ 141,750

116-Division of Forestry-
Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2006 Org 0305

1 Unclassified-Total .................. 096 $ 3,602,870

117-Geological and Economic Survey

(WV Code Chapter 29)

Fund 3100 FY 2006 Org 0306

1 Personal Services .................. 001 $ 42,818
2 Annual Increment ................... 004 465
3 Employee Benefits .................. 010 7,899
4 Unclassified ............................. 099  164,425
5 Total ................................. $  215,607

6 The above appropriation shall be used in accordance with
7 section four, article two, chapter twenty-nine of the code.

118-West Virginia Development Office-

   Energy Assistance

   (WV Code Chapter 5B)

   Fund 3144 FY 2006 Org 0307

1 Energy Assistance—Total (R) .......... 647  $  300,000

2 Any unexpended balance remaining in the appropriation for
3 Energy Assistance—Total (fund 3144, activity 647) at the close
4 of the fiscal year 2005 is hereby reappropriated for expenditure
5 during the fiscal year 2006.

119-West Virginia Development Office-

   Office of Coal Field Community Development

   (WV Code Chapter 5B)

   Fund 3162 FY 2006 Org 0307

1 Unclassified—Total (R) ............... 096  $  689,850

2 Any unexpended balance remaining in the above appropria-
3 tion for Unclassified—Total (fund 3162, activity 096) at the close
4 of the fiscal year 2005 is hereby reappropriated for expenditure
5 during the fiscal year 2006.

120-Division of Labor-

   Contractor Licensing Board Fund
### Fund 3187 FY 2006 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$990,554</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$14,663</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$425,622</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$356,804</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$1,787,643</td>
</tr>
</tbody>
</table>

### 121-Division of Labor-

**Elevator Safety Act**

(WV Code Chapter 21)

### Fund 3188 FY 2006 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$75,572</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$848</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$28,125</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$70,861</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$175,406</td>
</tr>
</tbody>
</table>

### 122-Division of Labor-

**Crane Operator Certification Fund**

(WV Code Chapter 21)

### Fund 3191 FY 2006 Org 0308

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$108,704</td>
</tr>
</tbody>
</table>

### 123-Division of Labor-

**Amusement Rides and Amusement Attraction Safety Fund**
Fund 3192 FY 2006 Org 0308

1 Unclassified-Total .................. 096 $ 101,135

124-Division of Natural Resources

Fund 3200 FY 2006 Org 0310

1 Wildlife Resources .................. 023 $ 6,274,534
2 Administration ........................ 155 1,956,690
3 Capital Improvements and
4 Land Purchase (R) .................... 248 1,560,000
5 Law Enforcement ..................... 806 7,274,534
6 DEP-Compliance Mandate-
7 Fish Hatchery ...................... 668 1,000,000
8 Total .................................. $18,065,758

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

Any unexpended balances remaining in the appropriations for Point of Sale Licensing System (fund 3200, activity 043) and Capital Improvements and Land Purchase (fund 3200, activity 248) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

125-Division of Natural Resources-

Game, Fish and Aquatic Life Fund

(WV Code Chapter 20)
### Fund 3202 FY 2006 Org 0310

<table>
<thead>
<tr>
<th>Line</th>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
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<td>Unclassified-Total</td>
<td>096</td>
<td>$75,000</td>
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**126-Division of Natural Resources-**

**Nongame Fund**

(WV Code Chapter 20)

### Fund 3203 FY 2006 Org 0310

<table>
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<th>Category</th>
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<tr>
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<td>Personal Services</td>
<td>001</td>
<td>$387,855</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>142,044</td>
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<td>Unclassified</td>
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<td>5</td>
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<td>$977,626</td>
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**127-Division of Natural Resources-**

**Planning and Development Division**

(WV Code Chapter 20)

### Fund 3205 FY 2006 Org 0310

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<tr>
<td>1</td>
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<td>001</td>
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<td>2</td>
<td>Annual Increment</td>
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<td>6,400</td>
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<td>Employee Benefits</td>
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**128-Division of Natural Resources-**

**Whitewater Study and Improvement Fund**

(WV Code Chapter 20)

### Fund 3253 FY 2006 Org 0310

<table>
<thead>
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<th>Line</th>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
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<td>1</td>
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<td>096</td>
<td>$185,000</td>
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129-Division of Natural Resources -
Recycling Assistance Fund
(WV Code Chapter 20)

Fund 3254 FY 2006 Org 0310

<table>
<thead>
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<th>Item</th>
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<th>Account</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
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Any unexpended balance remaining in the appropriation for Unclassified (fund 3254, activity 099) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

130-Division of Natural Resources -
Whitewater Advertising and Promotion Fund
(WV Code Chapter 20)

Fund 3256 FY 2006 Org 0310

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>1</td>
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</table>

131-Miners' Health, Safety and Training Fund
(WV Code Chapter 22A)

Fund 3355 FY 2006 Org 0314

<table>
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<th>Description</th>
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<th>Amount</th>
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<tr>
<td>1</td>
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<td>1,450</td>
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<td>Employee Benefits</td>
<td>010</td>
<td>138,000</td>
</tr>
</tbody>
</table>
4 WV Mining Extension Service ....... 026 150,000  
5 Unclassified .......................... 099 775,250  
6 Total ............................... $ 1,463,550  

DEPARTMENT OF EDUCATION  

132-State Board of Education-  
Strategic Staff Development  
(WV Code Chapter 18)  
Fund 3937 FY 2006 Org 0402  

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total (R)</td>
<td>096</td>
<td>$477,225</td>
</tr>
<tr>
<td>2</td>
<td>Any unexpended balance remaining in the appropriation for Unclassified-Total (fund 3937, activity 096) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

133-State Department of Education-  
School Building Authority  
(WV Code Chapter 18)  
Fund 3959 FY 2006 Org 0402  

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
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<td>$661,719</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>7,800</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>236,120</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>266,715</td>
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<td>5</td>
<td>Total</td>
<td>099</td>
<td>$1,172,354</td>
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</table>

The above appropriation for the administrative expenses of the school building authority shall be paid from the interest earnings on debt service reserve accounts maintained on behalf of said authority.
134-State Department of Education-

*FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Fund 3960 FY 2006 Org 0402

<table>
<thead>
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<th>Item</th>
<th>Description</th>
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<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$800,000</td>
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<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$13,800</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$284,669</td>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$791,531</td>
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<td>5</td>
<td>Total</td>
<td></td>
<td>$1,890,000</td>
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</tbody>
</table>

**DEPARTMENT OF EDUCATION AND THE ARTS**

135-Office of the Secretary-

*Lottery Education Fund Interest Earnings-
Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2006 Org 0431

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>EPSCoR—Total (R)</td>
<td>651</td>
<td>$300,000</td>
</tr>
</tbody>
</table>

2 Any unexpended balance remaining in the appropriation for
3 Unclassified-Total (fund 3508, activity 096) and
4 EPSCoR—Total (fund 3508, activity 651) at the close of the
5 fiscal year 2005 is hereby reappropriated for expenditure during
6 the fiscal year 2006.

136-Division of Culture and History—

*Public Records and Preservation Revenue Account*
### Fund 3542 FY 2006 Org 0432

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
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</thead>
<tbody>
<tr>
<td>Unclassified–Total</td>
<td>096</td>
<td>$472,500</td>
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</table>

**137-State Board of Rehabilitation-**

**Division of Rehabilitation Services-**

**West Virginia Rehabilitation Center-**

**Special Account**

### Fund 8664 FY 2006 Org 0932

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>$2,620,562</td>
</tr>
<tr>
<td>Workshop Development</td>
<td>163</td>
<td>450,000</td>
</tr>
<tr>
<td>Workshop-Supported Employment</td>
<td>484</td>
<td>50,000</td>
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<tr>
<td>Total</td>
<td></td>
<td>$3,120,562</td>
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</table>

### Department of Environmental Protection

**138-Solid Waste Management Board**

### Fund 3288 FY 2006 Org 0312

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>3,250</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>174,210</td>
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<td>Unclassified</td>
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<td>1,798,499</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$2,534,334</td>
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</tbody>
</table>
### 139-Division of Environmental Protection-

#### The Hazardous Waste Management Fund

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund 3023 FY 2006 Org 0313</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ........... 001</td>
</tr>
<tr>
<td>2 Annual Increment ........... 004</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4 Unclassified ................ 099</td>
</tr>
<tr>
<td>5 Total ......................</td>
</tr>
</tbody>
</table>

### 140-Division of Environmental Protection-

#### Air Pollution Education and Environment Fund

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund 3024 FY 2006 Org 0313</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified—Total .......... 096</td>
</tr>
</tbody>
</table>

### 141-Division of Environmental Protection-

#### Special Reclamation Fund

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund 3321 FY 2006 Org 0313</th>
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</thead>
<tbody>
<tr>
<td>1 Personal Services .......... 001</td>
</tr>
<tr>
<td>2 Annual Increment ........... 004</td>
</tr>
<tr>
<td>3 Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4 Unclassified ................ 099</td>
</tr>
<tr>
<td>5 Total ......................</td>
</tr>
</tbody>
</table>
### 142-Division of Environmental Protection -

**Oil and Gas Reclamation Fund**

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund 3322 FY 2006 Org 0313</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Unclassified-Total ............ 096</td>
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</table>

### 143-Division of Environmental Protection -

**Oil and Gas Operating Permit and Processing Fund**

(WV Code Chapter 22)

<table>
<thead>
<tr>
<th>Fund 3323 FY 2006 Org 0313</th>
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</thead>
<tbody>
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<tr>
<td>2 Annual Increment ............. 004</td>
</tr>
<tr>
<td>3 Employee Benefits ............ 010</td>
</tr>
<tr>
<td>4 Unclassified ................. 099</td>
</tr>
<tr>
<td>5 Total ..............................</td>
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</table>

### 144-Division of Environmental Protection -

**Mining and Reclamation Operations Fund**

(WV Code Chapter 22)

<table>
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</thead>
<tbody>
<tr>
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<tr>
<td>2 Annual Increment ............. 004</td>
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<tr>
<td>3 Employee Benefits ............ 010</td>
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<tr>
<td>4 Unclassified ................. 099</td>
</tr>
<tr>
<td>5 Total ..............................</td>
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</table>
145-Division of Environmental Protection-

The Underground Storage Tank

Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2006 Org 0313

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>1</td>
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<td>36,006</td>
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146-Division of Environmental Protection-

The Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

Fund 3331 FY 2006 Org 0313

<table>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
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</tr>
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<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
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<td>Annual Increment</td>
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<td>Unclassified</td>
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<td>843,248</td>
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147-Division of Environmental Protection-

Solid Waste Reclamation and

Environmental Response Fund

(WV Code Chapter 22)

Fund 3332 FY 2006 Org 0313

<table>
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<th>Item</th>
<th>Description</th>
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<tr>
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<td>Personal Services</td>
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<td>[Ch. 16]</td>
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<tr>
<td>2</td>
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<td>3,300</td>
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<td>Employee Benefits</td>
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<td>932,118</td>
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148-Division of Environmental Protection-

**Solid Waste Enforcement Fund**

(WV Code Chapter 22)

Fund 3333 FY 2006 Org 0313

<table>
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<th></th>
<th>Personal Services</th>
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<td>$3,223,433</td>
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149-Division of Environmental Protection-

**Air Pollution Control Fund**

(WV Code Chapter 22)

Fund 3336 FY 2006 Org 0313

<table>
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<tr>
<th></th>
<th>Personal Services</th>
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<th>$4,000,919</th>
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<td>004</td>
<td>41,330</td>
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<td>1,806,107</td>
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<td>$7,071,854</td>
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</table>

150-Division of Environmental Protection-

**Environmental Laboratory**

**Certification Fund**
Ch. 16] APPROPRIATIONS

(WV Code Chapter 22)

Fund 3340 FY 2006 Org 0313

<table>
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<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
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<td>Employee Benefits</td>
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<td>145,002</td>
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151-Division of Environmental Protection

Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2006 Org 0313

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

152-Division of Environmental Protection

Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2006 Org 0313

<table>
<thead>
<tr>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$726,679</td>
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<td>Annual Increment</td>
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<td>7,025</td>
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<td>Employee Benefits</td>
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<td>341,563</td>
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153-Oil and Gas Conservation Commission—

Special Oil and Gas Conservation Fund

(WV Code Chapter 22C)
DEPARTMENT OF HEALTH AND
HUMAN RESOURCES

154-Board of Barbers and Cosmetologists

(WV Code Chapters 16 and 30)

The total amount of this appropriation shall be paid from a
special revenue fund out of collections made by the board of
barbers and cosmetologists as provided by law.

155-WV Board of Medicine

(WV Code Chapter 30)

156-Division of Health-

Tobacco Settlement Expenditure Fund
Fund 5124 FY 2006 Org 0506

ABCA Tobacco Retailer Education
  Program-Transfer .................. 239  $ 200,000
Institutional Facilities
  Operations (R) .................... 335  19,549,408
Tobacco Education Program (R) ...... 906  5,650,592
Total ................................ $ 25,400,000

Any unexpended balances remaining in the above appropriations for Institutional Facilities Operations (fund 5124, activity 335) and Tobacco Education Program (fund 5124, activity 906) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006 except for fund 5124, activity 335, (fiscal year 2004) which shall expire on June 30, 2005.

From the above appropriation for ABCA Tobacco Retailer Education Program-Transfer, $200,000 shall be transferred to the Alcohol Beverage Control Administration (fund 7352, org 0708) for expenditure.

The secretary of the department of health and human resources, prior to the beginning of the fiscal year, shall file with the legislative auditor and the department of revenue an expenditure schedule for each formerly separate spending unit which has been consolidated into the above account and which receives a portion of the above appropriation for Institutional Facilities Operations. The secretary shall also, within fifteen days after the close of the six-month period of said fiscal year, file with the legislative auditor and the department of revenue an itemized report of expenditures made during the preceding six-month period.
Additional funds have been appropriated in fund 0525, fiscal year 2006, organization 0506, and fund 5156, fiscal year 2006, organization 0506, for the operation of the institutional facilities. The secretary of the department of health and human resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations line item to facilitate cost effective and cost saving services at the community level.

From the above appropriation to Institutional Facilities Operations, together with available funds from the division of health-hospital services revenue account (fund 5156, activity 335) and consolidated medical services fund (fund 0525, activity 335), on July 1, 2005, the sum of one hundred sixty 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.

157-Division of Health-

Vital Statistics

(WV Code Chapter 16)

Fund 5144 FY 2006 Org 0506

1 Personal Services ....................... 001 $ 263,211
2 Annual Increment ...................... 004 9,003
3 Employee Benefits .................... 010 117,035
4 Unclassified. .......................... 099 96,188
5 Total ............................... $ 485,437

158-Division of Health-

Hospital Services Revenue Account

(Special Fund)
(Capital Improvement, Renovation and Operations)

(WV Code Chapter 16)

Fund 5156 FY 2006 Org 0506

<table>
<thead>
<tr>
<th>Line</th>
<th>Description</th>
<th>Account</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Debt Service (R)</td>
<td>040</td>
<td>$2,420,000</td>
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<tr>
<td>2</td>
<td>Institutional Facilities Operations (R)</td>
<td>335</td>
<td>$38,671,470</td>
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<tr>
<td>3</td>
<td>Medical Services Trust Fund-Transfer (R)</td>
<td>512</td>
<td>$23,300,000</td>
</tr>
<tr>
<td>4</td>
<td>Total</td>
<td></td>
<td>$64,391,470</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriation for hospital services revenue account at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006, except for fund 5156, activity 040 (fiscal year 2004) and fund 5156, activity 099 (fiscal year 1987) which shall expire on June 30, 2005.

The total amount of this appropriation shall be paid from the hospital services revenue account special fund created by section fifteen-a, article one, chapter sixteen of the code, and shall be used for operating expenses and for improvements in connection with existing facilities and bond payments.

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

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this account or in connection with the line item designated Institutional Facilities Operations in the consolidated medical service fund (fund 0525, fiscal year 2006, organization 0506) and the
tobacco settlement expenditure fund (fund 5124, fiscal year 2006, organization 0506).

From the above appropriation to Institutional Facilities Operations, together with available funds from the consolidated medical services fund (fund 0525, activity 335) and the tobacco settlement expenditure fund (fund 5124, activity 335), on July 1, 2005, the sum of one hundred sixty 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.

159-Division of Health-

Laboratory Services

(WV Code Chapter 16)

Fund 5163 FY 2006 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
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</table>

160-Division of Health-

Health Facility Licensing

(WV Code Chapter 16)

Fund 5172 FY 2006 Org 0506

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
</tr>
<tr>
<td>Ch. 16]</td>
<td>APPROPRIATIONS</td>
<td>201</td>
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<td>---</td>
<td>---</td>
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</tr>
<tr>
<td>3 Employee Benefits</td>
<td>010</td>
<td>75,269</td>
</tr>
<tr>
<td>4 Unclassified</td>
<td>099</td>
<td>93,313</td>
</tr>
<tr>
<td>5 Total</td>
<td></td>
<td>$ 373,012</td>
</tr>
</tbody>
</table>

161-Division of Health-

Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2006 Org 0506

| 1 Personal Services | 001 | $ 56,071 |
| 2 Annual Increment | 004 | 1,455 |
| 3 Employee Benefits | 010 | 21,224 |
| 4 Unclassified | 099 | 2,996,096 |
| 5 Total | | $ 3,074,846 |

162-Division of Health-

Lead Abatement Fund

(WV Code Chapter 16)

Fund 5204 FY 2006 Org 0506

| 1 Unclassified-Total | 096 | $ 20,000 |

163-Division of Health-

West Virginia Birth to Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2006 Org 0506

| 1 Personal Services | 001 | $ 499,250 |
| 2 Annual Increment | 004 | 4,750 |
### 164-Division of Health-

**Tobacco Control Special Fund**

(WV Code Chapter 16)

Fund 5218 FY 2006 Org 0506

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$85,000</td>
</tr>
</tbody>
</table>

### 165-West Virginia Health Care Authority—

**Health Care Cost Review Fund**

(WV Code Chapter 16)

Fund 5375 FY 2006 Org 0507

<table>
<thead>
<tr>
<th>Item Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$2,184,704</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>25,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>682,042</td>
</tr>
<tr>
<td>Hospital Assistance</td>
<td>025</td>
<td>600,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>3,089,545</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$6,581,291</td>
</tr>
</tbody>
</table>

7 The above appropriation is to be expended in accordance with and pursuant to the provisions of article twenty-nine-b, chapter sixteen of the code and from the special revolving fund designated health care cost review fund.

### 166-Division of Human Services—

**Health Care Provider Tax**
(WV Code Chapter 11)

Fund 5090 FY 2006 Org 0511

1 Unclassified-Total .................. 096 $153,080,614

2 From the above appropriation, an amount not to exceed two
3 hundred thousand dollars shall be transferred to a special
4 revenue account in the treasury for use by the department of
5 health and human resources for administrative purposes. The
6 remainder of all moneys deposited in the fund shall be trans-
7ferred to the West Virginia medical services fund (fund 5084).

167-Division of Human Services-

Child Support Enforcement

(WV Code Chapter 48A)

Fund 5094 FY 2006 Org 0511

1 Unclassified-Total (R) ............... 096 $34,052,180

2 Any unexpended balance remaining in the appropriation for
3 Unclassified-Total (fund 5094, activity 096) at the close of the
4 fiscal year 2005 is hereby reappropriated for expenditure during
5 the fiscal year 2006, except for fund 5094, activity 096, fiscal
6 years 2002 and 2003 which shall expire on June 30, 2005.

168-Division of Human Services-

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2006 Org 0511

1 Unclassified ......................... 099 $27,877,927
2 Eligibility Expansion .................. 582  1,958,066
3 Public Employees Insurance Reserve Fund-
4 Transfer .......................... 903  6,100,000
5 Total .......................... $35,935,993

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

169-Division of Human Services-

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2006 Org 0511

1 Unclassified-Total .................. 096  $ 1,606,500

170-Family Protection Services Board-

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2006 Org 0511

1 Unclassified-Total .................. 096  $ 588,022

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY

171-Department of Military Affairs and Public Safety-
Office of the Secretary-
Law-Enforcement, Safety and
Emergency Worker Funeral
Expense Payment Fund
(WV Code Chapter 15)

Fund 6003 FY 2006 Org 0601

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
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<td>$20,000</td>
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</tbody>
</table>

172-State Armory Board-
General Armory Fund
(WV Code Chapter 15)

Fund 6057 FY 2006 Org 0603

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$635,650</td>
</tr>
</tbody>
</table>

173-West Virginia Division of Corrections-
Parolee Supervision Fees
(WV Code Chapter 62)

Fund 6362 FY 2006 Org 0608

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Account</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$116,774</td>
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<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>1,651</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>52,130</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>212,684</td>
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<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$383,239</td>
</tr>
</tbody>
</table>
174-West Virginia State Police - 

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2006 Org 0612

1 Personal Services .................. 001 $ 1,091,240
2 Annual Increment .................. 004 18,900
3 Employee Benefits ................. 010 380,812
4 Unclassified ...................... 099 345,573
5 BRIM Premium ................... 913 285,071
6 Total ................................ $ 2,121,596

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

175-West Virginia State Police -

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2006 Org 0612

1 Unclassified ........................ 099 $ 885,531
2 BRIM Premium ................... 913 145,585
3 Total .............................. $ 1,031,116

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

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2006 Org 0612

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$444,980</td>
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<tr>
<td>2</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$72,789</td>
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<td>3</td>
<td>Total</td>
<td></td>
<td>$517,769</td>
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</table>

177-West Virginia State Police-

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2006 Org 0612

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified (R)</td>
<td>099</td>
<td>$312,002</td>
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<tr>
<td>2</td>
<td>BRIM Premium</td>
<td>913</td>
<td>$50,959</td>
</tr>
<tr>
<td>3</td>
<td>Total</td>
<td></td>
<td>$362,961</td>
</tr>
</tbody>
</table>

4 Any unexpended balances remaining in the appropriations for Unclassified (fund 6519, activity 099) and Helicopter Purchase (fund 6519, activity 063) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

178-West Virginia State Police-

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2006 Org 0612

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified</td>
<td>099</td>
<td>$190,602</td>
</tr>
</tbody>
</table>
### 179-West Virginia State Police-Bail Bond Enforcer Fund

(WV Code Chapter 15)

Fund 6532 FY 2006 Org 0612

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$3,308</td>
</tr>
</tbody>
</table>

### 180-Division of Veterans' Affairs-Veterans' Facilities Support Fund

(WV Code Chapter 19A)

Fund 6703 FY 2006 Org 0613

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>096</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

### 181-Regional Jail and Correctional Facility Authority

(WV Code Chapter 31)

Fund 6675 FY 2006 Org 0615

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,213,846</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>16,550</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>406,374</td>
</tr>
<tr>
<td>Debt Service</td>
<td>040</td>
<td>9,000,000</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>545,235</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$11,182,005</td>
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</tbody>
</table>

### 182-Division of Veterans' Affairs-Veterans' Home
### 183-Fire Commission-

**Fire Marshal Fees**

(WV Code Chapter 29)

<table>
<thead>
<tr>
<th>Fund 6152 FY 2006 Org 0619</th>
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<tbody>
<tr>
<td>1. Personal Services .......... 001</td>
</tr>
<tr>
<td>2. Annual Increment .......... 004</td>
</tr>
<tr>
<td>3. Employee Benefits .......... 010</td>
</tr>
<tr>
<td>4. Unclassified ............ 099</td>
</tr>
<tr>
<td>5. BRIM Premium ............ 913</td>
</tr>
<tr>
<td>6. Total .................... $3,104,062</td>
</tr>
</tbody>
</table>

Any unexpended cash balance remaining in fund 6152 at the close of the fiscal year 2005 is hereby available for expenditure as part of the fiscal year 2006 appropriation.

### 184-Division of Criminal Justice Services-

**WV Community Corrections Fund**

(WV Code Chapter 62)

<table>
<thead>
<tr>
<th>Fund 6386 FY 2006 Org 0620</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Unclassified-Total ........ 096</td>
</tr>
</tbody>
</table>

185-Criminal Justice Services-

**Court Security Fund**
DEPARTMENT OF REVENUE

186-Division of Banking

(WV Code Chapter 31A)

Fund 3041 FY 2006 Org 0303

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$1,645,533</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>14,000</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>496,433</td>
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<td>Unclassified</td>
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<td>507,598</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$2,663,564</strong></td>
</tr>
</tbody>
</table>

187-Tax Division-

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2006 Org 0702

<table>
<thead>
<tr>
<th>Category</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$17,274</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>175</td>
</tr>
<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>5,870</td>
</tr>
<tr>
<td>Unclassified</td>
<td>099</td>
<td>7,797</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$31,116</strong></td>
</tr>
</tbody>
</table>

188-Tax Division-

Special Audit and Investigative Unit
Ch. 16] APPROPRIATIONS 211

(WV Code Chapter 11)

Fund 7073 FY 2006 Org 0702

1 Personal Services ...................... 001 $ 830,304
2 Annual Increment ...................... 004 17,500
3 Employee Benefits .................... 010 313,900
4 Unclassified .......................... 099 235,847
5 Total .................................. $ 1,397,551

189-State Budget Office-

Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2006 Org 0703

1 Public Employees Insurance Reserve
2 Fund—Transfer ...................... 903 $ 6,100,000
3 The above appropriation for Public Employees Insurance
4 Reserve Fund—Transfer shall be transferred to the Medical
5 Services Trust Fund (fund 5185, org 0511) for expenditure.

190-Insurance Commissioner-

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2006 Org 0704

1 Personal Services ...................... 001 $ 556,330
2 Annual Increment ...................... 004 3,500
3 Employee Benefits .................... 010 152,738
4 Unclassified .......................... 099 487,242
5 Total .................................. $ 1,199,810
191-Insurance Commissioner-

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2006 Org 0704

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$331,028</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>3,500</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>98,192</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>97,851</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$530,571</td>
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</tbody>
</table>

Any unexpended balances remaining in the appropriations for Personal Services (fund 7152, activity 001), Annual Increment (fund 7152, activity 004), Employee Benefits (fund 7152, activity 010), and Unclassified (fund 7152, activity 099) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

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

192-Insurance Commissioner

(WV Code Chapter 33)

Fund 7152 FY 2006 Org 0704

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$14,427,807</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>217,365</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>5,371,483</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>5,424,719</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$25,441,374</td>
</tr>
</tbody>
</table>

The total amount of this appropriation shall be paid from a special revenue fund out of collections of fees and charges as provided by law.
193-Insurance Commissioner—
Workers' Compensation Old Fund
(WV Code Chapter 23)
Fund 7162 FY 2006 Org 0704
1 Unclassified-Total ....................... 096 $500,000,000

194-Insurance Commissioner—
Workers' Compensation Uninsured Employers' Fund
(WV Code Chapter 23)
Fund 7163 FY 2006 Org 0704
1 Unclassified-Total ....................... 096 $27,000,000

195-Insurance Commissioner—
Self-Insured Employer Guaranty Risk Pool
(WV Code Chapter 23)
Fund 7164 FY 2006 Org 0704
1 Unclassified-Total ....................... 096 $5,000,000

196-Insurance Commissioner—
Self-Insured Employer Security Risk Pool
(WV Code Chapter 23)
Fund 7165 FY 2006 Org 0704
1 Unclassified-Total ....................... 096 $10,000,000
197-Insurance Commissioner—

Private Carrier Guaranty Fund

(WV Code Chapter 23)

Fund 7166 FY 2006 Org 0704

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

198-Insurance Commissioner—

Assigned Risk Fund

(WV Code Chapter 23)

Fund 7167 FY 2006 Org 0704

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

199-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2006 Org 0706

1 Personal Services ........................... 001 $ 161,262
2 Annual Increment ........................... 004 4,300
3 Employee Benefits ........................... 010 62,024
4 Unclassified ................................. 099 78,579
5 Total ........................................ $ 306,165

200-Racing Commission-

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2006 Org 0707

1 Medical Expenses-Total .................... 245 $ 57,000
2 The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

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

201-Racing Commission-
Administration and Promotion

(WV Code Chapter 19)

Fund 7304 FY 2006 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 66,444</td>
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<tr>
<td>Annual Increment</td>
<td>004</td>
<td>1,000</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>24,152</td>
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<td>Unclassified</td>
<td>099</td>
<td>39,716</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$ 131,312</td>
</tr>
</tbody>
</table>

202-Racing Commission-
General Administration

(WV Code Chapter 19)

Fund 7305 FY 2006 Org 0707

<table>
<thead>
<tr>
<th>Item</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal Services</td>
<td>001</td>
<td>$ 1,770,000</td>
</tr>
<tr>
<td>Annual Increment</td>
<td>004</td>
<td>20,250</td>
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<tr>
<td>Employee Benefits</td>
<td>010</td>
<td>459,000</td>
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<td>Unclassified</td>
<td>099</td>
<td>380,728</td>
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<tr>
<td>Total</td>
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<td>$ 2,629,978</td>
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</tbody>
</table>

203-Racing Commission-
Administration, Promotion and Education Fund
204-Alcohol Beverage Control Administration—Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2006 Org 0708

1 Personal Services ................. 001 $ 224,718
2 Annual Increment ................. 004 4,000
3 Employee Benefits ............... 010 93,680
4 Unclassified ..................... 099 114,939
5 Total ........................... $ 437,337

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

205-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2006 Org 0708

1 Personal Services .................. 001 $ 3,585,014
2 Annual Increment .................. 004 79,000
3 Employee Benefits ................. 010 1,341,893
4 Unclassified (R) ................... 099 1,855,070
5 Total ........................... $ 6,860,977

Any unexpended balance remaining in Unclassified (fund 7352, activity 099) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.
From the above appropriation an amount * of $500,000 shall be used for the Tobacco/Alcohol Education Program.

The total amount of this appropriation shall be paid from a special revenue fund out of liquor revenues.

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

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

**DEPARTMENT OF TRANSPORTATION**

206-Division of Motor Vehicles-

**Driver's License Reinstatement Fund**

(WV Code Chapter 17B)

<table>
<thead>
<tr>
<th>Fund 8213 FY 2006 Org 0802</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Personal Services ................. 001</td>
</tr>
<tr>
<td>2 Annual Increment ................. 004</td>
</tr>
<tr>
<td>3 Employee Benefits ................. 010</td>
</tr>
<tr>
<td>4 Unclassified ................. 099</td>
</tr>
<tr>
<td>5 Total ..................</td>
</tr>
</tbody>
</table>

207-Division of Motor Vehicles-

**Driver Rehabilitation**

(WV Code Chapter 17C)

*CLERK’S NOTE: The Governor struck language on line 9.*
### APPROPRIATIONS

<table>
<thead>
<tr>
<th>Fund</th>
<th>FY 2006 Org</th>
<th>Appropriations</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8214</td>
<td>0802</td>
<td>$779,555</td>
<td><strong>208-Division of Motor Vehicles</strong>-Insurance Certificate Fees (WV Code Chapter 20)</td>
</tr>
<tr>
<td>8215</td>
<td>0802</td>
<td>$891,571</td>
<td><strong>209-Division of Motor Vehicles</strong>-Motorboat Licenses (WV Code Chapter 20)</td>
</tr>
<tr>
<td>8216</td>
<td>0802</td>
<td>$375,830</td>
<td><strong>210-Division of Motor Vehicles</strong>-Returned Check Fees (WV Code Chapter 17)</td>
</tr>
<tr>
<td>8217</td>
<td>0802</td>
<td>$15,120</td>
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</table>

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Org</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$779,555</td>
</tr>
<tr>
<td>2</td>
<td>Personal Services</td>
<td>001</td>
<td>$621,000</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$15,900</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$184,990</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>$69,681</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$891,571</td>
</tr>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$375,830</td>
</tr>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$15,120</td>
</tr>
</tbody>
</table>
211-Division of Motor Vehicles -

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2006 Org 0802

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

212-Division of Highways -

A. James Manchin Fund

(WV Code Chapter 17)

Fund 8319 FY 2006 Org 0803

1 Unclassified-Total ............... 096 $ 3,425,625

HIGHER EDUCATION POLICY COMMISSION

213-Higher Education Policy Commission -

System -

Registration Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4902 FY 2006 Org 0442

1 Debt Service (R) ................... 040 $ 4,822,241
2 General Capital Expenditures (R) ..... 306 500,000
3 Total .................................. $ 5,322,241
Any unexpended balances remaining in the appropriations at the close of fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

The total amount of this appropriation shall be paid from the special capital improvements fund created in section eight, article ten, chapter eighteen-b of the code.

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

214-Higher Education Policy Commission-

(System-

Tuition Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2006 Org 0442

1 Debt Service (R) ....................... 040 $23,736,048
2 General Capital Expenditures (R) .... 306 500,000
3 Facilities Planning
4 and Administration (R) .............. 386 388,258
5 Total ................................... $ 24,624,306

Any unexpended balances remaining in the appropriations at the close of fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

The total amount of this appropriation shall be paid from the special capital improvement fund created in section eight, article ten, chapter eighteen-b of the code.
The above appropriations, except for debt service, may be transferred to special revenue funds for capital improvement projects at the institutions.

**215-Higher Education Policy Commission-**

1977 State System Registration Fee Refund Revenue Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2006 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to section eight, article ten, chapter eighteen-b of the code, which have since been refunded.

**216-Higher Education Policy Commission-**

Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2006 Org 0442

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.
The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to section eight, article twelve-b, chapter eighteen of the code, which have since been refunded.

217-Health Sciences-

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2006 Org 0463

1 Unclassified-Total (R) ............... 096 $15,359,466

2 Any unexpended balance remaining in the appropriation at the close of fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

218-Higher Education Policy Commission-

Fairmont State College

(WV Code Chapters 18 and 18B)

Fund 4457 FY 2006 Org 0484

1 Any unexpended balance remaining in the appropriation at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.
MISCELLANEOUS BOARDS AND COMMISSIONS

219-Workers' Compensation Fund

(WV Code Chapter 23)

Fund 3440 FY 2006 Org 0322

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>Personal Services</td>
<td>$22,312,746</td>
</tr>
<tr>
<td>004</td>
<td>Annual Increment</td>
<td>326,288</td>
</tr>
<tr>
<td>010</td>
<td>Employee Benefits</td>
<td>8,118,195</td>
</tr>
<tr>
<td>099</td>
<td>Unclassified (R)</td>
<td>12,191,943</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>$42,949,172</strong></td>
</tr>
</tbody>
</table>

Any unexpended balances remaining in the appropriations for Unclassified (fund 3440, activity 099) and Technology Improvements (fund 3440, activity 599) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

From the above fund, moneys may be expended, transferred or otherwise disbursed for operating expenditures of the Worker’s Compensation Commission or to comply with any and all requirements related to SB 1004 regarding transfers of monies to other funds or accounts established by code or to the Employers’ Mutual Insurance Company created pursuant to Senate Bill 1004.

220-Workers’ Compensation Fund—

Mutualization Transition Fund

(WV Code Chapter 23)

Fund 3462 FY 2006 Org 0322

<table>
<thead>
<tr>
<th>Account</th>
<th>Description</th>
<th>FY 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>096</td>
<td>Unclassified-Total</td>
<td>$35,000,000</td>
</tr>
</tbody>
</table>
From the above fund, moneys may be expended, transferred or otherwise disbursed for operating expenditures for the Worker’s Compensation Commission or to comply with any and all requirements related to Senate Bill No. 1004, First Extraordinary Session of 2005, regarding transfers of money to other funds or accounts established by Code or to the Employers’ Mutual Insurance Company created pursuant to Senate Bill No. 1004.

221-Workers’ Compensation Fund-New Fund

(WV Code Chapter 23)

Fund 3463 FY 2006 Org 0322

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

From the above fund, moneys may be expended, transferred or otherwise disbursed only for payments of new claims for which New Fund funds may be expended under Senate Bill No. 1004, First Extraordinary Session of 2005, pursuant to the requests of the Employers’ Mutual Insurance Company for payments of the same to the State Treasurer created pursuant to Senate Bill No. 1004, * and the provisions of West Virginia Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

222-Hospital Finance Authority

(WV Code Chapter 16)

Fund 5475 FY 2006 Org 0509

1 Personal Services . . . . . . . . . . . . . . . . . 001 $ 46,024
2 Annual Increment . . . . . . . . . . . . . . . . . 004 750

*CLERK’S NOTE: The Governor struck language on line 8 through 10.
**Ch. 16] Appropriations**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>17,453</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>30,273</td>
</tr>
<tr>
<td>5</td>
<td>Total</td>
<td></td>
<td>$94,500</td>
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</tbody>
</table>

6. The total amount of this appropriation shall be paid from the special revenue fund out of fees and collections as provided by article twenty-nine-a, chapter sixteen of the code.

**223-WV State Board of Examiners for Licensed Practical Nurses**

(WV Code Chapter 30)

Fund 8517 FY 2006 Org 0906

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$363,090</td>
</tr>
</tbody>
</table>

**224-WV Board of Examiners for Registered Professional Nurses**

(WV Code Chapter 30)

Fund 8520 FY 2006 Org 0907

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$883,619</td>
</tr>
</tbody>
</table>

**225-Public Service Commission**

(WV Code Chapter 24)

Fund 8623 FY 2006 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$7,916,582</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>130,000</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>2,858,493</td>
</tr>
<tr>
<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>2,105,355</td>
</tr>
<tr>
<td>5</td>
<td>Weight Enforcement Program</td>
<td>345</td>
<td>4,566,000</td>
</tr>
<tr>
<td>6</td>
<td>Debt Payment/Capital Outlay</td>
<td>520</td>
<td>350,000</td>
</tr>
<tr>
<td>7</td>
<td>BRIM Premium</td>
<td>913</td>
<td>160,715</td>
</tr>
<tr>
<td>8</td>
<td>Total</td>
<td></td>
<td>$18,087,145</td>
</tr>
</tbody>
</table>
The total amount of this appropriation except for the PSC Weight Enforcement appropriation (activity 345) shall be paid from a special revenue fund out of collection for special license fees from public service corporations as provided by law. The amount appropriated to the PSC Weight Enforcement (activity 345) shall be paid from the state road fund as provided by law.

The Public Service Commission is authorized to spend up to $500,000, from surplus funds in this account, to meet the expected deficiencies in the Motor Carrier Division account due to passage of enrolled house bill no. 2715, regular session, 1998.

226-Public Service Commission-

Gas Pipeline Division—

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2006 Org 0926

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$152,476</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>5,556</td>
</tr>
<tr>
<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>57,669</td>
</tr>
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<td>4</td>
<td>Unclassified</td>
<td>099</td>
<td>80,971</td>
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<td>$296,672</td>
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</table>

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

227-Public Service Commission-

Motor Carrier Division
Ch. 16] APPROPRIATIONS 227

(WV Code Chapter 24A)

Fund 8625 FY 2006 Org 0926

1 Personal Services ......................... 001  $ 1,582,433
2 Annual Increment ......................... 004  40,000
3 Employee Benefits ....................... 010  621,607
4 Unclassified ............................. 099  501,067
5 Total ....................................  $ 2,745,107

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

228-Public Service Commission-

Consumer Advocate

(WV Code Chapter 24)

Fund 8627 FY 2006 Org 0926

1 Personal Services ......................... 001  $ 505,577
2 Annual Increment ......................... 004  6,650
3 Employee Benefits ....................... 010  157,595
4 Unclassified ............................. 099  264,961
5 BRIM Premium .................. 913  3,764
6 Total ....................................  $ 938,547

7 The total amount of this appropriation shall be paid from a
8 special revenue fund out of collections made by the public
9 service commission.

229-Real Estate Commission

(WV Code Chapter 30)
### Fund 8635 FY 2006 Org 0927

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Personal Services</td>
<td>001</td>
<td>$360,695</td>
</tr>
<tr>
<td>2</td>
<td>Annual Increment</td>
<td>004</td>
<td>$6,500</td>
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<td>3</td>
<td>Employee Benefits</td>
<td>010</td>
<td>$115,700</td>
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<td>4</td>
<td>Unclassified</td>
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<td>$236,526</td>
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<td>Total</td>
<td></td>
<td>$719,421</td>
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</table>

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

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

(WV Code Chapter 30)

### Fund 8646 FY 2006 Org 0930

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$70,875</td>
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231-WV Board of Respiratory Care

(WV Code Chapter 30)

### Fund 8676 FY 2006 Org 0935

<table>
<thead>
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<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
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<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$98,894</td>
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232-WV Board of Licensed Dietitians

(WV Code Chapter 30)

### Fund 8680 FY 2006 Org 0936

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Code</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unclassified-Total</td>
<td>096</td>
<td>$18,900</td>
</tr>
</tbody>
</table>

233-Massage Therapy Licensure Board

(WV Code Chapter 30)
Sec. 4. Appropriations from lottery net profits.-Net profits of the lottery are to be deposited by the director of the lottery to the following accounts in the amounts indicated. The director of the lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252 and Fund 3963 pursuant to section eighteen, article twenty-two, chapter twenty-nine of the code, the director of the lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 3167 and Fund 4297, and is authorized to transfer any such amounts to Fund 3167 and Fund 4297 for that purpose. Upon receipt of reimbursement of amounts so transferred, the director of the lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

234-Education, Arts, Sciences and Tourism-

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2006 Org 0211

<table>
<thead>
<tr>
<th>Lottery Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt Service</td>
<td>310 $10,000,000</td>
</tr>
</tbody>
</table>
235-West Virginia Development Office-

Division of Tourism

(WV Code Chapter 5B)

Fund 3067 FY 2006 Org 0304

1. Tourism-Telemarketing Center ........ 463 $ 90,000
2. WV Film Office .......................... 498 102,515
3. Motor Sports Council .................... 513 90,000
4. Tourism-Advertising (R) ............... 618 3,154,815
5. Tourism-Unclassified .................... 662 4,185,765
6. Total ................................... $ 7,623,095

Any unexpended balances remaining in the appropriations for Tourism-Advertising (fund 3067, activity 618), State Parks and Recreation Advertising (fund 3067, activity 619), Capitol Complex-Capital Outlay (fund 3067, activity 417), Tourism-Special Projects (fund 3067, activity 859), Tourism-Unclassified (fund 3067, activity 662), Tourism-Unclassified-Lottery Surplus (fund 3067, activity 773) and Stonewall Jackson State Park (fund 3067, activity 959) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

236-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2006 Org 0310

1. Gypsy Moth Suppression
2. Program for State Parks (R) ........... 017 $ 42,997
3. Unclassified (R) .......................... 099 2,147,570
4. Pricketts Fort State Park ................ 324 92,874
5. Non-Game Wildlife (R) ................. 527 423,649
6 State Parks and Recreation Advertising (R) ........... 619 588,206
7 West Virginia Stream Partners Program (R) .......... 637 77,396
8 Total ........................................ $ 3,372,692

Any unexpended balances remaining in the appropriations for Gypsy Moth Suppression Program for State Parks (fund 3267, activity 017), Unclassified (fund 3267, activity 099), State Recreation Area Improvements (fund 3267, activity 307), Capital Outlay-Parks (fund 3267, activity 288), Flood Reparations (fund 3267, activity 400), Non-Game Wildlife (fund 3267, activity 527), State Parks and Recreation Advertising (fund 3267, activity 619), West Virginia Stream Partners Program (fund 3267, activity 637), Parks Operations-Unclassified (fund 3267, activity 645), State Parks-Special Projects (fund 3267, activity 860) and State Parks Repairs, Renovations, Maintenance and Life Safety Repairs (fund 3267, activity 911) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

237-State Department of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2006 Org 0402

1 Unclassified .................................. 099 $ 4,138,000
2 34/1000 Waiver .............................. 139 0
3 National Teacher Certification .............. 161 0
4 Technology Repair and
  Modernization (R) ......................... 298 0
5 Technology Infrastructure Network (R) .... 351 20,470,000
6 READS Program .............................. 365 300,000
7 Early Retirement Notification Incentive .... 366 0
8 MATH Program ............................... 368 400,000
9 Vocational Education
  Equipment Replacement .................... 393 819,750
<table>
<thead>
<tr>
<th></th>
<th>Appropriations</th>
<th>[Ch. 16]</th>
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<tbody>
<tr>
<td>12</td>
<td>Assessment Program</td>
<td>396</td>
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<td>13</td>
<td>Teacher Reimbursement</td>
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<td>14</td>
<td>Teacher Relocation</td>
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<td>15</td>
<td>National Science Foundation Match/WV Science</td>
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<td>Principals Academy</td>
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<td>17</td>
<td>Educational Program Allowance</td>
<td>996</td>
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<tr>
<td>18</td>
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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 Infrastructure Network (fund 3951, activity 351), Technology and Telecommunications Initiative (fund 3951, activity 596), Technology Demonstration Project (fund 3951, activity 639) and Computer Study (fund 3951, activity 998) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

The above appropriation for Technology Infrastructure Network shall be expended on the following programs and technology: Computer Basic Skills, S.U.C.C.E.S.S., WVEIS, Technology Repair and Modernization, Technology and Telecommunications Initiative and other programs in the field that will benefit the Counties. *No more than 40% of the total appropriation shall be allotted to Computer Basic Skills and S.U.C.C.E.S.S.*

*CLERK'S NOTE:* The Governor struck language on line 35 through line 37.
Fund 3963 FY 2006 Org 0402

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**239-Department of Education and the Arts-**

**Office of the Secretary-**

**Control Account-**

**Lottery Education Fund**

Fund 3508 FY 2006 Org 0431

<table>
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<tr>
<th>Item Description</th>
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<tr>
<td>Community Service</td>
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<td>160,050</td>
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<td>Arts Programs (R)</td>
<td>500</td>
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<tr>
<td>College Readiness (R)</td>
<td>579</td>
<td>200,000</td>
</tr>
<tr>
<td>LATA Access (R)</td>
<td>580</td>
<td>360,000</td>
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<tr>
<td>Energy Express</td>
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<tr>
<td>Special Olympic Games</td>
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<td>Center for Excellence in Disabilities</td>
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<td><strong>Total</strong></td>
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Any unexpended balances remaining in the appropriations for Unclassified (fund 3508, activity 099), Arts Programs (fund 3508, activity 500), College Readiness (fund 3508, activity 579), LATA Access (fund 3508, activity 580) and WV2001 Project (fund 3508, activity 836) at the close of fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.
 Appropriations [Ch. 16

*From the Technical Preparation Program (activity 440), $350,000 shall be allocated to Southern West Virginia Community and Technical College for shared facilities at Southern West Virginia Community College/Boone County Technical Center/Yeager Vocational School and Shepherd College/James Rumsey Vocational Center and $100,000 to Southern West Virginia Community and Technical College:

240-Division of Culture and History-

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2006 Org 0432

1 Huntington Symphony .......... 027 $ 75,000
2 Martin Luther King, Jr.
3 Holiday Celebration .......... 031 10,800
4 Fairs and Festivals ........... 122 2,015,000
5 Archeological Curation/Capital
6 Improvements (R) .......... 246 50,344
7 Historic Preservation Grants (R) .. 311 450,000
8 West Virginia Public Theater ...... 312 200,000
9 Tri-County Fair Association ........ 343 125,000
10 George Tyler Moore Center for the
11 Study of the Civil War .......... 397 60,000
12 Theater Arts of West Virginia ... 464 420,000
13 Grants for Competitive Arts Program (R) 624 810,000
14 Contemporary American
15 Theater Festival ............. 811 110,000
16 Independence Hall (R) ........ 812 50,000
17 Mountain State Forest Festival ...... 864 70,000
18 Charleston Symphony .......... 659 75,000
19 West Virginia State Fair ........ 657 50,000
20 Total .......................... $ 4,571,144

*Clerk's Note: The Governor struck language on line 19 through line 25.
Any unexpended balances remaining in the appropriations for Archeological Curation/Capital Improvements (fund 3534, activity 246), Historic Preservation Grants (fund 3534, activity 311), Capital Outlay, Repairs and Equipment (fund 3534, activity 589), Grants for Competitive Arts Program (fund 3534, activity 624), Independence Hall (fund 3534, activity 812) and Project ACCESS (fund 3534, activity 865) at the close of the fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006.

Included in the above appropriation for Fairs/Festivals (activity 122), funding shall be provided to the African-American Cultural Heritage Festival 5,000, African-American Heritage Family Tree Museum 4,500, African-American Jubilee (Ohio) 5,500, Alderson 4th of July Celebration (Greenbrier) 3,000, Allegheny Echo (Pocahontas) 7,500, Alpine Festival/Leaf Peepers Festival (Tucker) 11,250, American Legion Post 8 - Veterans Day Parade 2,000, Annual Labor Day Observance (Randolph) 2,000, Annual Law Enforcement Day (Lewis) 2,000, Apollo Theater - Summer Program (Beckley) 2,000, Appalachian Autumn Festival (Braxton) 3,500, Appalachian Mountain Bike Race (Calhoun) 1,500, Apple Butter Festival (Morgan) 6,000, Aracoma Story (Logan) 50,000, Arkansaw Homemaker's Heritage Weekend (Hardy) 3,500, Armed Forces Day-South Charleston 3,000, Arthurdale Heritage (Preston) 4,000, Athens Town Fair (Mercer) 2,000, Augusta Fair (Randolph) 5,000, Barbour County Arts & Humanities Council 1,500, Barbour County Fair 2,500, Barboursville Octoberfest (Cabell) 5,000, Bass Festival (Pleasants) 1,850, Battle of Dry Creek (Greenbrier) 1,500, Battle of Point Pleasant Memorial Committee 5,000, Beckley Main Street (Raleigh) 5,000, Belington VFD Community Fair (Barbour) 1,750, Belle Boyd House (Berkeley) 2,000, Belle Fall Festival (Kanawha) 2,000, Bergoo Down Home Days (Webster) 2,500, Berkeley County Youth Fair 3,500, Birch River Days Festival (Nicholas) 2,000, Black Bear 40K Mountain Bike Race
56 1,000, Black Heritage Festival (Harrison) 2,500, Black Walnut Festival (Roane)
57 3,800, Blue-Gray Reunion (Barbour) 3,500, Boone County Fair 6,500, Boone County Labor Day Celebration 4,000, Bradshaw Fall Festival (McDowell) 2,000, Bramwell Street Fair (Mercer) 1,500, Braxton County Arts and Crafts Fair 500, Braxton County Fairs and Festivals Association 9,000, Braxton County Homecoming 500, Brooke County Fair 2,500, Bruceton Mills Good Neighbor Days (Preston) 2,000, Buckwheat Festival (Preston) 6,000, Buffalo 4th of July Celebration (Putnam) 500, Buffalo Creek Memorial (Logan) 5,000, Burlington Apple Harvest Festival (Mineral) 8,000, Cabell County Fair 10,000, Cabwaylingo Forest Foundation (Wayne) 1,500, Calhoun County Wood Festival 2,000, Cape Coalwood Festival Association (McDowell) 2,500, Capon Bridge Annual VFD Celebration (Hampshire) 1,000, Capon Springs Ruritan 4th of July (Hampshire) 1,000, Carnegie Hall, Inc. (Greenbrier) 70,000, Cass Homecoming (Pocahontas) 2,000, Celebration in the Park (Wood) 3,000, Celebration of America (Monongalia) 6,000, Ceredo Historical Society (Wayne) 2,000, Ceredo Landmark Commission (Wayne) 1,500, Ceredo-Kenova Railroad Museum (Wayne) 2,000, Chapmanville Apple Butter Festival (Logan) 1,000, Chapmanville Fire Department 4th of July 3,000, Charles Town Summer Sampler (Jefferson) 1,000, Charleston River Lights Project (Kanawha) 10,000, Cherry River Festival (Nicholas) 6,500, Chester Fireworks (Hancock) 1,500, Chief Logan State Park-Civil War Celebration 8,000, Christmas in Shepherdstown (Jefferson) 4,000, Christmas in the Park (Logan) 25,000, Civil War Horse Cavalry Race (Barbour) 1,000, Clay County Agriculture Youth Fair 1,500, Clay County Golden Delicious Festival 5,000, Coal Field Jamboree (Logan) 35,000, Coalton Days Fair (Randolph) 7,000, Collis P. Huntington Railroad Historical Society 10,000, Country Roads Festival (Fayette) 2,000, Cowen Railroad Festival (Webster) 3,500, Craigsville Fall Festival 3,500, Cross Lanes Annual Festival (Kanwaha)
8,000, Doddridge County Fair 5,200, Durbin Days (Pocahontas)
2,000, Elbert/Filbert Reunion Festival (McDowell) 1,500,
Elizabethtown Festival (Marshall) 4,000, Ellenboro Glass
Festival (Ritchie) 3,000, Fairview 4th of July Celebration
(Marion) 1,000, Fayette American Legion 4th of July 1,000,
Fellowsville Firemen’s Festival (Preston) 1,000, First Stage
Children’s Theater Company (Cabell) 1,000, Flatwood Days
(Braxton) 1,000, Flemington Day Fair and Festival (Taylor)
3,500, Follansbee Community Days (Brooke) 3,750, Fort
Ashby Fort (Mineral) 1,500, Fort Gay Mountain Heritage Days
(Wayne) 5,000, Fort Randolph (Mason) 5,000, Frankford
Autumnfest (Greenbrier) 3,000, Friends Auxiliary of W.R.
Sharpe Hospital 5,000, Frontier Fest/Canaan Valley (Taylor
County) 5,000, Fund for the Arts-Wine & All that Jazz Festival
2,500, Gassaway Days Celebration (Braxton) 3,500, General
Adam Stephen Memorial Foundation 18,525, Gilbert Kiwanis
Harvest Festival 1,000, Gilbert Spring Fling (Mingo) 1,000.
Gilmer County Farm Show 3,500, Grafton Mother’s Day Shrine
Committee (Taylor) 7,500, Grafton Railroad Festival (Taylor)
1,000, Grant County Arts Council 2,000, Grape Stomping Wine
Festival (Nicholas) 2,000, Greater Quinwood Days (Greenbrier)
2,000, Green Spring Days (Hampshire) 1,000, Greenbrier
Valley Theater 50,000, Guyandotte Civil War Days (Cabell)
10,000, Hamlin 4th of July Celebration (Lincoln) 3,500,
Hampshire Civil War Celebration Days 1,000, Hampshire
County Fair 6,000, Hampshire County French & Indian War
Celebration 1,000, Hampshire Herbs & Arts Festival 1,000,
Hampshire Heritage Days 2,000, Hardy County Commission -
4th of July 10,000, Harts Community Celebration (Lincoln)
1,000, Heritage Craft Center of the Eastern Panhandle 7,000,
Heritage Craft Festival (Monroe) 1,000, Heritage Days Festival
(Roane) 1,500, Hicks Festival (Tucker) 2,000, Hilltop Festival
(Huntington) 500, Hinton Railroad Days (Summers) 3,000,
Historic Fayette Theater (Fayette) 5,500, Holly River Festival
(Webster) 1,500, Hundred 4th of July (Wetzel) 7,250, Hunting-
ton Outdoor Theater (Cabell) 1,000, Iaeger Lions Club Annual
Car Show (McDowell) 1,500, Iaeger Town Fair (McDowell)
1,500, Indian Mound Cemetery (Hampshire) 2,000, International
Ramp Cook-Off (Randolph) 2,000, Irish Heritage
Festival of WV (Raleigh) 6,000, Irish Spring Festival (Lewis)
1,000, Italian Heritage Festival - Clarksburg 25,000,
Jacksonburg Homecoming (Wetzel) 1,000, Jane Lew Arts and
Crafts Fair (Lewis) 1,000, Jefferson Co. Black History Preservation Society 5,000, Jefferson Co. Historical Landmark Commission 8,000, Jersey Mountain Ruritan Pioneer Days (Hampshire) 1,000, John Henry Days Festival (Monroe) 4,000, Johnstown Community Fair (Harrison) 2,500, Junior Heifer Preview Show (Lewis) 2,000, Kanawha Coal Riverfest - St. Albans July 5,000, Kay Ford Reunion (Kanawha) 2,500, Kenova Fall Festival (Wayne) 5,000, Kermit Fall Festival (Mingo) 3,000, Keyser Old Fashioned 4th of July Celebration 1,000, King Coal Festival (Mingo) 3,500, Kingwood Downtown Street Fair and Heritage Days 2,000, Lady of Agriculture (Preston) 1,000, Lamb and Steer Show 9,000, Last Blast of Summer (McDowell) 5,000, Laurel Mt. Re-enactment Committee (Barbour) 3,250, Levels VFD Lawn Association (Hampshire) 1,000, Lewis County Fair Association 3,500, Lewisburg Shanghai (Greenbrier) 2,000, Lincoln County Fall Festival 6,000, Lincoln County Winterfest 5,000, Lincoln District Fair (Marion) 2,500, Lindside 4th of July (Monroe) 500, Little Birch Days Celebration (Braxton) 500, Little Levels Heritage Festival 2,000, Logan County Arts and Crafts Fair 4,000, Lost Creek Community Festival 6,000, Maddie Carroll House (Cabell) 7,500, Mannington District Fair (Marion) 6,000, Maple Syrup Festival (Randolph) 1,000, Marmet Annual Labor Day Celebration (Kanawha) 2,000, Marshall County Antique Power Show 2,500, Marshall County Fair 4,500, Marshall County Historical Society 8,500, Marshall County Riverfront Festival 2,500, Mason County Fair 5,000, Mason Dixon Festival (Monongalia) 7,000, Matewan-Magnolia Fair (Mingo) 4,000, McARTS-
McDowell County 20,000, McCoy Theater (Hardy) 20,000,
McDowell County Fair 2,500, McGrew House History Day
2,000, McNeill’s Rangers (Mineral) 8,000, Meadow Bridge
Hometown Festival (Fayette) 1,250, Meadow River Days
Festival 3,000, Mid-State Archers Amateur Shoot (Braxton)
1,500, Mineral County Fair 1,750, Molasses Festival (Calhoun)
2,000, Moncove Lake Festival (Monroe) 2,000, Monroe County
Farmer’s Day - Union 2,000, Monroe County Harvest Festival
2,000, Mothers’ Day Festival (Randolph) 2,500, Moundsville
July 4th Celebration (Marshall) 5,000, Moundsville Bass
Festival 4,000, Mount Liberty Fall Festival (Barbour) 2,500,
Mountain Festival (Mercer) 4,625, Mountain Heritage Arts and
Crafts Festival 2,000, Mountain State Apple Harvest Festival
(Berkeley) 7,500, Mountaineer Boys’ State (Lewis) 10,000,
Mountaineer Hot Air Balloon Festival 4,000, Mud River
Festival (Lincoln) 8,000, Northern Preston Mule Pull and
Farmers Days 4,000, Mullens Dogwood Festival (Wyoming)
6,000, Multi-Cultural Festival of West Virginia 20,000,
Museum in the Community (Putnam) 45,000, Music Hall of
Fame (Marion) 5,000, New Cumberland 4th of July (Hancock)
2,000, New River Bridge Day Festival (Fayette) 5,000, New-
burg Volunteer Fireman’s Field Day (Preston) 1,000, Newell
Annual Clay Festival (Hancock) 3,000, Nicholas County Potato
Festival 3,500, Nicholas Old Main Foundation (Nicholas)
2,000, Norman Dillon Farm Museum (Berkeley) 10,000, North
Preston Farmers Club - Civil War Times 1,000, North River
Valley Festival (Hampshire) 1,000, Oak Leaf Festival (Fayette)
4,000, Oceana Heritage Festival (Wyoming) 6,000, Oglebay
City Park - Festival of Lights (Ohio) 80,000, Oglebay Festival
(Ohio) 5,000, Ohio County Fair 8,500, Old Central City Fair
(Huntington) 5,000, Old Opera House Theater Company
(Jefferson) 15,000, Old Tyme Christmas (Jefferson) 2,325,
Paden City Labor Day Festival (Wetzel) 6,500, Panther Fall
Festival (McDowell) 4,000, Parkersburg Arts Center 20,000,
Parkersburg Homecoming (Wood) 12,000, Paw Paw District
Fair (Marion) 3,500, Pax Reunion Committee (Fayette) 5,000, Pendleton County 4-H Weekend 2,000, Pendleton County Committee for Arts 15,000, Pennsboro Country Road Festival 2,000, Petersburg Fourth of July Celebration 20,000, Peterstown 4th of July Horse Show (Grant) 1,000, Piedmont Annual Back Street Festival 4,000, Pinch Reunion (Kanawha) 1,500, Pine Bluff Fall Festival 1,000, Pine Grove 4th of July Festival (Wetzel) 5,000, Pineville Festival (Wyoming) 6,000, Pleasants County Agriculture Youth Fair 5,000, Poca Heritage Days (Putnam) 3,000, Pocahontas County Pioneer Days 7,000, Pocahontas Historic Opera House 6,000, Point Pleasant Artist Series 5,000, Point Pleasant Stern Wheel Regatta River 5,000, Potomac Highlands Maple Festival (Grant) 6,000, Princeton Civil War Heritage Days (Mercer) 1,000, Princeton Town Fair (Mercer) 5,000, Putnam County Fair 5,000, Quartets on Parade (Wardensville) 4,000, Raleigh County All Wars Museum 10,000, Randolph County Community Arts Council 3,000, Ravenswood Oktoberfest 5,000, Reedsville VFD Fair (Preston) 2,000, Rhododendron Girls’ State (Ohio) 10,000, Ripley 4th of July (Jackson) 15,000, Ritchie County Pioneer Days 1,000, Ritter Park Days (Cabell) 3,000, River Heritage Days - Speed Boat Race (Wetzel) 5,000, River Heritage Days Festival (Wetzel) 6,000, Roane County 4-H and FFA Youth Livestock Program 2,000, Ronceverte River Festival (Greenbrier) 3,000, Rowlesburg Labor Day Festival (Preston) 1,000, Rupert Country Fling (Greenbrier) 3,000, Salem Apple Butter Festival (Harrison) 4,000, Scottish Heritage Society/N.Central WV Central 5,000, Sistersville 4th of July Fireworks (Wetzel) 5,500, Smoke on the Water (Kanawha) 2,000, Smoke on the Water (Wetzel) 3,000, Soldiers’ Memorial Theater (Raleigh) 10,000, Southern WV Veterans’ Museum (Summers) 4,500, Spring Mountain Festival (Grant) 3,650, Springfield Peach Festival (Hampshire) 1,200, St. Albans City of Lights - December 5,000, Stoco Reunion (Raleigh) 2,500, Stonewall Jackson Heritage Arts and Crafts 6,000, Storytelling Festival (Lewis)
500, Strawberry Festival (Upshur) 20,000, Summer Festival of Panther (McDowell) 1,500, Summers County Historic Landmark Commission 5,000, Summers County Railroad Days Festival 2,500, Summer-Ramer Heritage, Inc (Berkeley) 3,000, Sylvester July 4th Celebration (Boone) 2,500, Taylor County Fair 2,500, Terra Alta VFD 4th of July Celebration (Preston) 1,000, Thornton Pumpkin Festival (Taylor) 1,000, Those Who Served War Museum (Mercer) 4,000, Three Rivers Avian Center (Summers) 15,000, Three Rivers Coal Festival (Marion) 7,750, Thunder on the Tygart - Mothers’ Day Celebration 15,000, Treasure Mountain Festival (Pendleton) 2,500, Tri-County Fair (Grant) 10,000, Tucker County Arts Festival and Celebration 18,000, Tucker County Fair 4,750, Tug Valley Arts Council (Mingo) 5,000, Tunnelton Depot Days (Preston) 1,000, Tunnelton Fire Department Carnival (Preston) 750, Tunnelton Historical Society (Preston) 2,000, Turkey Festival (Hardy) 3,000, Tyler County Fair 5,200, Tyler County Fourth of July 500, Uniquely West Virginia Festival (Morgan) 2,000, Upper Ohio Valley Italian Festival (Ohio) 7,000, Upper West Fork Blue Grass Festival (Calhoun) 500, Upshur County Fair 7,000, Valley District Fair - Reedsville (Preston) 2,500, War Homecoming Fall Festival 1,500, Wardensville Fall Festival 5,000, Wayne County Fair 5,000, Wayne County Fall Festival 5,000, Webster County Woodchopping Festival 4,500, Webster Wild Water Weekend 2,000, Weirton July 4th Celebration (Hancock) 3,000, Wellsburg 4th of July Celebration (Brooke) 3,000, Wellsburg Apple Festival of Brooke County 4,000, West Virginia Autumn Festival (Burnsville) 3,000, West Virginia Blackberry Festival 5,000, West Virginia Coal Festival (Boone) 7,000, West Virginia Days - Hinton (Summers) 2,000, West Virginia Fair and Exposition (Wood) 8,100, West Virginia Highland Games & Celtic Festival 3,000, West Virginia Honey Festival (Wood) 2,000, West Virginia Museum of Glass (Lewis) 5,000, West Virginia Oil and Gas Festival (Tyler) 11,000, West Virginia Polled Hereford Assoc. 1,500, West
Virginia Poultry Festival (Hardy) 5,000, West Virginia Pumpkin Festival (Cabell) 5,000, West Virginia Roundhouse Rail Days (Berkeley) 25,000, West Virginia State Folk Festival 4,500, West Virginia Water Festival - City of Hinton 16,000, West Virginia Wine & Jazz Festival (Monongalia) 9,000, West Virginia Wine and Arts Festival (Berkeley) 5,000, Weston Carp Festival & Fishing Tournament 4,000, Weston VFD 4th of July Firemen Festival (Lewis) 2,000, Wetzel County Autumnfest 5,500, Wetzel County Town and Country Days 17,000, Wheeling Celtic Festival (Ohio) 2,000, Wheeling City of Lights 8,000, Wheeling Sterwheel Regatta 10,000, Whipple Community Action (Fayette) 2,500, Whitesville - Big Coal River Festival (Boone) 4,000, Widen Days Festival (Calhoun) 2,000, Wileyville Homecoming (Wetzel) 4,000, Winter Festival of the Waters (Berkeley) 5,000, Wirt County Fair 2,500, Wirt County Pioneer Days 2,000, YMCA Camp Horseshoe 105,000, Youth Museum of Southern WV (Raleigh) 12,000, Youth Stockman Beef Expo. (Lewis) 2,000, Z.D. Ramsdell House (Wayne) 4,500.

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

241-Library Commission-

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2006 Org 0433

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<td>Services to Libraries</td>
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<td>5</td>
<td>Libraries-Special Projects</td>
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6 Infomine Network .......................... 884 1,135,884
7 Total ................................. $10,204,760

242-Educational Broadcasting Authority-
Lottery Education Fund

(WV Code Chapter 10)

Fund 3587 FY 2006 Org 0439

1 Mountain Stage .............................. 249 $ 200,000
2 Star Schools .................................. 509 208,538
3 Total ........................................... $ 408,538

4 Any unexpended balance remaining in the above appropriation for Digital Conversion (fund 3587, activity 247) at the close of the fiscal year 2004 is hereby reappropriated for expenditure during the fiscal year 2005 with the exception of fund 3587, fiscal year 2001, organization 0439, activity 247 which shall expire on June 30, 2005.

243-Bureau of Senior Services-
Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2006 Org 0508

1 Local Programs Service Delivery Costs 200 $ 2,475,250
2 In-Home Services for Senior Citizens .. 224 1,000,000
3 Nutrition Services for the Elderly ...... 337 1,000,000
4 Senior Citizen Centers and Programs (R) 462 2,600,000
5 Direct Services ............................... 481 2,800,000
6 Transfer to Division of Human Services for Health Care and Title XIX Waiver
7 for Senior Citizens ......................... 539 13,000,000
Senior Services Medicaid Transfer 871 10,300,000
Legislative Initiatives
for the Elderly 904 5,200,000
Long Term Care Ombudsman 905 321,325
Total 871 38,696,575

Any unexpended balances remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, activity 462) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program. Further, the program shall be preserved within the aggregate of these funds.

244-Higher Education Policy Commission-
Lottery Education-

Higher Education Policy Commission-

Control Account
(WV Code Chapters 18B and 18C)

Fund 4925 FY 2006 Org 0441

Marshall Medical School-
RHI Program and Site Support (R) 033 $440,358
WVU Health Sciences
RHI Program and Site Support (R) 035 1,215,640
RHI Program and Site Support -
District Consortia (R) 036 2,410,172
RHI Program and Site Support -
RHEP Program Administration (R) 037 183,058
Any unexpended balances remaining in the appropriations at the close of fiscal year 2005 are hereby reappropriated for expenditure during the fiscal year 2006, with the exception of fund 4455, fiscal year 2003, organization 0484, activity 404 which shall expire on June 30, 2005.
Sec. 5. Appropriations from state excess lottery revenue

In accordance with section eighteen-a, article twenty-two, chapter twenty-nine of the code, the following appropriations shall be deposited and disbursed by the director of the lottery to the following accounts in this section in the amounts indicated.

245-Lottery Commission—

Refundable Credit

Fund 7207 FY 2006 Org 0705

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<th>Activity</th>
<th>Funds</th>
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</tbody>
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The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under chapter eleven, article twenty-one, section twenty-one of the code. The amount of the required transfer shall be determined solely by the state tax commissioner and shall be completed by the director of the lottery upon the commissioner's request.

246-Lottery Commission—

General Purpose Account

Fund 7206 FY 2006 Org 0705

<table>
<thead>
<tr>
<th>Activity</th>
<th>Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total-Transfer . . . . . . . . 402</td>
<td>$65,000,000</td>
</tr>
</tbody>
</table>

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the General Revenue Fund as determined by the director of the lottery.
The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by chapter eighteen-c, article seven, section seven.

Since creating the PROMISE Scholarship Program in 2001, the Legislature has directed that at a minimum, the administration of the Program maintain the financial stability of the fund and provide for the award of scholarships within the limits of available appropriations. W. Va. Code §18C-7-6. In 2001 as well, The Legislature set the maximum available appropriations for the fiscal year ending June 30, 2004, and thereafter, to be $27 million. W. Va. Code §29-22-18a. In June, 2004, the PROMISE Scholarship Board advised the Legislature that the Program needed $3 million more than the $27 million that had been appropriated for the fiscal year ending June 30, 2005, and that it expected that funding requirements for the fiscal year ending June 30, 2006, would be approximately $38 million. The Board now advises that it has obligated an aggregate award of scholarships for the fiscal year ending June 30, 2006, in the amount of $37,921,651, and that its expected appropriation needs for the next year will be $43 million.

The Legislature finds that it crafted the PROMISE Scholarship Program to control its costs and avoid the mistakes of other states that enacted similar legislation only to discover that its costs could not be controlled and obligations created were beyond the ability of those states to pay. The Legislature explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.
248-Economic Development Authority-

Economic Development Project Fund

Fund 3167 FY 2006 Org 0307

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

2 Pursuant to subsection (f), section eighteen-a, article twenty-two, chapter twenty-nine of the code, excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and subsection (f), section eighteen, article twenty-two, chapter twenty-nine of the code.

249-School Building Authority

Fund 3514 FY 2006 Org 0402

1 Unclassified-Total-Transfer ........ 402 $19,000,000

250-West Virginia Infrastructure Council

Fund 3390 FY 2006 Org 0316

1 Unclassified-Total-Transfer (R) ..... 402 $40,000,000

2 Any unexpended balance remaining in the appropriation at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

3 The above appropriation for Unclassified-Total-Transfer(activity 402) shall be transferred to the West Virginia Infrastructure Fund (fund 3384, org 0316) created by chapter thirty-one, article fifteen-a, section nine of the code.
251-Higher Education Improvement Fund

Fund 4297 FY 2006 Org 0441

1 Unclassified-Total (R) ............... 096  $10,000,000

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006 with the exception of fund 4297, fiscal year 2002, organization 0441, activity 096 and fund 4297, fiscal year 2003, organization 0441, activity 096 which shall expire on June 30, 2005.

252-State Park Improvement Fund

Fund 3277 FY 2006 Org 0310

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

Any unexpended balance remaining in the appropriation at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

253-Lottery Commission-

Excess Lottery Revenue Fund Surplus

Fund 7208 FY 2006 Org 0705

1 Unclassified-Total-Transfer ............ 402  $12,900,000

The above appropriation for Unclassified-Total-Transfer (activity 402) shall be transferred to the General Revenue Fund only after all funding required by chapter twenty-nine, article twenty-two, section eighteen-a of the code has been satisfied as determined by the director of the lottery.
250

APPROPRIATIONS

254—Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2006 Org 0100

Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses—Lottery Surplus (fund 1046, activity 066) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

255—Division of Health—

Central Office

(WV Code Chapter 16)

Fund 5219 FY 2006 Org 0506

Any unexpended balance remaining in the appropriation for Chief Medical Examiner—Capital Improvements—Lottery Surplus (fund 5219, activity 051) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

256—West Virginia State Police

(WV Code Chapter 15)

Fund 6394 FY 2006 Org 0612

Any unexpended balance remaining in the appropriation for Helicopter Purchase (fund 6394, activity 063) at the close of fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.
257—Tax Division

(WV Code Chapter 11)

Fund 7082 FY 2006 Org 0702

1 Any unexpended balance remaining in the appropriation for
2 Remittance Processor—Lottery Surplus (fund 7082, activity
3 054) at the close of the fiscal year 2005 is hereby
4 reappropriated for expenditure during the fiscal year 2006.

258-Joint Expenses

(WV Code Chapter 4)

Fund 1735 FY 2006 Org 2300

1 Any unexpended balance remaining in the appropriation at
2 the close of fiscal year 2005 is hereby reappropriated for
3 expenditure during the fiscal year 2006.

4 The above appropriation for Tax Reduction and Federal
5 Funding Increased Compliance (TRAFFIC)-Total (fund 1735,
6 activity 620) is intended for possible general state tax reduc-
7 tions or the offsetting of any reductions in federal funding for
8 state programs. It is not intended as a general appropriation for
9 expenditure by the Legislature.

10 Total TITLE II, Section 5-Excess
11 Lottery Funds ................ $ 202,900,000

Sec. 6. Appropriations of federal funds.—In accordance
with article eleven, chapter four of the code, from federal funds
there are hereby appropriated conditionally upon the fulfillment
of the provisions set forth in article two, eleven-h of the code
the following amounts, as itemized, for expenditure during the
fiscal year two thousand six.
252 APPOPRIATIONS

LEGISLATIVE

259-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2006 Org 2300

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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JUDICIAL

260-Supreme Court—

Consolidated Federal Funds

Fund 8867 FY 2006 Org 2400

<table>
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<th>Activity</th>
<th>Federal Funds</th>
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</thead>
<tbody>
<tr>
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</table>

EXECUTIVE

261-Governor's Office-

Governor's Cabinet on Children and Families

(WV Code Chapter 5)

Fund 8792 FY 2006 Org 0100

<table>
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<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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</table>

262-Governor's Office-

Office of Economic Opportunity

(WV Code Chapter 5)
Fund 8797 FY 2006 Org 0100

1  Unclassified-Total ..................... 096  $ 7,811,976

263-Governor’s Office-

Commission for National and Community Service

(WV Code Chapter 5)

Fund 8800 FY 2006 Org 0100

1  Unclassified-Total ..................... 096  $ 5,431,509

264-Auditor’s Office-

National White Collar Crime Center

(WV Code Chapter 12)

Fund 8807 FY 2006 Org 1200

1  Unclassified-Total ..................... 096  $14,000,942

265-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2006 Org 1400

1  Unclassified-Total ..................... 096  $ 4,246,459

266-Department of Agriculture-

Meat Inspection

(WV Code Chapter 19)

Fund 8737 FY 2006 Org 1400

1  Unclassified-Total ..................... 096  $  818,829
254  APPROPRIATIONS  [Ch. 16

267-Department of Agriculture-

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2006 Org 1400

1 Unclassified-Total ................. 096 $ 341,174

268-Secretary of State-

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2006 Org 1600

1 Unclassified-Total ................. 096 $14,500,000

DEPARTMENT OF ADMINISTRATION

269-West Virginia Prosecuting Attorney’s Institute

(WV Code Chapter 7)

Fund 8834 FY 2006 Org 0228

1 Unclassified-Total ................. 096 $ 199,468

270-Children’s Health Insurance Agency

(WV Code Chapter 5)

Fund 8838 FY 2006 Org 0230

1 Unclassified-Total ................. 096 $33,817,646
DEPARTMENT OF COMMERCE

271-Division of Forestry
(WV Code Chapter 19)
Fund 8703 FY 2006 Org 0305

1 Unclassified-Total .................. 096 $ 3,210,064

272-Geological and Economic Survey
(WV Code Chapter 29)
Fund 8704 FY 2006 Org 0306

1 Unclassified-Total .................. 096 $ 300,000

273-West Virginia Development Office
(WV Code Chapter 5B)
Fund 8705 FY 2006 Org 0307

1 Unclassified-Total .................. 096 $ 10,590,512

274-Division of Labor
(WV Code Chapters 21 and 47)
Fund 8706 FY 2006 Org 0308

1 Unclassified-Total .................. 096 $ 540,822

275-Division of Natural Resources
(WV Code Chapter 20)
Fund 8707 FY 2006 Org 0310

1 Unclassified-Total .................. 096 $ 8,769,201
276-Division of Miners' Health, Safety and Training
(WV Code Chapter 22)

Fund 8709 FY 2006 Org 0314
1 Unclassified-Total ..................... 096 $ 1,330,765

DEPARTMENT OF EDUCATION

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

Fund 8712 FY 2006 Org 0402
1 Unclassified-Total ..................... 096 $230,000,000

278-State Department of Education-
School Lunch Program
(WV Code Chapters 18 and 18A)

Fund 8713 FY 2006 Org 0402
1 Unclassified-Total ..................... 096 $ 90,000,000

279-State Board of Education-
Vocational Division
(WV Code Chapters 18 and 18A)

Fund 8714 FY 2006 Org 0402
1 Unclassified-Total ..................... 096 $30,000,000
### 280-State Department of Education-

*Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

**Fund 8715 FY 2006 Org 0402**

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### 281-State Department of Education-

*Education Grant*

**Fund 8748 FY 2006 Org 0402**

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### DEPARTMENT OF EDUCATION AND THE ARTS

#### 282-Department of Education and the Arts-

*Office of the Secretary*

(WV Code Chapter 5F)

**Fund 8841 FY 2006 Org 0431**

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#### 283-Division of Culture and History

(WV Code Chapter 29)

**Fund 8718 FY 2006 Org 0432**

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</table>
284-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2006 Org 0433

1 Unclassified-Total 096 $1,932,637

285-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2006 Org 0439

1 Unclassified-Total 096 $1,500,000

286-State Board of Rehabilitation-

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2006 Org 0932

1 Unclassified-Total 096 $49,128,380

DEPARTMENT OF ENVIRONMENTAL PROTECTION

287-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2006 Org 0313

1 Unclassified-Total 096 $98,015,470

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

288-Consolidated Medical Service Fund
Fund 8723 FY 2006 Org 0506

1 Unclassified-Total .................. 096 $7,308,797

289-Division of Health-

Central Office

Fund 8802 FY 2006 Org 0506

1 Unclassified-Total .................. 096 $85,787,737

290-Division of Health-

West Virginia Safe Drinking Water Treatment

Fund 8824 FY 2006 Org 0506

1 Unclassified-Total .................. 096 $16,000,000

291-West Virginia Health Care Authority

Fund 8851 FY 2006 Org 0507

1 Unclassified-Total .................. 096 $200,000

292-Human Rights Commission

Fund 8725 FY 2006 Org 0510

1 Unclassified-Total .................. 096 $510,467
293-Division of Human Services

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2006 Org 0511

1 Unclassified-Total ................. 096 $2,131,700,685

DEPARTMENT OF MILITARY AFFAIRS
AND PUBLIC SAFETY

294-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2006 Org 0601

1 Unclassified-Total ................. 096 $10,000,000

295-Adjutant General-State Militia

(WV Code Chapter 15)

Fund 8726 FY 2006 Org 0603

1 Unclassified-Total ................. 096 $95,600,000

296-Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2006 Org 0606

1 Unclassified-Total ................. 096 $32,016,368

297-Division of Corrections

(WV Code Chapters 25, 28, 49 and 62)
Ch. 16] APPROPRIATIONS 261

Fund 8836 FY 2006 Org 0608

1 Unclassified-Total ....................... 096 $ 650,000

298-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2006 Org 0612

1 Unclassified-Total ....................... 096 $ 1,105,392

299-Division of Veterans' Affairs

(WV Code Chapter 9A)

Fund 8858 FY 2006 Org 0613

1 Unclassified-Total ....................... 096 $ 10,000,000

300-Division of Veterans' Affairs

Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2006 Org 0618

1 Unclassified-Total ....................... 096 $ 1,753,467

301-Division of Criminal Justice Services

(WV Code Chapter 15)

Fund 8803 FY 2006 Org 0620

1 Unclassified-Total ....................... 096 $ 14,927,396
DEPARTMENT OF REVENUE

303-Tax Division

(WV Code Chapter 11)

Fund 7069 FY 2006 Org 0702
1 Unclassified-Total ................. 096 $ 25,000

304-Insurance Commission

(WV Code Chapter 33)

Fund 8883 FY 2006 Org 0704
1 Unclassified-Total ................. 096 $ 950,000

DEPARTMENT OF TRANSPORTATION

305-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2006 Org 0802
1 Unclassified-Total ................. 096 $ 9,819,900

306-Division of Public Transit

(WV Code Chapter 17)
Fund 8745 FY 2006 Org 0805

1 Unclassified-Total .................. 096 $ 13,559,897

307-Public Port Authority

(WV Code Chapter 17)

Fund 8830 FY 2006 Org 0806

1 Unclassified-Total .................. 096 $ 0

308-Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2006 Org 0807

1 Unclassified-Total .................. 096 $ 100,000

BUREAU OF EMPLOYMENT PROGRAMS

309-Bureau of Employment Programs

(WV Code Chapter 21A)

Fund 8835 FY 2006 Org 0323

1 Unclassified ......................... 099 $ 512,657
2 Reed Act 2002—Unemployment
3 Compensation ........................ 622 2,374,000
4 Reed Act 2002—Employment Services 630 1,371,000
5 Total ................................. $ 4,257,657

Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of section nine, article nine, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the above appropriation to Unclassified shall be used
by the bureau of employment programs for the specific purpose
of administration of the state’s unemployment insurance
program or job service activities, subject to each and every
restriction, limitation or obligation imposed on the use of the
funds by those federal and state statutes.

BUREAU OF SENIOR SERVICES

310-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2006 Org 0508

1 Unclassified-Total ....................... 096 $ 14,550,000

MISCELLANEOUS BOARDS AND COMMISSIONS

311-Board of Pharmacy

(WV Code Chapter 30)

Fund 8857 FY 2006 Org 0913

1 Unclassified-Total ....................... 096 $ 100,000

312-Public Service Commission-

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2006 Org 0926

1 Unclassified-Total ....................... 096 $ 1,514,718

313-Public Service Commission-

Gas Pipeline Division
Fund 8744 FY 2006 Org 0926

1 Unclassified-Total .................. 096 $ 270,918

314-WV Statewide Addressing and Mapping Board

Fund 8868 FY 2006 Org 0940

1 Unclassified-Total .................. 096 $ 100,000

315-National Coal Heritage Area Authority

Fund 8869 FY 2006 Org 0941

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

316-Coal Heritage Highway Authority

Fund 8861 FY 2006 Org 0942

1 Unclassified-Total .................. 096 $ 30,000
2 Total TITLE II, Section
3 6-Federal Funds ..................... $3,172,449,159

Sec. 7. Appropriations from federal block grants.-The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2006.

317-Governor's Office-

Office of Economic Opportunity
Community Services

Fund 8799 FY 2006 Org 0100

1 Unclassified-Total .................. 096 $ 9,500,000

318-West Virginia Development Office-

Community Development

Fund 8746 FY 2006 Org 0307

1 Unclassified-Total .................. 096 $28,330,852

319-West Virginia Development Office-

Workforce Investment Act

Fund 8848 FY 2006 Org 0307

1 Unclassified-Total .................. 096 $39,700,000

320-Division of Health-

Maternal and Child Health

Fund 8750 FY 2006 Org 0506

1 Unclassified-Total .................. 096 $10,902,891

321-Division of Health-

Preventive Health

Fund 8753 FY 2006 Org 0506

1 Unclassified-Total .................. 096 $2,241,834
322-Division of Health-

Substance Abuse Prevention and Treatment

Fund 8793 FY 2006 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
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<td>Unclassified-Total</td>
<td>$11,563,804</td>
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</table>

323-Division of Health-

Community Mental Health Services

Fund 8794 FY 2006 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
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324-Division of Health-

Abstinence Education Program

Fund 8825 FY 2006 Org 0506

<table>
<thead>
<tr>
<th>Description</th>
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<tbody>
<tr>
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325-Division of Human Services-

Energy Assistance

Fund 8755 FY 2006 Org 0511

<table>
<thead>
<tr>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>$25,000,000</td>
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326-Division of Human Services-

Social Services

Fund 8757 FY 2006 Org 0511

<table>
<thead>
<tr>
<th>Description</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Unclassified-Total</td>
<td>$15,000,000</td>
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</table>
327-Division of Human Services-
Temporary Assistance Needy Families

Fund 8816 FY 2006 Org 0511

1 Unclassified-Total ...................... 096 $ 150,000,000

328-Division of Human Services-
Child Care and Development

Fund 8817 FY 2006 Org 0511

1 Unclassified-Total ...................... 096 $ 40,000,000

329-Division of Criminal Justice Services-
Juvenile Accountability Incentive

Fund 8829 FY 2006 Org 0620

1 Unclassified-Total ...................... 096 $ 572,263

330-Division of Criminal Justice Services-
Local Law Enforcement

Fund 8833 FY 2006 Org 0620

1 Unclassified-Total ...................... 096 $ 947,069

2 Total TITLE II, Section 7-Federal
3 Block Grants ......................... $ 338,054,843

Sec. 8. Awards for claims against the state.—There are hereby appropriated for fiscal year 2006, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $1,062,195, special revenue fund in the
amount of $175,223, state road funds in the amount of
$205,455, and non-general revenue funds in the amount of
$603,266 for payment of claims against the state.

Sec. 9. Special revenue appropriations.-There are hereby
appropriated for expenditure during the fiscal year two thou-
sand six appropriations made by general law from special
revenue which are not paid into the state fund as general
revenue under the provisions of section two, article two, chapter
twelve of the code: Provided, That none of the money so
appropriated by this section shall be available for expenditure
except in compliance with and in conformity to the provisions
of articles two and three, chapter twelve and article two, chapter
eleven-b of the code, with due consideration to the digest of the
budget bill prepared pursuant to article one, chapter four, unless
the spending unit has filed with the director of the budget and
the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues
accruing to such fund;

(b) A detailed expenditure schedule showing for what
purposes the fund is to be expended.

Sec. 10. State improvement fund appropriations.-Be-
quests or donations of nonpublic funds, received by the
governor on behalf of the state during the fiscal year two
thousand six, for the purpose of making studies and recommend-
dations relative to improvements of the administration and
management of spending units in the executive branch of state
government, shall be deposited in the state treasury in a
separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited
during the fiscal year two thousand six to be expended as
authorized by the governor, for such studies and recommenda-
tions which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 11. Specific funds and collection accounts.-A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of article three, chapter twelve of the code.

Sec. 12. Appropriations for refunding erroneous payment.-Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the auditor for the refunding of the proper amount. The auditor shall issue his or her warrant to the treasurer and the treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 13. Sinking fund deficiencies.-There is hereby appropriated to the governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by section twenty-b, article eighteen, chapter thirty-one of the code, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund require-
ments. The governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 14. Appropriations for local governments.-There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 15. Total appropriations.-Where only a total sum is appropriated to a spending unit, the total sum shall include personal services, annual increment, employee benefits, current expenses, repairs and alterations, equipment and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I-GENERAL PROVISIONS, Sec. 3.

Sec. 16. General school fund.-The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with section sixteen, article nine-a, chapter eighteen of the code.
Sec. 17. Reimbursement limits.-Reimbursements to the state attorney general may not exceed the following limits in the aggregate for all funds and activities subordinate to the identified organizations: Division of Corrections (org 0608) $213,000; Higher Education Policy Commission (org 0441; 0442; 0477) $304,000; Department of Health and Human Resources (0500) $1,402,000; Division of Juvenile Services (0621) $122,000; Division of Forestry (0305) $14,000; Division of Natural Resources (0310) $119,000; Division of Tourism (0304) $7,000; Parole Board (0605) $10,000; State Police (0612) $345,000; Division of Rehabilitation (0932) $71,000; Tax Division (0702) $327,000; Workers' Compensation Commission (0322) $3,261,000; and Division of Labor (0308) $73,000. With respect to the spending units identified in this section, the State Auditor shall approve no expense-to-expense transfer, intergovernmental transfer, invoice or other payment or reimbursement to the attorney general in excess of the above limits:

TITLE III-ADMINISTRATION.

§1. Appropriations conditional.
§2. Legislative intent.
§3. Constitutionality.

Section 1. Appropriations conditional.- The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of article two, chapter eleven-b of the code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the

*CLERK'S NOTE: The Governor struck language on line 1 through line 18.
Sec. 2. Legislative intent.-It is the intent of the Legislature that the duly appointed members of the conference committee on this bill may formulate and set forth in a budget digest recommendations for the expenditure of money appropriated by this bill after its enactment. It is the further intent of the Legislature that the recommendations set forth in the budget digest are an expression of legislative intent, do not have the force and effect of law, and may not be construed to alter the lawful enactment of this bill.

Sec. 3. Constitutionality.-If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 17

(H. B. 3181 — By Delegates Michael, Doyle, R.M. Thompson, Stalnaker, Williams, Proudfoot, Browning, Houston, Cann, Frederick and Ashley)

[Passed March 30, 2005; in effect from passage.]
[Approved by the Governor on March 31, 2005.]

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 five, to a new item of appro-
Appropriation designated to the bureau of commerce - economic development authority - economic development project bridge loan fund, fund 3169, fiscal year 2005, organization 0307, supplementing and amending chapter thirteen, Acts of the Legislature, regular session, two thousand four, known as the budget bill.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the bureau of commerce - economic development authority - economic development project bridge loan fund, fund 3169, fiscal year 2005, organization 0307, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five; 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 three thereof the following:

1 TITLE II — APPROPRIATIONS.

2 Sec. 3. Appropriations from other funds.

3 BUREAU OF COMMERCE

4 178a—Economic Development Authority—

5 Economic Development Project Bridge Loan Fund

6 (WV Code Chapter 29)

7 Fund 3169 FY 2005 Org 0307

8 Activity Other Funds

9

10 1 Unclassified - Total .................. 096 $ 1,000,000
The purpose of this supplementary appropriation bill is to supplement this account in the budget act for 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 other funds for the designated spending unit for expenditure during the fiscal year two thousand five.

CHAPTER 18

(S. B. 752 — By Senators Helmick, Sharpe, Chafin, Plymale, Preziosi, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 22, 2005.]

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 Environmental Protection - Division of Environmental Protection, fund 8708, fiscal year 2005, organization 0313, by 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 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 8708, fiscal year 2005, organization 0313, be supplemented and amended by increasing the total appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

294—Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2005 Org 0313

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$10,000,000</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 19

(S. B. 739 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed April 7, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]
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 five, to the Department of Health and Human Resources - Division of Health - Hepatitis B Vaccine, fund 5183, fiscal year 2005, organization 0506, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources - Division of Health - Hepatitis B Vaccine, fund 5183, fiscal year 2005, organization 0506, available for expenditure 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 5183, fiscal year 2005, organization 0506, be supplemented and amended by increasing the total appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

129—Division of Health—

Hepatitis B Vaccine

Fund 5183 FY 2005 Org 0506
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 West Virginia State Mapping and Addressing Board, fund 8868, fiscal year 2005, organization 0940, by 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 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 fiscal year ending the thirtieth day of June, two thousand five, to fund 8868, fiscal year 2005, organization 0940, be supplemented and amended by increasing the total appropriation as follows:

TITLE II—APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

299—WV State Mapping and Addressing Board

(WV Code Chapter 24E)

Fund 8868 FY 2005 Org 0940

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>099</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 21

(H. B. 3363 — By Delegates Michael, Doyle, Stalnaker, Williams, Proudfoot, Cann, Frederick, Palumbo, Anderson and Ashley)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 22, 2005.]
AN ACT supplementing, amending, reducing and adding a new item to the existing appropriations from the state fund, general revenue, to the Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2005, organization 0608, 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 Department of Military Affairs and Public Safety - Division of Corrections - Correctional Units, fund 0450, fiscal year 2005, organization 0608, be amended and reduced 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 56—Division of Corrections—
6 Correctional Units
7 (WV Code Chapters 25, 28, 49 and 62)
8 Fund 0450 FY 2005 Org 0608

9 General
10 Act-Revenue
11 ivity
12 Fund

12 14 Martinsburg Correctional Center . . . 663 $ 325,000
And that the total appropriations from the state fund, general revenue, to the Department of Military Affairs and Public Safety - Division of Corrections - correctional units, fund 0450, fiscal year 2005, organization 0608, be amended and increased by adding a new item of 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 2005 Org 0608

<table>
<thead>
<tr>
<th>Activity</th>
<th>General Revenue Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Capital Outlay</td>
<td>511 $325,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement, amend, reduce, and add a new item to existing appropriations in the aforesaid account for the designated spending unit. The funds are for expenditure during the fiscal year two thousand five with no new money being appropriated.
AN ACT making a supplementary appropriation in the State Fund, General Revenue, to the Department of Transportation - Aeronautics Commission, fund 0582, fiscal year 2005, organization 0807, by 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 fiscal year ending the thirtieth day of June, two thousand five, to fund 0582, fiscal year 2005, organization 0807, be supplemented and amended to read as follows:

TITLE II—APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

72—Aeronautics Commission

Fund 0582 FY 2005 Org 0807
<table>
<thead>
<tr>
<th></th>
<th>General Activity Fund</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>Unclassified (R)</td>
<td>099 $ 1,209,436</td>
</tr>
<tr>
<td>15</td>
<td>Civil Air Patrol</td>
<td>234 $ 111,384</td>
</tr>
<tr>
<td>16</td>
<td>Total</td>
<td>$ 1,320,820</td>
</tr>
</tbody>
</table>

Any unexpended balance remaining in the appropriations for unclassified (fund 0582, activity 099) at the close of the fiscal year two thousand four is hereby reappropriated for expenditure during the fiscal year two thousand five, with the exception of fund 0582, fiscal year 2004, activity 099 ($35,606) which shall expire on the thirtieth day of June, two thousand four.

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 decreasing and increasing items of appropriation with no additional funds being appropriated.

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**CHAPTER 23**

(S. B. 733 — By Senators Helmick, Sharpe, Edgell, Love, Bailey, Bowman, McCabe, Minear, Boley, Facemyer, Yoder and Guills)

[Passed April 7, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

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 Transportation, Aeronautics Commission, fund 8831, fiscal year 2005, organization 0807, 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 continuing 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:

1 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 TRANSPORTATION

286a—Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2005 Org 0807

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified</td>
<td>$4,000</td>
</tr>
</tbody>
</table>

The purpose of this supplementary appropriation bill is to supplement this account in the budget act for fiscal year ending the thirtieth day of June, two thousand five, by providing for a
CHAPTER 24

(S. B. 269 — By Senators Helmick, Sharpe, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed March 4, 2005; in effect from passage.]
[Approved by the Governor on March 15, 2005.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2005, organization 0803, by 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 the executive budget document, dated the ninth day of February, two thousand five, which included the statement of the State Road Fund setting forth therein the cash balances and investments as of the first day of July, two thousand four, and further included the estimate of revenues for the fiscal year two thousand five, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand five.

WHEREAS, It thus appears from the Governor’s executive budget document 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 items of the total appropriation from the State Road Fund, fund 9017, fiscal year 2005, organization 0803, be amended and reduced in the existing line items as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 2. Appropriations from State Road Fund.

3 DEPARTMENT OF TRANSPORTATION

4 92—Division of Highways

5 (WV Code Chapters 17 and 17C)

6 Fund 9017 FY 2005 Org 0803

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bridge Repair and Replacement</td>
<td>273 $ 10,000,000</td>
</tr>
<tr>
<td>General Operations</td>
<td>277 1,500,000</td>
</tr>
<tr>
<td>Appalachian Programs</td>
<td>280 40,000,000</td>
</tr>
<tr>
<td>Highway Litter Control</td>
<td>282 87,000</td>
</tr>
</tbody>
</table>

And that the items of the total appropriations from the State Road Fund, fund 9017, fiscal year 2005, organization 0803, be amended and increased in the line items as follows:

17 TITLE II—APPROPRIATIONS.

18 Sec. 2. Appropriations from State Road Fund.

19 DEPARTMENT OF TRANSPORTATION

20 92—Division of Highways
The purpose of this supplementary appropriation bill is to supplement, amend, reduce and increase existing items in the aforesaid account for the designated spending unit for expenditure during the fiscal year ending the thirtieth day of June, two thousand five.
Be it enacted by the Legislature of West Virginia:

1 That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 9007, fiscal year 2005, organization 0802, be supplemented and amended to read as follows:

5 TITLE II—APPROPRIATIONS.

6 Sec. 2. Appropriations from State Road Fund.

7 DEPARTMENT OF TRANSPORTATION

8 91—Division of Motor Vehicles

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

10 Fund 9007 FY 2005 Org 0802

11

<table>
<thead>
<tr>
<th>Activity</th>
<th>State Road Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>001</td>
<td>13,232,017</td>
</tr>
<tr>
<td>004</td>
<td>206,350</td>
</tr>
<tr>
<td>010</td>
<td>5,679,059</td>
</tr>
<tr>
<td>099</td>
<td>19,876,868</td>
</tr>
<tr>
<td>613</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td>$38,994,294</td>
</tr>
</tbody>
</table>

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 decreasing and increasing items of appropriation with no additional funds being appropriated.
CHAPTER 26

(S. B. 731 — By Senators Helmick, Sharpe, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Minear, Boley, Facemyer, Yoder and Guills)

[Passed April 7, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

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 Department of Transportation - Division of Public Transit, fund 8745, fiscal year 2005, organization 0805, by 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 continuing programs now available for expenditure during 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:

1 That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 8745, fiscal year 2005, organization 0805, be supplemented and amended by increasing the total appropriation as follows:

5 TITLE II—APPROPRIATIONS.

6 Sec. 6. Appropriations of federal funds.
DEPARTMENT OF TRANSPORTATION

285—Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2005 Org 0805

<table>
<thead>
<tr>
<th>Activity</th>
<th>Federal Funds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unclassified - Total</td>
<td>$1,612,202</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 fiscal year two thousand five.

CHAPTER 27

(S. B. 122 — By Senators Minard and McCabe)

[Passed April 5, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §31A-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §31A-2-5 of said code; and to amend and reenact §31A-4-1 and §31A-4-5 of said code, all relating to the ability of a state-chartered bank to organize as a limited liability company.

Be it enacted by the Legislature of West Virginia:

That §31A-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31A-2-5 of said code be amended
and reenacted; and that §31A-4-1 and §31A-4-5 of said code be amended and reenacted, all to read as follows:

Article
  2. Division of Banking.
  4. Banking Institutions and Services Generally.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.


1. As used in this chapter, unless the context in which used plainly requires a different meaning:

  3. (a) The word "action", in the sense of a judicial proceeding, means any proceeding in a court of competent jurisdiction in which rights are adjudicated and determined and shall embrace and include recoupment, counterclaim, setoff and other related, similar and summary proceedings;

  8. (b) The words "bank" and "banking institution" mean a corporation, limited liability company or association heretofore or hereafter chartered to conduct a banking business under the laws of the United States or any state, territory, district or possession thereof, which is authorized in West Virginia to accept deposits that the depositor has a legal right to withdraw on demand and is authorized to engage in the business of commercial lending, and meets the criteria set forth in Section 2(c) of the Bank Holding Company Act, as amended, 12 U. S. C. §1841(c), and shall embrace and include a savings bank, savings and loan association, trust company or an institution combining banking and trust company facilities, functions and services so chartered or authorized to conduct such business in this state;

  22. (c) The words "bankers' bank" mean a banking institution, insured by the Federal Deposit Insurance Corporation, the stock
of which is owned exclusively by banks and other depository
institutions, and such banking institution and all subsidiaries
thereof are engaged exclusively in providing services for banks
and other depository institutions and their officers, directors and
employees;

(d) The term "banking business" means the functions,
services and activities contained, detailed and embraced in
sections thirteen and fourteen, article four of this chapter and as
elsewhere defined by law;

(e) The word "Board" means the West Virginia Board of
Banking and Financial Institutions;

(f) The words "branch bank" mean an office or other place
at which a bank performs any or all banking business. For
purposes of this chapter, a branch bank does not include:

(1) A bank's principal place of business;

(2) Any customer bank communication terminals installed
and operated pursuant to section twelve-b, article eight of this
chapter; and

(3) Any loan origination office authorized by section
twelve-c, article eight of this chapter;

(g) The words "Commissioner" or "Commissioner of
Banking" mean the Commissioner of Banking of West Vir-
ginia;

(h) The word "community" means a city, town or other
incorporated area or, where not so incorporated, a trading area;

(i) The word "department" or "division" means the Division
of Banking of West Virginia;
(j) The words "Deputy Commissioner" or "Deputy Commissioner of Banking" mean the Deputy Commissioner of Banking of West Virginia;

(k) The word "fiduciary" means any trustee, agent, executor, administrator, curator, committee, guardian or conservator, special commissioner, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust or responsibility;

(l) The words "financial institutions" mean banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the Commissioner of Banking;

(m) The word "officer", when referring to any financial institution, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee and any trust officer, assistant vice president, assistant treasurer, assistant secretary, assistant trust officer, assistant cashier, assistant comptroller or any other person who performs the duties appropriate to those offices and the term "executive officer" as herein used, when referring to banking institutions, means an officer of a bank whose duties involve regular, active and substantial participation in the daily operations of such institution and who, by virtue of his or her position, has both a voice in the formulation of the policy of the bank and responsibility for implementation of the policy, such responsibility of and functions performed by the individual, and not his or her title or office, being determinative of whether he or she is an "executive officer";

(n) The words "out-of-state bank" or "out-of-state banking institution" mean a bank chartered under the laws of a state or
84 United States territory, possession or district, other than West Virginia, or organized under federal law and having its main office located in a state, United States territory, possession or district, other than West Virginia;

88 (o) The words "person" or "persons" mean any individual, partnership, society, association, firm, institution, company, public or private corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

95 (p) The words "safe-deposit box" mean a safe-deposit box, vault or other safe-deposit receptacle maintained by a lessor bank and the rules relating thereto apply to property or documents kept therein in the bank's vault under the joint control of lessor and lessee;

100 (q) The words "state bank" or "state banking institution" mean, unless the context requires otherwise, a bank chartered under the laws of West Virginia, as distinguished from either an out-of-state bank or a national banking association and is also referred to as a "West Virginia State Bank" or "West Virginia State Banking Institution"; and

106 (r) The words "trust business" mean the functions, services and activities contained, detailed and embraced in section fourteen, article four of this chapter and as elsewhere defined by law and as may be included within the meaning of the term "banking business".

ARTICLE 2. DIVISION OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.
(a) No person shall engage or continue in the business of a financial institution in this state without a license or certificate to do so issued in accordance with this section, or other applicable law, which license or certificate remains unsuspended, unexpired and unrevoked except that a corporation which proposes to apply for such license or certificate may secure its charter, adopt bylaws, elect its directors and officers and perfect its organization.

(b) No person shall operate an office in West Virginia which regularly makes consumer loans in this state other than first mortgage loans unless they are a financial institution, licensed pawnbroker or a federally insured depository institution authorized and qualified to do business in this state. The purchase of consumer paper does not constitute the making of consumer loans for the purposes of this subsection, unless the purchase is made by a business affiliated with the credit provider pursuant to a standing arrangement.

(c) Application for such license or certificate shall be upon such forms and contain such information as the Commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(d) If the application be that of a West Virginia state banking institution, the Commissioner of Banking shall examine the information, documents and statements submitted and, if he or she finds that such banking institution has adopted bylaws which provide practical, safe, just and equitable rules and methods for the management of its business and it has
complied in all respects with the provisions of this chapter and other applicable laws, he or she shall issue to it a certificate or license permitting it to engage in business. If the application be that of a financial institution other than a banking institution, the Commissioner of Banking shall examine the information, documents and statements submitted and, if he or she finds that such financial institution has adequate resources for the proposed business and has provided practical, safe, just and equitable rules and methods for the management of its business, and it has complied in all respects with the provisions of this chapter and other applicable laws, and that the public convenience and advantage will be promoted by the issuance of a certificate or license thereto, he or she shall issue to it a certificate or license permitting it to engage in business. Such certificate or license shall be preserved and the original or copy thereof displayed in all the places of business of such banking or other financial institution located in this state.

(e) In addition to the requirements of subsections (b) and (c) of this section, every foreign corporation applying for a license or certificate to engage in the business of a financial institution in this state, other than an out-of-state banking institution, shall file with the Commissioner of Banking a copy of the bylaws under which it operates, together with a cite to the statutes of the jurisdiction where it is organized which pertain to its organization and powers and the conduct of its business. The commissioner shall examine the information, documents and statements submitted by such foreign corporation and if he or she finds that they provide practical, safe, just and equitable rules and methods for the management of the business of the corporation, that it has adequate resources for the proposed business and it has complied in all respects with the provisions of this chapter and other applicable laws and that the public convenience and advantage will be promoted by the issuance of a license or certificate thereto, he or she shall issue to such corporation a certificate or license permitting it to engage in
business in this state, which certificate or license shall authorize
such corporation to engage in the business of the type of
financial institution specified therein, until the thirtieth day of
the following June. Thereafter a new certificate or license shall
be secured annually by any such foreign corporation, except
where annual renewal of the license or certificate is specifically
not required for the type of institution involved. The fee for the
original and each additional license or certificate issued to a
foreign corporation shall be one hundred dollars, unless
otherwise provided by statute. A verified statement of the
financial condition of every such foreign corporation shall be
filed with the Commissioner before the issuance of each annual
certificate or license. Such certificate or license shall be
preserved and the original or copy thereof displayed in the West
Virginia place of business of such corporation.

(f) Unless the institution is a federally insured depository
institution or it is otherwise provided for by statute, a new
certificate or license shall be secured annually by all domestic
state financial institutions and the fee for the original and each
additional license or certificate shall be one hundred dollars.

(g) No amendment of the charter or bylaws of any domestic
or foreign corporation, other than an out-of-state banking
institution, engaging in business in this state as a financial
institution shall become effective until the proposed change
shall have been submitted to and approved by the Commis-
sioner of Banking; but, if the Commissioner does not disap-
prove such proposed change within twenty days after it is
received by him or her, it shall be deemed to have been ap-
proved.

(h) Unless specifically provided for by this chapter, nothing
contained in this code shall authorize any person to engage in
the banking business in this state except corporations chartered
to conduct a banking business under the laws of West Virginia
and which hold a license or certificate to do so issued under this
section, limited liability companies organized to conduct a
banking business under the laws of West Virginia and which
hold a license or certificate to do so under this section or
associations authorized to conduct a banking business in West
Virginia under the laws of the United States and having their
principal place of business in this state.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY

§31A-4-1. General corporation laws applicable; charter applications to be approved by West Virginia Board of Banking and Financial Institutions.

§31A-4-5. Requirements and procedure for incorporation of state banks.

§31A-4-1. General corporation laws applicable; charter applications to be approved by West Virginia Board of Banking and Financial Institutions.

(a) The general corporation laws of the state, including the provisions of chapter thirty-one-d of this code, shall govern banking institutions and the chartering thereof, except as otherwise provided in or where inconsistent with the provisions of this chapter, when the banking institutions are chartered as business corporations.

(b) The provisions of the Uniform Limited Liability Company Act, chapter thirty-one-b of this code shall govern banking institutions and the organizing thereof, except as otherwise provided in or where inconsistent with the provisions of this chapter when the banking institutions are chartered as limited liability companies. Any reference in this chapter to “directors” of a bank, in the case of limited liability company banks, refers to the bank’s members if the bank is a member-managed company or to the bank’s managers if it is a manager-managed company.
(c) No charter shall issue in this state for any banking institution unless the application therefor shall have been submitted to and approved by the West Virginia Board of Banking and Financial Institutions: Provided, That the Board may not approve the application to charter any banking institution unless the proposed banking institution does business within this state and is subject to the supervision of the Commissioner of Banking.

§31A-4-5. Requirements and procedure for incorporation of state banks.

(a) A state bank may be organized by five or more incorporators, a majority of whom shall be residents of the State of West Virginia. Such banking institution shall have as a part of its corporate name or title one or more of the following words indicative of the business which it is authorized to conduct, namely, "bank", "banking company", "banking association", "trust company", "banking and trust company" or "bank and trust company".

The incorporators shall file with the board an agreement of incorporation, in duplicate, following generally the form prescribed by the Secretary of State for chartering corporations under the provisions of article one, chapter thirty-one of this code. The information set forth in the agreement shall include the following:

(1) The name of the proposed bank;

(2) The community and county in which the bank is to be located, together with the post office address of the place of business of the bank;

(3) Whether such bank proposes also to engage in the trust business;
The name, residence and occupation of each incorporator, and the amount of capital stock subscribed and paid for by each;

(5) The names of the persons who are to serve as officers and directors of the banking institution and the official position proposed to be held by each; and

(6) The total authorized capital stock of the institution.

The agreement of incorporation shall be signed and acknowledged by each of the incorporators and, when filed with the Board, shall be accompanied by the statutory corporation charter fees and an examination and investigation fee of five thousand dollars payable to the Board. However, if the agreement is for the incorporation of a bank to be organized solely for the purpose of facilitating the acquisition of another bank, the examination and investigation fee is five hundred dollars payable to the Board. When transmitting the agreement to the Board, the incorporators shall designate by name and give the address of the attorney, agent or other responsible party with whom the Board may communicate, on whom the Board may call for further information and to whom the Board may officially report as to action on the agreement so filed with him or her. The agreement shall constitute and may be considered and treated by the Board as an application for the Board's approval to incorporate and organize a banking institution in this state.

(b) Notwithstanding the provisions of subsection (a) of this section, a person may apply to the Commissioner to obtain a certificate of authority to organize and operate as a bank under this chapter as a limited liability company, if that limited liability company is formed to have perpetual existence, centralized management, limited liability, free transferability of interests and the Federal Deposit Insurance Corporation has
53 ruled that a bank so organized will be eligible for federal deposit insurance.

55 (c) An existing bank structured as a corporation may apply to the Commissioner to reorganize and operate as a limited liability company.

CHAPTER 28

(S. B. 413 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed March 21, 2005; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2005.]

AN ACT to amend and reenact §31A-3-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31A-8C-1, §31A-8C-2, §31A-8C-3 and §31A-8C-5 of said code, all relating generally to financially related activities of state-chartered banking institutions; reorganizing the approval process for engaging in financially related activities; clarifying the definition of financially related activities; creating a notice and approval process to engage in financially related activities; requiring annual reporting to the Legislature; allowing banks to make equity investments in entities providing financially related activities on the same terms as national banks; and restating the purpose and interpretation of the article.

Be it enacted by the Legislature of West Virginia:

That §31A-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §31A-8C-1, §31A-8C-2, §31A-8C-3 and §31A-8C-5 of said code be amended and reenacted, all to read as follows:
ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.

§31A-3-2. General powers and duties.

(a) In addition to other powers conferred by this chapter, the Board has the power to:

1. Regulate its own procedure and practice;
2. Promulgate reasonable rules to implement any provision of this article in accordance with the provisions of article three, chapter twenty-nine-a of this code;
3. Advise the Commissioner in all matters within his or her jurisdiction;
4. Study the organization, programs and services of financial institutions and the laws relating thereto in this state and in other jurisdictions and to report and recommend to the Governor and the Legislature all such changes and amendments in laws, policies and procedures relating thereto as it considers proper;
5. Grant permission and authority to a financial institution:
   A. To participate in a public agency hereafter created under the laws of this state or of the United States, the purpose of which is to afford advantages or safeguards to financial institutions or to depositors therein and to comply with all lawful requirements and conditions imposed upon those participants; and
(B) To pay interest on demand deposits of the United States
or any agency thereof, if the payment of interest is permitted
under any applicable federal law, rule or regulation; and

(6) Seek judicial enforcement to compel compliance with
any of its orders and to seek and obtain civil penalties as set
forth under this chapter.

(b) The Board also has the power, by entering appropriate
orders, to:

(1) Restrict the withdrawal of deposits from any financial
institution when, in the judgment of the Board, extraordinary
circumstances make the restrictions necessary for the protection
of creditors of and depositors in the affected institution;

(2) Compel the holder of shares in any corporate financial
institution to refrain from voting the shares on any matter when,
in the judgment of the Board, the order is necessary to protect
the institution against reckless, incompetent or careless man-
agement, to safeguard funds of depositors in the institution or
to prevent willful violation of any applicable law or of any rule
and regulation or order issued thereunder. In such a case the
shares of the holder may not be counted in determining the
existence of a quorum or a percentage of the outstanding shares
necessary to take any corporate action;

(3) Approve or disapprove applications to incorporate and
organize state banking institutions in accordance with the
provisions of sections six and seven, article four of this chapter;

(4) Approve or disapprove applications to incorporate and
organize state-chartered bankers' banks in accordance with the
provisions of sections six and seven, article four of this chapter;

(5) Exempt a bankers' bank from any provision of this
chapter if the Board finds that the provision is inconsistent with
the purpose for which a bankers' bank is incorporated and
organized and that the welfare of the public or any banking
institution or other financial institution would not be jeop-
dized thereby;

(6) Revoke the certificate of authority, permit, certificate or
license of any state banking institution to engage in business in
this state if that institution fails or refuses to comply with any
order of the Commissioner entered pursuant to the provisions
of paragraph (A) or (B), subdivision (15), subsection (c),
section four, article two of this chapter, or at the Board's
election to direct the Commissioner to apply to any court
having jurisdiction for a prohibitory or mandatory injunction or
other appropriate remedy to compel obedience to such order;

(7) Suspend or remove a director, officer or employee of
any financial institution who is or becomes ineligible to hold
that position under any provision of law or rule and regulation
or order, or who willfully disregards or fails to comply with any
order of the Board or Commissioner made and entered in
accordance with the provisions of this chapter or who is
dishonest or grossly incompetent in the conduct of financial
institution business and prohibit that director, officer or
employee from participating in the affairs of any other financial
institution until further order of the Board;

(8) To receive from state banking institutions applications
to establish branch banks by the purchase of the business and
assets and assumption of the liabilities of, or merger or consoli-
dation with, another banking institution or by the construction,
lease or acquisition of branch bank facilities in an unbanked
area; examine and investigate such applications, to hold
hearings thereon and to approve or disapprove such applica-
tions, all in accordance with section twelve, article eight of this
chapter;
(9) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of, or merge or consolidate with, another state banking institution in accordance with the provisions of section seven, article seven of this chapter;

(10) Approve or disapprove the application of any state bank to purchase the business and assets and assume the liabilities of a national banking association, or merge or consolidate with a national banking association to form a resulting state bank in accordance with the provisions of section seven, article seven of this chapter; and

(11) In addition to any authority granted pursuant to section twelve, article eight of this chapter, incident to the approval of an application pursuant to subdivisions (7) or (8) of this subsection, permit the bank the application of which is so approved to operate its banking business under its name from the premises of the bank the business and assets of which have been purchased and the liabilities of which have been assumed by such applicant bank or with which the applicant bank has merged or consolidated: Provided, That this permission may be granted only if the Board has made the findings required by subsection (f), section three of this article and such applicant bank has no common directors or officers nor common ownership of stock exceeding ten percent of total outstanding voting stock with the bank whose business and assets are being purchased and liabilities assumed, or with whom the applicant bank is being merged; and

(12) To receive an appeal from any party who is adversely affected by an order of the Commissioner issued pursuant to section twelve-d, article eight of this chapter and hold hearings in accordance with the provisions of article five, chapter twenty-nine-a of this code.
A provision of this section may not be construed to alter, reduce or modify the rights of shareholders, or obligations of a banking institution in regard to its shareholders, as set forth in section one hundred seventeen, article one, chapter thirty-one of this code and section seven, article seven of this chapter, and other applicable provisions of this code.

Any order entered by the West Virginia Board of Banking and Financial Institutions pursuant to this section is a matter of public record.

ARTICLE 8C. PROVISION OF FINANCIALLY RELATED SERVICES BY BANKS AND BANK HOLDING COMPANIES.

§31A-8C-1. Financially related defined.

§31A-8C-2. Banks and bank holding companies permitted to offer financially related services.

§31A-8C-3. Limitation on permitted investment in entities offering financially related services.

§31A-8C-5. Construction, conflicting provisions.

§31A-8C-1. Financially related defined.

The term “financially related” includes:

(a) All products, services and activities offered or engaged in by national banks or by any federally chartered thrift institution or West Virginia state or federally chartered credit union or a bank chartered by any other state; except those excluded by subsection (f) of this section;

(b) Equity investments in real estate development activities, products and services;

(c) Securities underwriting and brokerage activities, products and services, except those excluded by subsection (f) of this section;
(d) Financial consulting activities, products and services; and

(e) Any and all other activities, products and services engaged in or offered by other providers of financial products or services which may be deemed by the Commissioner of Banking pursuant to this article to be financially related, except those excluded by subsection (f) of this section.

(f) The term “financially related” excludes products, services or activities offered or engaged in by any real estate agent, agency or broker, which products, services or activities are regulated by the state Real Estate Commission pursuant to chapter forty-seven of this code except for such activities, products and services permitted, engaged in or offered by a West Virginia state-chartered banking institution prior to the effective date of this section or permitted pursuant to subdivision (b) of this section.

§31A-8C-2. Banks and bank holding companies permitted to offer financially related services.

(a) Subject to the prior approval of the Commissioner of Banking, any West Virginia state-chartered banking institution or any bank holding company headquartered in this state may, either through equity investment in other entities or through a wholly owned subsidiary or subsidiaries, or by contract or agreement with others to provide such products or services, engage in any activity, exercise any power or offer any product or service that is financially related. A state-chartered banking institution may engage in a financially related activity directly and not through an operating subsidiary, financial subsidiary or affiliate if it is permissible for a national bank to engage in the financially related activity directly. The Commissioner shall grant or deny any request under this section within sixty days of receipt unless additional information is required.
(b) In determining whether an activity is financially related, the Commissioner shall consider:

(1) The ability of financial institutions to exercise any additional powers in a safe and sound manner;

(2) The authority of national banks, federal thrifts, federal credit unions and other financial service providers operating pursuant to federal law or regulation and the laws of other states to provide the financially related service; and

(3) Any specific limitations on financial institution operations or powers contained in this chapter.

(c) If a state-chartered banking institution or bank holding company must make prior application to a federal bank regulatory agency for approval to engage in a financially related activity, the banking institution or bank holding company shall file with the Commissioner a copy of the application submitted to the federal agency.

(d) The Commissioner shall include a list of every financially related activity authorized pursuant to this section during the previous twelve months in his or her annual report to the Legislature.

§31A-8C-3. Limitation on permitted investment in entities offering financially related services.

No West Virginia state-chartered banking institution or bank holding company may invest or otherwise expend more, in the aggregate of the amount of its capital and surplus, on a consolidated basis, in the conduct of financially-related activities than would be allowed to a national bank.

§31A-8C-5. Construction, conflicting provisions.
This article shall be construed liberally to permit banks and bank holding companies to offer financially related products and services and to enable West Virginia state-chartered banking institutions and bank holding companies to compete fairly with other financial institutions and other entities providing financial services under the laws of the United States or any other state. No other provision of this code shall be deemed to prohibit such activity: Provided, That in the provision of such products and services, banks and bank holding companies are subject to the same state and federal regulation and licensing requirements as are other providers of such products and services.

CHAPTER 29

(S. B. 278 — By Senators Minard, Jenkins and Love)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §31A-4-10 of the Code of West Virginia, 1931, as amended, relating to lists of stockholders of banking institutions and bank holding companies; defining bank holding company for the purpose of said section; and requiring certain bank holding companies to submit annually lists of stockholders.

Be it enacted by the Legislature of West Virginia:

That §31A-4-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-10. List of stockholders.

For the purposes of this section, "bank holding company" means any company which has control over any West Virginia state chartered bank, including financial holding companies as defined by the Bank Holding Company Act, 12 U. S. C. §1841(p).

“Control” shall be construed consistently with section 2(a) of the Bank Holding Company Act, 12 U. S. C. §1841(a).

In addition to the requirements of chapter thirty-one-d of this code, the President, or other Executive Officer of every state banking institution and every bank holding company with a controlling interest in a state banking institution shall cause to be kept at all times a full and correct list of the names and post office addresses of the stockholders of the banking institution or bank holding company who directly or indirectly own, control or hold with power to vote five percent or more of the outstanding shares of that institution, and the number of shares owned by each, in the office where its business is transacted. This list shall be open to inspection by all of the stockholders of the banking institution or bank holding company, and the officers authorized by law to assess taxes, during business hours of each day, except Sundays and holidays. A copy of this list shall be made on the first Monday in July of each year and verified by the oath of the President or other executive officer and immediately transmitted by mail to the Commissioner of Banking at his or her office. A bank holding company may comply with the reporting requirement of this section by simultaneously filing with the Commissioner a copy of the annual report it files with its federal reserve bank.
AN ACT to amend and reenact §31A-8A-8 of the Code of West Virginia, 1931, as amended, relating to the assessment date for bank holding companies.

Beit enacted by the Legislature of West Virginia:

That §31A-8A-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8A. ACQUISITION OF BANKS BY BANK HOLDING COMPANIES.

§31A-8A-8. Authority to issue rules; cooperative agreements; fees.

In order to carry out the purposes of this article, the Commissioner may:

(1) Propose rules and issue orders;

(2) Enter into cooperative, coordinating or information-sharing agreements with any other bank supervisory agency or any organization affiliated with or representing one or more bank supervisory agencies;

(3) Accept any report of examination or investigation by another bank supervisory agency having concurrent jurisdiction
over a West Virginia bank or a bank holding company that
controls a West Virginia state bank in lieu of conducting the
Commissioner’s own examination or investigation of the bank
holding company or bank;

(4) Enter into contracts with any bank supervisory agency
having concurrent jurisdiction over a West Virginia state bank
or a bank holding company that controls a West Virginia state
bank to engage the services of the agency’s examiners at a
reasonable rate of compensation, or to provide the services of
the Commissioner’s examiners to any bank supervisory agency
at a reasonable rate of compensation: Provided, That any
contract for examiners shall be excluded from the requirements
of article three, chapter five-a of this code;

(5) Enter into joint examinations or joint enforcement
actions with any other bank supervisory agency having concur-
rent jurisdiction over any West Virginia state bank or any bank
holding company that controls a West Virginia state bank:
Provided, That the Commissioner may take any such action
independently if he or she determines that the action is neces-
sary to carry out the responsibilities set forth in this article to
everse compliance with the laws of this state: Provided,
however, That in the case of an out-of-state bank holding
company, the Commissioner shall recognize the authority of the
home state regulator over corporate governance matters and the
primary responsibility of the home state regulator with respect
to safety and soundness matters; and

(6) Assess supervisory and examination fees that shall be
payable by any bank holding company operating a bank or bank
branch in West Virginia in connection with the Commissioner’s
performance of his or her duties under this article. The Com-
mmissioner shall charge and collect from each bank holding
company and pay into a special revenue account in the State
Treasury for the Department of Banking an annual assessment
payable on the fifteenth day of January computed on total deposits in this state of the bank holding company as of the thirtieth day of June of the previous year as is set out in section eight, article two of this chapter. The payment of the assessment fee shall be accompanied by the report prescribed by the Commissioner under subsection (a), section seven of this article. Examination fees may be shared with other bank supervisory agencies or organizations affiliated with or representing one or more bank supervisory agencies in accordance with agreements between them and the Commissioner.

CHAPTER 31

(S. B. 229 — By Senators Minard, Jenkins and Sharpe)

[Passed March 23, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 6, 2005.]

AN ACT to repeal §31A-2-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31C-1-7 of said code, relating to reports of financial institutions to the Division of Banking; removing the annual deposit and loan reporting requirement for banking institutions; and modifying the annual deposit and loan reporting requirement and its submission date for credit unions.

Be it enacted by the Legislature of West Virginia:

That §31A-2-11 of the Code of West Virginia, 1931, as amended, be repealed; and that §31C-1-7 of said code be amended and reenacted to read as follows:

ARTICLE I. SUPERVISION AND REGULATION.
§31C-1-7. Reports.

(a) Credit unions shall report to the Commissioner semiannually during January and July of each calendar year on a date set by the Commissioner for the business periods ending the thirtieth day of June and the thirty-first day of December respectively on forms supplied by the Commissioner for that purpose. Additional reports may also be required.

(b) A charge of one hundred dollars shall be levied for each day a credit union fails to provide a required report unless it is excused for cause by the Commissioner or courts.

(c) The fiscal year of each credit union incorporated under this chapter shall end on the last day of December.

(d) In addition to other reports that may be required under this chapter, every credit union with a main office or branch located in this state shall file with the Commissioner on or before the first day of September of each year the amount of deposits and shares held by each office in this state (excluding automated teller machines) as of the immediately preceding thirtieth day of June.

CHAPTER 32

(S. B. 659 — By Senator Minard)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §32A-2-1 of the Code of West Virginia, 1931, as amended, relating to the definition of “money transmission”.
Be it enacted by the Legislature of West Virginia:

That §32A-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION AND CURRENCY EXCHANGE.

§32A-2-1. Definitions.

1. “Commissioner” means the Commissioner of Banking of this state.

2. “Check” or “payment instrument” means any check, traveler’s check, draft, money order or other instrument for the transmission or payment of money whether or not the instrument is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

3. “Currency” means a medium of exchange authorized or adopted by a domestic or foreign government.

4. “Currency exchange” means the conversion of the currency of one government into the currency of another government, but does not include the issuance and sale of travelers checks denominated in a foreign currency. Transactions involving the electronic transmission of funds by licensed money transmitters which may permit, but do not require, the recipient to obtain the funds in a foreign currency outside of West Virginia are not currency exchange transactions: Provided, That they are not reportable as currency exchange transactions under federal laws and regulations.

5. “Currency exchange, transportation, transmission business” means a person who is engaging in currency exchange, currency transportation or currency transmission as a service or for profit.
(6) "Currency transmission" or "money transmission" means engaging in the business of selling or issuing checks or the business of receiving currency or the payment of money by any means for the purpose of transmitting, either prior to or after receipt, that currency, payment of money or its equivalent by wire, facsimile or other electronic means, or through the use of a financial institution, financial intermediary, the federal reserve system or other funds transfer network. It includes the transmission of funds through the issuance and sale of stored value cards which are intended for general acceptance and used in commercial or consumer transactions.

(7) "Currency transportation" means knowingly engaging in the business of physically transporting currency from one location to another in a manner other than by a licensed armored car service exempted under section three of this article.

(8) "Licensee" means a person licensed by the Commissioner under this article.

(9) "Money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission or handling of money, whether the instrument is signed by the seller, the purchaser or remitter or some other person.

(10) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust or corporation.

(11) "Principal" means a licensee's owner, president, senior officer responsible for the licensee's business, chief financial officer or any other person who performs similar functions or who otherwise controls the conduct of the affairs of a licensee. A person controlling ten percent or more of the voting stock of any corporate applicant is a principal under this provision.
(12) "Securities" means all bonds, debentures or other evidences of indebtedness: (a) Issued by the United States of America or any agency thereof, or guaranteed by the United States of America, or for which the credit of the United States of America or any agency thereof is pledged for the payment of the principal and interest thereof; and/or (b) which are direct general obligations of this state, or any other state if unconditionally guaranteed as to the principal and interest by the other state and if the other state has the power to levy taxes for the payment of the principal and interest thereof and is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness; and/or (c) which are general obligations of any county, school district or municipality in this state, issued pursuant to law and payable from ad valorem taxes levied on all of the taxable property located therein, if the county, school district or municipality is not in default in the payment of any part of the principal or interest on any debt evidenced by its bonds, debentures or other evidences of indebtedness.

CHAPTER 33

(Com. Sub. for S. B. 198 — By Senators Fanning, Hunter, Jenkins, Oliverio, McKenzie, Yoder, Unger and Barnes)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-3-16c, relating to establishing safety standards for bed and breakfast establishments; providing findings relating to the need for special fire code
standards for bed and breakfasts; defining the term "bed and breakfast establishment"; providing exemption from certain fire code standards; establishing fire safety standards for bed and breakfasts; authorizing the Fire Commission to promulgate rules; authorizing variance from certain requirements; and authorizing Division of Culture and History to provide recommendations regarding historical preservation of structures.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-3-16c, to read as follows:

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16c. Safety standards for bed and breakfast establishments; findings.

(a) Findings. — Bed and breakfast establishments provide a unique and important contribution to the state, allowing visitors the opportunity to enjoy many of the aspects of our communities and state not available at hotels and motels and often provide vacationers access to overnight accommodation in areas of this state that would not otherwise be available. These operations continue to grow in number and importance in our state’s economy and must be promoted and encouraged by state and local government. Most of these facilities are older residences being converted to this use, and in many cases have architectural and historical significance, and, as with most small businesses, are begun with limited capital available for investment. Any fire safety code standards applicable to these facilities must be sensitive to this distinction and avoid placing a large financial burden on persons operating or planning to operate these facilities. Further, the personal safety of those who live in and visit these facilities is of paramount importance and requires that consideration be made to assure that adequate
safety requirements are placed on these facilities to provide for
the safety of visitors, residents and, in an emergency, respond-
ing firefighters and rescue workers.

(b) Definition. — For the purposes of this section, the term
"bed and breakfast establishment" means a building occupied
as a one-family dwelling unit that provides sleeping accommoda-
dations and breakfast to transient guests for a single fee and
does not offer more than six guest rooms to no more than
twelve guests.

(c) Fire code standards. — Notwithstanding any provision
of this code to the contrary, every bed and breakfast establish-
ment shall be exempt from provisions of fire safety code
requirements which are contrary to the following standards:

(1) Each bed and breakfast shall have operational smoke
alarms in all common areas, guest rooms and hallways and heat
detectors as otherwise required by this code or rule of the Fire
Commission. Battery-powered smoke alarms shall be permitted
where the establishment has demonstrated that the testing,
maintenance and battery replacement procedures will ensure
reliable power to the smoke alarms. Notwithstanding any
provision of this code to the contrary, no smoking will be
allowed inside a bed and breakfast establishment.

(2) Each bed and breakfast shall have operational hard-
wired, battery-powered or plug-in emergency lighting that
indicate available means of egress. Battery-powered or plug-in
emergency lighting devices shall be permitted where the
establishment has demonstrated that the testing, maintenance
and battery replacement procedures will ensure reliable power
to the emergency lighting devices.

(3) Each guest floor shall have a primary and a secondary
means of egress. A door leading directly from a guestroom
outside the building with access to grade, or a stairway which
is covered or enclosed, or a covered balcony or deck with a stairway to grade are acceptable secondary means of egress. A bed and breakfast with third-floor guest rooms must have an accessible second stairway leading from the third floor to grade. Any bed and breakfast establishment with a sprinkler system which otherwise meets the requirements of this section and the state fire safety and building codes is exempt from the requirement of a secondary means of egress. A bed and breakfast establishment which offers three or fewer guest rooms on the first or second floor only, and accommodates no more than six guest occupants at one time, is exempted from the secondary means of egress requirement;

(4) The state Fire Commission shall permit bed and breakfast establishments that cannot readily comply with the requirements of a legislative rule, which may mandate the installation of a secondary means of escape or a sprinkler system, one year per floor of the establishment to comply with the requirements.

(5) All other provisions of the state fire safety code not inconsistent with this section and rules promulgated pursuant to subsection (d) of this section are applicable to bed and breakfast establishments.

(d) Legislative rules. — The state Fire Commission shall promulgate or amend an existing legislative rule, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to effectuate the provisions of this section. The rule shall include a mechanism for the Fire Commission to grant individual variances to bed and breakfast establishments which cannot otherwise meet provisions of the state fire safety code due to the historic and architectural significance of the establishment with due consideration of the economic limitations inherent in the operation of this type of small business.
Historic preservation review.—The owner of a bed and breakfast may request the historical preservation section of the Division of Culture and History, pursuant to section eight, article one of this chapter, to consult with the owner and provide a recommendation to the Fire Commission regarding the historic character of the structures used or proposed to be used as a bed and breakfast and any objections or concerns regarding any renovations or other changes required by the Fire Commission or Fire Marshal. If an appeal regarding a decision made by the Fire Marshal is made to the Commission as provided by section eighteen of this article, the Commission shall consider the recommendation of the historical preservation section when making a determination regarding the variance as provided for in subsection (d) of this section.

CHAPTER 34

(S. B. 513 — By Senators McCabe, Plymale, Jenkins, Foster, Sprouse, Harrison, Sharpe, Dempsey, Barnes and Unger)

[Amended and again passed April 16, 2005, as a result of the objections of the Governor; in effect from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §5E-1-8 of the Code of West Virginia, 1931, as amended, relating to the Capital Company Act; eliminating the total tax credits available under the Capital Company Act during the fiscal year beginning on the first day of July, two thousand five; and modifying the time period in which the authority may allocate tax credits available under the Capital Company Act during the fiscal year beginning on the first day of July, two thousand four.

Be it enacted by the Legislature of West Virginia:
That §5E-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

(a) The total amount of tax credits authorized for a single qualified company may not exceed two million dollars. The total amount of tax credits authorized for a single economic development and technology advancement center may not exceed one million dollars. Capitalization of the company or center may be increased pursuant to rule of the authority.

(b)(1) The total credits authorized by the authority for all companies and centers may not exceed a total of ten million dollars each fiscal year: Provided, That for the fiscal year beginning on the first day of July, one thousand nine hundred ninety-nine, the total credits authorized for all companies may not exceed a total of six million dollars: Provided, however, That for the fiscal year beginning on the first day of July, two thousand, the total credits authorized for all companies may not exceed a total of four million dollars: Provided further, That for the fiscal year beginning on the first day of July, two thousand one, the total credits authorized for all companies may not exceed a total of four million dollars: And provided further, That for the fiscal year beginning on the first day of July, two thousand two, the total credits authorized for all companies may not exceed a total of three million dollars: And provided further, That for the fiscal year beginning on the first day of July, two thousand three, the total credits authorized for all companies may not exceed a total of three million dollars: And provided further, That for the fiscal year beginning on the first day of July, two thousand four, the total credits authorized for all companies may not exceed a total of one million dollars: And provided further, That for the fiscal year beginning on the first day of July, two thousand five, there shall be no credits
authorized: And provided further, That the capital base of any qualified company other than an economic development and technology advancement center qualified under the provisions of article twelve-a, chapter eighteen-b of this code shall be invested in accordance with the provisions of this article. The authority shall allocate these credits to qualified companies and centers in the order that the companies are qualified.

(2) Not more than two million dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more small business investment companies described in this subdivision: Provided, That for the fiscal year beginning on the first day of July, two thousand four, and for the fiscal year beginning on the first day of July, two thousand five, no credits authorized by this section may be allocated by the authority to one or more small business investment companies. After a portion of the credits are allocated to small business investment companies as provided in this section, not more than one million dollars of the credits allowed under subdivision (1) of this subsection may be allocated by the authority during each fiscal year to one or more economic development and technology advancement centers qualified by the authority under article twelve-a, chapter eighteen-b of this code: Provided, however, That for the fiscal year beginning on the first day of July, two thousand four, all of the credits allowed under subdivision (1) of this subsection shall be allocated only to one or more qualified economic development and technology advancement centers: Provided further, That for the fiscal year beginning on the first day of July, two thousand five, no credits allowed under subdivision (1) of this subsection shall be allocated to any qualified economic development and technology advancement center. The remainder of the tax credits allowed during the fiscal year shall be allocated by the authority under the provisions of section four, article two of this chapter: And provided further, That for the fiscal year beginning on the first day of July, two
thousand four, and for the fiscal year beginning on the first day of July, two thousand five, no credits authorized by this section may be allocated by the authority to a taxpayer pursuant to the provisions of section four, article two of this chapter. The portion of the tax credits allowed for small business investment companies described in this subdivision shall be allowed only if allocated by the authority during the first ninety days of the fiscal year and may only be allocated to companies that: (A) Were organized on or after the first day of January, one thousand nine hundred ninety-nine; (B) are licensed by the small business administration as a small business investment company under the small business investment act; and (C) have certified in writing to the authority on the application for credits under this act that the company will diligently seek to obtain and thereafter diligently seek to invest leverage available to the small business investment companies under the small business investment act. These credits shall be allocated by the authority in the order that the companies are qualified. The portion of the tax credits allowed for economic development and technology advancement centers described in article twelve-a, chapter eighteen-b of this code shall be similarly allowed only if allocated by the authority during the first ninety days of the fiscal year: And provided further, That solely for the fiscal year beginning on the first day of July, two thousand four, the authority may allocate the tax credits allowed for economic development and technology advancement centers at any time during the fiscal year. Any credits which have not been allocated to qualified companies meeting the requirements of this subdivision relating to small business investment companies or to qualified economic development and technology advancement centers during the first ninety days of the fiscal year shall be made available and allocated by the authority under the provisions of section four, article two of this chapter: And provided further, That for the fiscal year beginning on the first day of July, two thousand four, and for the fiscal year beginning on the first day of July, two thousand five, no credits
authorized by this section may be allocated by the authority to a taxpayer pursuant to the provisions of section four, article two of this chapter.

(3) Notwithstanding any provision of this code or legislative rule promulgated thereunder to the contrary, for the fiscal year beginning on the first day of July, two thousand four, and for the fiscal year beginning on the first day of July, two thousand five, the authority has the sole discretion to allocate or refuse to allocate tax credits authorized under this section to any qualified economic development and technology advancement center upon its determination of the extent to which the center will fulfill the purposes of this article. The determination shall be based upon the application of the center, the extent to which the company or center fulfilled those purposes in prior years after receiving tax credits authorized under this section, the extent to which the center is expected to stimulate economic development and high technology research in the chemical industry and such other similarly related criteria as the authority may establish by vote of the majority of authority.

(c) Any investor, including an individual, partnership, limited liability company, corporation or other entity who makes a capital investment in a qualified West Virginia capital company, is entitled to a tax credit equal to fifty percent of the investment, except as otherwise provided in this section or in this article: Provided, That the tax credit available to investors who make a capital investment in an economic development and technology advancement center shall be one hundred percent of the investment. The credit allowed by this article shall be taken after all other credits allowed by chapter eleven of this code. It shall be taken against the same taxes and in the same order as set forth in subsections (c) through (i), inclusive, section five, article thirteen-c, chapter eleven of this code. The credit for investments by a partnership, limited liability company, a corporation electing to be treated as a subchapter S
corporation or any other entity which is treated as a pass through entity under federal and state income tax laws may be divided pursuant to election of the entity's partners, members, shareholders or owners.

(d) The tax credit allowed under this section is to be credited against the taxpayer's tax liability for the taxable year in which the investment in a qualified West Virginia capital company or economic development and technology advancement center is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability for the taxable year may be carried to succeeding taxable years until used in full or until forfeited: Provided, That: (i) Tax credits may not be carried forward beyond fifteen years; and (ii) tax credits may not be carried back to prior taxable years. Any tax credit remaining after the fifteenth taxable year is forfeited.

(e) The tax credit provided in this section is available only to those taxpayers whose investment in a qualified West Virginia capital company or economic development and technology advancement center occurs after the first day of July, one thousand nine hundred eighty-six.

(f) The tax credit allowed under this section may not be used against any liability the taxpayer may have for interest, penalties or additions to tax.

(g) Notwithstanding any provision in this code to the contrary, the tax commissioner shall publish in the state register the name and address of every taxpayer and the amount, by category, of any credit asserted under this article. The categories by dollar amount of credit received are as follows:

(1) More than $1.00, but not more than $50,000;

(2) More than $50,000, but not more than $100,000;
CHAPTER 35

(H. B. 3306 — By Delegate Michael)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §15-2C-6 of the Code of West Virginia, 1931, as amended, relating to fees charged for requests for information from the central abuse registry; providing that fees charged for requests for information from the central abuse registry may be used for criminal record keeping; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §15-2C-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-6. Fees.

1 The criminal identification bureau may charge, and any requester shall pay a user charge of ten dollars for each request for information made by a requester to the central abuse
registry. In order to expedite requests by requesters, the
criminal identification bureau may establish a procedure
permitting service providers to deposit funds with the bureau in
anticipation of requests. Fees pursuant to this section shall be
paid into a special account in the State Treasury to be expended
for registry purposes and criminal record keeping: Provided,
That for and after the fiscal year ending the thirtieth day of
June, one thousand nine hundred ninety-eight, all expenditures
shall be made in accordance with appropriation by the Legisla-
ture. Amounts collected which are found from time to time to
exceed the funds needed for central abuse registry and criminal
record keeping purposes may be transferred to other accounts
or funds and redesignated for other purposes by appropriation
of the Legislature. For purposes of this section, the term
“criminal record keeping” means the compiling of fingerprints,
photographs, criminal disposition reports, uniform crime report
statistics and other relevant data regarding the arrest, convic-
tion, incarceration and post-conviction status of criminal
violators and sex offenders. “Criminal record keeping” does not
include the creation of any data.

CHAPTER 36

(Com. Sub. for H. B. 2229 — By Delegates Hamilton,
Wakim, Hrutkay and Yost)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §48-27-403 of the Code of West
Virginia, 1931, as amended, and to amend and reenact §49-5-7
and §49-5-8 of said code, all relating to custody of juveniles who
are respondents in an emergency protective order by law-enforcing
ment officials.

Be it enacted by the Legislature of West Virginia:

That §48-27-403 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §49-5-7 and §49-5-8 of said Code
be amended and reenacted, all to read as follows:

Chapter

48. Domestic Relations.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

§48-27-403. Emergency protective orders of court; hearings; persons present.

(a) Upon the filing of a verified petition under this article,
the magistrate court may enter an emergency protective order
as it may deem necessary to protect the petitioner or minor
children from domestic violence and, upon good cause shown,
may do so ex parte without the necessity of bond being given
by the petitioner. Clear and convincing evidence of immediate
and present danger of abuse to the petitioner or minor children
shall constitute good cause for the issuance of an emergency
protective order pursuant to this section. If the respondent is not
present at the proceeding, the petitioner or the petitioner’s legal
representative shall certify to the court, in writing, the efforts
which have been made to give notice to the respondent or just
cause why notice should not be required. Copies of medical
reports or records may be admitted into evidence to the same
extent as though the original thereof. The custodian of such
records shall not be required to be present to authenticate such
records for any proceeding held pursuant to this subsection. If
the magistrate court determines to enter an emergency protective order, the order shall prohibit the respondent from possessing firearms.

(b) Following the proceeding, the magistrate court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any emergency protective order entered pursuant to the proceedings, a notice of the final hearing before the family court and a statement of the right of the respondent to appear and participate in the final hearing, as provided in subsection (d) of this section. Copies of any order entered under the provisions of this section, a notice of the final hearing before the family court and a statement of the right of the petitioner to appear and participate in the final hearing, as provided in subsection (d) of this section, shall also be delivered to the petitioner. Copies of any order entered shall also be delivered to any law-enforcement agency having jurisdiction to enforce the order, including municipal police, the county sheriff’s office and local office of the State Police, within twenty-four hours of the entry of the order. An emergency protective order is effective until modified by order of the family court upon hearing as provided in subsection (d) of this section. The order is in full force and effect in every county in this state.

(c) Subsequent to the entry of the emergency protective order, service on the respondent and the delivery to the petitioner and law-enforcement officers, the court file shall be transferred to the office of the clerk of the circuit court for use by the family court.

(d) The family court shall schedule a final hearing on each petition in which an emergency protective order has been entered by a magistrate. The hearing shall be scheduled not later than ten days following the entry of the order by the magistrate. The notice of the final hearing shall be served on the
51 respondent and delivered to the petitioner, as provided in
52 subsection (b) of this section, and must set forth the hearing
53 date, time and place and include a statement of the right of the
54 parties to appear and participate in the final hearing. The notice
55 must also provide that the petitioner’s failure to appear will
56 result in a dismissal of the petition and that the respondent’s
57 failure to appear may result in the entry of a protective order
58 against him or her for a period of ninety or one hundred eighty
59 days, as determined by the court. The notice must also include
60 the name, mailing address, physical location and telephone
61 number of the family court having jurisdiction over the pro-
62 ceedings. To facilitate the preparation of the notice of final
63 hearing required by the provisions of this subsection, the family
64 court must provide the magistrate court with a day and time in
65 which final hearings may be scheduled before the family court
66 within the time required by law.

67 (e) Upon final hearing the petitioner must prove, by a
68 preponderance of the evidence, the allegation of domestic
69 violence or that he or she reported or witnessed domestic
70 violence against another and has, as a result, been abused,
71 threatened, harassed or has been the subject of other actions to
72 attempt to intimidate him or her, or such petition shall be
73 dismissed by the family court. If the respondent has not been
74 served with notice of the emergency protective order, the
75 hearing may be continued to permit service to be effected. The
76 failure to obtain service upon the respondent does not constitute
77 a basis to dismiss the petition. Copies of medical reports may
78 be admitted into evidence to the same extent as though the
79 original thereof, upon proper authentication, by the custodian
80 of such records.

81 (f) No person requested by a party to be present during a
82 hearing held under the provisions of this article shall be
83 precluded from being present unless such person is to be a
84 witness in the proceeding and a motion for sequestration has
been made and such motion has been granted. A person found by the court to be disruptive may be precluded from being present.

(g) Upon hearing, the family court may dismiss the petition or enter a protective order for a period of ninety days or, in the discretion of the court, for a period of one hundred eighty days. The hearing may be continued on motion of the respondent, at the convenience of the court. Otherwise, the hearing may be continued by the court no more than seven days. If a hearing is continued, the family court may modify the emergency protective order as it deems necessary.

(h) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to this section that results in the issuance of an emergency protective order naming a juvenile as the respondent, shall be treated as a petition authorized by section seven, article five, chapter forty-nine of this code, alleging the juvenile is a juvenile delinquent: Provided, That the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within twenty-four hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with the provisions of subsection (a) of section seven, article five, chapter forty-nine of this code within two judicial days.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.
§49-5-8. Taking a juvenile into custody.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents; subpoena.
(a)(1) A petition alleging that a juvenile is a status offender or a juvenile delinquent may be filed by a person who has knowledge of or information concerning the facts alleged. The petition shall be verified by the petitioner, shall set forth the name and address of the juvenile’s parents, guardians or custodians, if known to the petitioner, and shall be filed in the circuit court in the county where the alleged status offense or act of delinquency occurred: Provided, That any proceeding under this chapter may be removed, for good cause shown, in accordance with the provisions of section one, article nine, chapter fifty-six of this code. The petition shall contain specific allegations of the conduct and facts upon which the petition is based, including the approximate time and place of the alleged conduct; a statement of the right to have counsel appointed and consult with counsel at every stage of the proceedings; and the relief sought.

(2) Upon the filing of the petition, the court shall set a time and place for a preliminary hearing as provided in section nine of this article and may appoint counsel. A copy of the petition and summons may be served upon the respondent juvenile by first class mail or personal service of process. If a juvenile does not appear in response to a summons served by mail, no further proceeding may be held until the juvenile is served a copy of the petition and summons by personal service of process. If a juvenile fails to appear in response to a summons served in person upon him or her, an order of arrest may be issued by the court for that reason alone.

(b) The parents, guardians or custodians shall be named in the petition as respondents and shall be served with notice of the proceedings in the same manner as provided in subsection (a) of this section for service upon the juvenile and required to appear with the juvenile at the time and place set for the proceedings unless such respondent cannot be found after
diligent search. If any such respondent cannot be found after
diligent search, the court may proceed without further require-
ment of notice: Provided, That the court may order service by
first class mail to the last known address of such respondent.
The respondent shall be afforded fifteen days after the date of
mailing to appear or answer.

(c) The court or referee may order the issuance of a
subpoena against the person having custody and control of the
juvenile ordering him or her to bring the juvenile before the
court or referee.

(d) When any case of a juvenile charged with the commis-
sion of a crime is certified or transferred to the circuit court, the
court or referee shall forthwith cause the juvenile and his or her
parents, guardians or custodians to be served with a petition as
provided in subsections (a) and (b) of this section. In the event
the juvenile is in custody, the petition shall be served upon the
juvenile within ninety-six hours of the time custody began and
if the petition is not served within that time, the juvenile shall
be released forthwith.

(e) The clerk of the court shall promptly notify the local
office of the Department of Health and Human Resources of all
proceedings under this article, which shall then be responsible
for convening and directing the multidisciplinary treatment
planning process in accordance with the provisions of section
three, article five-d of this chapter: Provided, That in status
offense or delinquency cases where a case manager has not
been assigned, the juvenile probation officer shall be respon-
bile for notifying the local office of the Department of Health
and Human Services which will assign a case manager who will
initiate assessment and be responsible for convening and
directing the multidisciplinary treatment planning process.
(f) Notwithstanding any other provision of this code to the contrary, a petition filed pursuant to section four hundred-three, article twenty-seven, chapter forty-eight of this code, that results in the issuance of an emergency protective order naming a juvenile as the respondent, shall be treated as a petition authorized by this section, alleging the juvenile is a juvenile delinquent: Provided, That the magistrate court shall notify the prosecuting attorney in the county where the emergency protective order is issued within twenty-four hours of the issuance of the emergency protective order and the prosecuting attorney may file an amended verified petition to comply with the provisions of subsection (a) of this section within two judicial days.

§49-5-8. Taking a juvenile into custody.

(a) In proceedings formally instituted by the filing of a juvenile petition, the circuit court, a juvenile referee or a magistrate may issue an order directing that a juvenile be taken into custody before adjudication only upon a showing of probable cause to believe that one of the following conditions exists: (1) The petition shows that grounds exist for the arrest of an adult in identical circumstances; (2) the health, safety and welfare of the juvenile demand such custody; (3) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; or (4) the juvenile is alleged to be a juvenile delinquent with a record of willful failure to appear at juvenile proceedings and custody is necessary to assure his or her presence before the court. A detention hearing pursuant to section eight-a of this article shall be held by the judge, juvenile referee or magistrate authorized to conduct such hearings without unnecessary delay and in no event may any delay exceed the next day.

(b) Absent a court order, a juvenile may be taken into custody by a law-enforcement official only if one of the
following conditions exists: (1) Grounds exist for the arrest of an adult in identical circumstances; (2) emergency conditions exist which, in the judgment of the officer, pose imminent danger to the health, safety and welfare of the juvenile; (3) the official has reasonable grounds to believe that the juvenile has left the care of his or her parents, guardian or custodian without the consent of such person, and the health, safety and welfare of the juvenile is endangered; (4) the juvenile is a fugitive from a lawful custody or commitment order of a juvenile court; (5) the official has reasonable grounds to believe the juvenile to have been driving a motor vehicle with any amount of alcohol in his or her blood; or (6) the juvenile is the named respondent in an emergency protective order issued pursuant to section four hundred three, article twenty-seven, chapter forty-eight of this code and the individual filing the petition for the emergency protective order is the juvenile’s parent, guardian, or custodian.

(c) Upon taking a juvenile into custody, with or without a court order, the official shall:

(1) Immediately notify the juvenile’s parent, guardian, custodian or, if the parent, guardian or custodian cannot be located, a close relative;

(2) Release the juvenile into the custody of his or her parent, guardian or custodian unless:

   (A) Circumstances present an immediate threat of serious bodily harm to the juvenile if released;

   (B) No responsible adult can be found into whose custody the juvenile can be delivered: Provided, That each day the juvenile is detained, a written record must be made of all attempts to locate such a responsible adult; or

   (C) The juvenile has been taken into custody for an alleged act of delinquency for which secure detention is permissible.
(3) If the juvenile is an alleged status offender or has been taken into custody pursuant to subdivision (6) of subsection (b), immediately notify the Department of Health and Human Resources, and, if the circumstances of either paragraph (A) or (B), subdivision (2) of this subsection exist and the requirements therein are met, the official may detain the juvenile, but only in a nonsecure or staff-secure facility;

(4) Take the juvenile without unnecessary delay before a juvenile referee or judge of the circuit court for a detention hearing pursuant to section eight-a of this article: Provided, That if no judge or juvenile referee is then available in the county, the official shall take the juvenile without unnecessary delay before any magistrate then available in the county for the sole purpose of conducting such a detention hearing. In no event may any delay in presenting the juvenile for a detention hearing exceed the next day after he or she is taken into custody.

(d) In the event that a juvenile is delivered into the custody of a sheriff or director of a detention facility, the sheriff or director shall immediately notify the court or juvenile referee. The sheriff or director shall immediately provide to every juvenile who is delivered into his or her custody a written statement explaining the juvenile's right to a prompt detention hearing, his or her right to counsel, including appointed counsel if he or she cannot afford counsel, and his or her privilege against self-incrimination. In all cases when a juvenile is delivered into a sheriff's or detention center director's custody, that official shall release the juvenile to his or her parent, guardian or custodian by the end of the next day unless the juvenile has been placed in detention after a hearing conducted pursuant to section eight-a of this article.
AN ACT to amend and reenact §17C-15-46 of the Code of West Virginia, 1931, as amended, relating to the use of child safety booster seats for children under eight years of age unless the child is at least four feet nine inches tall or taller.

Be it enacted by the Legislature of West Virginia:

That §17C-15-46 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.


Every driver who transports a child under the age of eight years in a passenger automobile, van or pickup truck other than one operated for hire shall, while the motor vehicle is in motion and operated on a street or highway of this state, provide for the protection of the child by properly placing, maintaining and securing the child in a child passenger safety device system meeting applicable federal motor vehicle safety standards: Provided, That if a child is under the age of eight years and at least four feet nine inches tall, a safety belt shall be sufficient to meet the requirements of this section.
Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten dollars nor more than twenty dollars.

A violation of this section does not by virtue of the violation constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity may not affect other provisions or applications of this section and to this end the subsections of this section are declared to be severable.

If all seat belts in a vehicle are being used at the time of examination by a law officer and the vehicle contains more passengers than the total number of seat belts or other safety devices as installed in compliance with federal motor vehicle safety standards, the driver may not be considered in violation of this section.

CHAPTER 38

(S. B. 584 — By Senators Kessler, Dempsey, Foster, Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks)

[Amended and again passed April 16, 2005, as a result of the objections of the Governor; in effect from passage.] [Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §48-11-106a; to amend
said code by adding thereto a new section, designated §48-14-107; and to amend said code by adding thereto six new sections, designated §48-18-201, §48-18-202, §48-18-203, §48-18-204, §48-18-205 and §48-18-206, all relating to modification of child support orders; allowing the Bureau for Child Support Enforcement to assist a party seeking the recalculation of support and modification of a child support order due to a substantial change in circumstances; providing request for assistance; notice and filing procedures; granting subpoena powers; providing circumstances under which application may be refused; requiring certain information be provided; opportunity to meet with parties prior to filing of petition for a proposed order; providing for the submission and consideration of proposed modified child support orders to the family court; establishing filing, related notice and review procedures for petitions for modification; and providing that a party may file a request for modification if Bureau for Child Support Enforcement rejects request for assistance.

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 §48-11-106a; that said code be amended by adding thereto a new section, designated §48-14-107; and that said code be amended by adding thereto six new sections, designated §48-18-201, §48-18-202, §48-18-203, §48-18-204, §48-18-205 and §48-18-206, all to read as follows:

Article

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-106a. Modification of support order with the assistance of Bureau for Child Support Enforcement.
In addition to any other procedure which may exist by law, any party seeking the recalculation of support and modification under a child support order due to a substantial change in circumstances pursuant to the provisions of section one hundred six of this article may seek and obtain the assistance of the Bureau of Child Support Enforcement, pursuant to the procedures established under the provisions of sections two hundred one through two hundred six, inclusive, article eighteen of this chapter, in the preparation, assessment and presentation of an appropriate petition for modification of a support order, including the identification and narrowing of issues associated with a requested recalculation of support prior to filing the petition and the preparation and presentation of an appropriate petition and proposed order for modification for consideration by the family court.

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

§48-14-107. Modification of support order with the assistance of Bureau for Child Support Enforcement.

In addition to any other procedure which may exist by law, any party seeking the recalculation of support and modification under a child support order due to a substantial change in circumstances pursuant to the provisions of section one hundred six of this article may seek and obtain the assistance of the Bureau of Child Support Enforcement, pursuant to the procedures established under the provisions of sections two hundred one through two hundred six, inclusive, article eighteen of this chapter, in the preparation, assessment and presentation of an appropriate petition for modification of a support order, including the identification and narrowing of issues associated with a requested recalculation of support prior to filing the petition and the preparation and presentation of an appropriate petition and proposed order for modification for consideration by the family court.
ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-201. General provisions related to requests for assistance, recalculation of support amounts, preparation of petition and proposed orders.


§48-18-203. Bureau processing of request for assistance or recalculation.

§48-18-204. Request for meeting with the Bureau.

§48-18-205. Bureau action on request of recalculation and presentation of proposed order.


§48-18-201. General provisions related to requests for assistance, recalculation of support amounts, preparation of petition and proposed orders.

(a) An obligor or an obligee under a child support order may seek and obtain the assistance of the Bureau for Child Support Enforcement to perform a recalculation of the support amount and prepare and present a petition seeking modification of a child support order and the presentation of a proposed order modifying support to the family court.

(b) A request for services authorized by this section shall constitute an application for services from the Bureau for Child Support Enforcement.

(c) The duties and actions directed or authorized when a request is made pursuant to this section shall be exercised by the employees and agents of the Bureau for Child Support Enforcement under the supervision and direction of Bureau for Child Support Enforcement attorneys as part of, and in addition to, their duties as set out in section one hundred three, article nineteen of this chapter.

(d) In performing its duties under this section, the Bureau for Child Support Enforcement is authorized to issue subpoenas and subpoenas duces tecum, pursuant to the provisions of section one hundred twenty-three of this article, to require an
obligor or obligee to produce and permit inspection and
copying of designated books, papers, documents or tangible
things pursuant to Rule 45 of the Rules of Civil Procedure or
section one hundred twenty-three of this article.

(e) When the Bureau for Child Support Enforcement is
authorized or required by this section to notify or give notice to
a party, the notice shall be given in the same manner as required
for service of a petition for modification of support filed with
the family court.

(f) The procedures and forms used shall provide that one
party may request that their residential address and the address
and identity of the employer not be revealed to another party.

(g) The Bureau for Child Support Enforcement may refuse
to accept a request or take action on a request for assistance if
it determines there are existing ongoing proceedings which
would create a conflict, or if it determines that the request was
not in good faith based on the allegations made, a history of
multiple such requests or other information. If the Bureau for
Child Support Enforcement makes a determination to refuse the
request for assistance, it shall notify the party making the
request for assistance and, if the responding party has already
been notified of the request, the responding party.

(h) The Bureau for Child Support Enforcement shall
prepare an explanation of the process and procedures it will use
to process the request for assistance under this section. The
explanation shall be made available generally to the public,
given to every person who makes a request and included with
the notice to the responding party.


To make a request for assistance under this article, a party
shall submit the request in writing to the Bureau for Child
Support Enforcement on a form provided by the Bureau. The written request form shall include all of the requesting party’s information known to the party that is relevant to determine the child support amount. The request shall be accompanied by:

(1) A copy of the order being modified or, in the discretion of the Bureau, information sufficient to permit the Bureau to retrieve or identify the order;

(2) A form containing a statement of all of the requesting party’s information known to the party that is relevant to determining the amount of child support, including a general statement or argument advancing the reason the request is being made;

(3) Copies of documentation reasonably available to the requesting party setting forth all of the requesting party’s information that is relevant to determine the amount of child support;

(4) A statement setting forth the relevant information pertaining to the responding party’s earnings and child support that is known or believed to be true by the requesting party;

(5) Copies of any relevant documentation which the requesting party may have in its possession which would be relevant to determining the responding party’s child support obligations; and

(6) A statement of all other known proceedings, pending court proceedings or other pending requests for assistance involving the parties or related to the child or children whose support is being reevaluated.

§48-18-203. Bureau processing of request for assistance or recalculation.
(a) Upon receipt of a request from a party pursuant to section two hundred two of this article, the Bureau for Child Support Enforcement shall notify the responding party that a request for assistance in the recalculation of the support amount and the related preparation and presentation of a petition or proposed order to modify an existing child support order has been submitted to the Bureau for Child Support Enforcement.

(b) As a part of the notification provided under subsection (a) of this section, notification provided by the Bureau for Child Support Enforcement to the responding party shall include the following:

(1) A blank information statement form and an explanation of the form;

(2) A statement advising the responding party that if the responding party does not fill out and return the information statement with accompanying documentation, that the information contained on the requesting party’s information statement and any attached documentation may be used to prepare a petition and proposed order to modify the parties’ existing child support obligations and filed with the family court, if the submitted information shows a substantial change in the parties’ circumstances;

(3) A copy of the information statement supplied by the requesting party in support of its request;

(4) A request that the responding party submit a statement and supply a copy of any information or documentation which the responding party may have which would challenge, contradict or supplement the information which has been previously submitted by the requesting party to allow the Bureau for Child Support Enforcement to more accurately recalculate any modified child support obligations of the parties;
(5) An explanation that the Bureau for Child Support Enforcement may refuse to accept a request or take action on a request if it determines there are existing ongoing proceedings which would create a conflict;

(6) A request that the responding party provide a list of all other known proceedings, pending court proceedings or other requests for recalculation or modification of the parties’ respective child support obligations; and

(7) An explanation of the process to be followed by the Bureau for Child Support Enforcement in providing the requested assistance, recalculation of the parties’ modified child support obligations, including the preparation of a petition, and proposed order to modify the parties’ existing child support obligations, when appropriate.

(c) The Bureau for Child Support Enforcement may issue a subpoena or subpoena duces tecum, pursuant to the provisions of section one hundred twenty-three of this article, to require the responding party to produce and permit inspection and copying of designated books, papers, documents or tangible things which are relevant to determine child support.

(d) The Bureau for Child Support Enforcement may issue a subpoena, pursuant to the provisions of section one hundred twenty-three of this article, to produce and permit inspection and copying of designated books, papers, documents or tangible things relevant to the determination of child support to persons other than the parties to the support order.

(e) The Bureau for Child Support Enforcement may use other information and other communications or procedures available to the Bureau for Child Support Enforcement to gather information relevant to the determination of child support.
§48-18-204. Request for meeting with the Bureau.

(a) Either party may ask for an in-person meeting with the Bureau prior to the preparation or presentation of any petition to seek a modification of a child support order or any proposed modification order to the family court. As a part of the initial contact and notice to the parties after its receipt of an assistance request under this article, the Bureau for Child Support Enforcement shall inform the parties of their right to meet with the Bureau for Child Support Enforcement to discuss the circumstances and any relevant factors pertaining to the parties’ child support obligations. If either party asks for a meeting, the responding party shall be notified that a meeting has been requested. The parties shall not meet with the Bureau at the same time except as allowed in the discretion of the Bureau. No party may be required to meet with the Bureau.

(b) A party may modify an information statement or provide additional documents at the meeting or at any time before the Bureau sends its proposed order to the family court.

§48-18-205. Bureau action on request of recalculation and presentation of proposed order.

(a) If the Bureau determines that no credible information exists to establish finding of a substantial change in circumstances as required by section one hundred five, article eleven of this chapter or section one hundred six, article fourteen of this chapter, the Bureau for Child Support Enforcement shall notify the parties of that fact and notify the parties that the Bureau for Child Support Enforcement will not be preparing a petition or proposed order seeking modification of the parties’ child support obligation. Under those circumstances, if the parties disagree with the Bureau for Child Support Enforcement’s assessment and wish to independently file a petition for modification, the parties may still seek modification of child
support by filing a petition for modification of an order for
support with the family court under the provisions of section
one hundred five or one hundred six, article eleven of this
chapter or under the provisions of section one hundred six,
article fourteen of this chapter.

(b) If the Bureau for Child Support Enforcement determines
that there has been a substantial change of circumstances as
required by section one hundred five, article eleven of this
chapter or by section one hundred six, article fourteen of this
chapter, then the Bureau for Child Support Enforcement shall
prepare a petition and proposed order modifying the child
support order to be filed with the clerk of the family court.

(c) Any such petition filed by the Bureau for Child Support
Enforcement, filed pursuant to this article, shall include the
following:

(1) A copy of the proposed order;

(2) A print-out of the child support guidelines calculations;

(3) A notice of the Bureau's action;

(4) The documents and statements relied upon;

(5) Any statement of findings or justification the Bureau is
required or determines to include; and

(6) A form and instructions for filing an objection to the
proposed order, should a party wish to do so, which form shall
require a statement of the ground or grounds for filing the
objection.

(d) The Bureau for Child Support Enforcement's proposed
order shall be based on the child support guidelines: Provided,
That the Bureau may disregard the child support guidelines or
adjust the amount as allowed by section seven hundred two, article thirteen of this chapter in the following instances:

(1) When the previous child support order disregarded the child support guidelines; the grounds for the disregarding or adjusting the guidelines are stated in the worksheet or previous order or are agreed upon by the parties or are otherwise clear; and those grounds continue to exist and can be applied to the current circumstances; or

(2) If new grounds for the disregard or adjustment are fully explained in the proposed order.


(a) Upon receipt of petition for modification and proposed order prepared by the Bureau for Child Support Enforcement in accordance with the provisions of this article, the circuit clerk shall serve a copy of the petition and the proposed order upon all parties to the proceeding by personal service or by United States certified mail, return receipt requested, and direct the parties to file any objections to the proposed modified child support order within twenty days of the date of receiving such notice.

(b) Within five days of the filing of a petition for modification and proposed order, the circuit clerk shall notify the family court.

(c) If no party files timely objection to the proposed order or timely requests a hearing on the petition after receiving such notice, then the family court may proceed to review the petition and proposed order sua sponte and may issue the proposed order. If the family court receives no objection, but the family
court concludes that the proposed order should not be entered or should be changed, it shall set the matter for hearing.

(d) If the family court receives an objection to the petition or proposed order, the family court shall set a date and time for hearing.

(e) At any hearing on the proposed order, the family court shall treat the proposed order as a motion for modification made by the party requesting the Bureau to initiate the modification. The actions of the family court at a hearing shall be de novo and shall not be an appeal from the Bureau's recommended order. The family court shall notify the parties of the hearing and of the parties' rights and the procedures to be followed.

(f) The fees to be assessed for filing and service of the petition and the disbursement of the fee for petitions filed pursuant to this section shall be the same as the fee charged by the clerk for petitioning for an expedited modification of a child support order, as set forth in section eleven, article one, chapter fifty-nine of this code.

CHAPTER 39

(H. B. 3094 — By Delegates Staton, Mahan, Brown, Webster and Amores)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to repeal §48-14-419 of the Code of West Virginia, 1931, as amended; to repeal §48-16-308 of said code; to repeal §48-18-109
and §48-18-127 of said code; to amend and reenact §48-17-101 of said code; to amend and reenact §48-18-103, §48-18-108, §48-18-112, §48-18-113, §48-18-117, §48-18-118, §48-18-119, §48-18-121 of said code; and to amend and reenact §48-19-102 of said code, all relating to child support enforcement; repealing authority of the West Virginia Support Enforcement Commission to promulgate rules; repealing certain duties of the commission; repealing authority of Bureau for Child Support Enforcement to contract for certain services; repealing authority of commission to adopt form to identify support payments; increasing the number of members on the Commission; altering the organization of certain Bureau employees; removing commission authority to promulgate fee rules; authorizing the Commissioner of the Bureau for Child Support Enforcement to cooperate with other states in the enforcement of child support; moving certain rule-making authority from the Commission to the Commissioner; removing commission authority to require certain bonding requirements of Bureau employees; moving authority from Commission to the Commissioner relating to collecting child support from state and federal taxes; revising requirements relating to withholding child support payments from the Bureau of Employment Programs; and removing geographic delineations for certain Bureau attorneys.

Be it enacted by the Legislature of West Virginia:

That §48-14-419 of the Code of West Virginia, 1931, as amended, be repealed; to repeal §48-16-308 of said code; to repeal §48-18-109 and §48-18-127 of said code; to amend and reenact §48-17-101 of said code; to amend and reenact §48-18-103, §48-18-108, §48-18-112, §48-18-113, §48-18-117, §48-18-118, §48-18-119, §48-18-121 of said code; and to amend and reenact §48-19-102 of said code, all to read as follows:

Article
ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.

§48-17-101. Creation of Support Enforcement Commission; number of members.

The West Virginia Support Enforcement Commission, consisting of eight members, is hereby created in the Department of Health and Human Resources and may use the administrative support and services of that department. The Commission is not subject to control, supervision or direction by the Department of Health and Human Resources, but is an independent, self-sustaining commission that shall have the powers and duties specified in this chapter.

The Commission is a part-time commission whose members perform such duties as specified in this chapter. The ministerial duties of the Commission shall be administered and carried out by the Commissioner of the Bureau for Child Support Enforcement, with the assistance of such staff of the Department of Health and Human Resources as the Secretary may assign.

Each member of the Commission shall devote the time necessary to carry out the duties and obligations of the office and the seven members appointed by the Governor may pursue and engage in another business, occupation or gainful employment that is not in conflict with the duties of the Commission.

While the Commission is self-sustaining and independent, it, its members, its employees and the Commissioner are subject to article nine-a of chapter six, chapter six-b, chapter twenty-nine-a and chapter twenty-nine-b of this code.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-103. Organization and employees.
§48-18-112. Cooperation with other states in the enforcement of child support.
§48-18-113. Disbursements of amounts collected as support.
§48-18-103. Organization and employees.

(a) The Commissioner shall organize the work of the Bureau in such offices or other organizational units as he or she may determine to be necessary for effective and efficient operation.

(b) The Commissioner shall employ a sufficient number of employees in the position of Bureau for Child Support Enforcement attorney so as to provide for the effective and efficient operation of the Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement attorneys shall be distributed geographically as determined by the Commissioner.

(c) The Secretary may transfer employees and resources of the Department to the Bureau for Child Support Enforcement as may be necessary to fulfill the duties and responsibilities of the Bureau under this chapter: Provided, That the Secretary may not transfer employees of other divisions and agencies within the Department to the Bureau for Child Support Enforcement without a prior finding that the office or position held by the employee may be eliminated and until the office or position is, in fact, eliminated.

(d) The Commissioner, if he or she deems such action necessary, may hire legal counsel for the Division, notwithstanding the provisions of section two, article three, chapter five of this code or any other code provision to the contrary, or may request the Attorney General to appoint counsel who shall perform such duties as may be required by the Bureau. The Attorney General, in pursuance of such request, may select and appoint counsel to serve during the will and pleasure of the
Attorney General, and shall be paid out of any funds allocated and appropriated to the Child Support Enforcement Fund.

(e) The Commissioner may employ such staff or employees as may be necessary to administer and enforce this chapter.


(a) When the Bureau for Child Support Enforcement provides child support collection services either to a public assistance recipient or to a party who does not receive public assistance, the Bureau for Child Support Enforcement shall, upon written notice to the obligor, charge a monthly collection fee equivalent to the full monthly cost of the services, in addition to the amount of child support which was ordered by the court. The fee shall be deposited in the Child Support Enforcement Fund. The service fee assessed may not exceed ten percent of the monthly court-ordered child support and may not be assessed against any obligor who is current in payment of the monthly court-ordered child support payments: Provided, That this fee may not be assessed when the obligor is also a recipient of public assistance.

(b) Except for those persons applying for services provided by the Bureau for Child Support Enforcement who are applying for or receiving public assistance from the Division of Human Services or persons for whom fees are waived pursuant to a legislative rule promulgated pursuant to this section, all applicants shall pay an application fee of twenty-five dollars.

(c) Fees imposed by state and federal tax agencies for collection of overdue support shall be imposed on the person for whom these services are provided. Upon written notice to the obligee, the Bureau for Child Support Enforcement shall assess a fee of twenty-five dollars to any person not receiving public assistance for each successful federal tax interception. The fee shall be withheld prior to the assistance for each
successful federal tax interception. The fee shall be withheld prior to the release of the funds received from each interception and deposited in the Child Support Enforcement Fund established pursuant to section 18-107.

(d) In any action brought by the Bureau for Child Support Enforcement, the court shall order that the obligor shall pay attorney fees for the services of the attorney representing the Bureau for Child Support Enforcement in an amount calculated at a rate similar to the rate paid to court-appointed attorneys paid pursuant to section thirteen-a, article twenty-one, chapter twenty-nine of this code and all court costs associated with the action: Provided, That no such award shall be made when the court finds that the award of attorney’s fees would create a substantial financial hardship on the obligor or when the obligor is a recipient of public assistance. Further, the Bureau for Child Support Enforcement may not collect such fees until the obligor is current in the payment of child support. No court may order the Bureau for Child Support Enforcement to pay attorney’s fees to any party in any action brought pursuant to this chapter.

(e) This section shall not apply to the extent it is inconsistent with the requirements of federal law for receiving funds for the program under Title IV-A and Title IV-D of the Social Security Act, United States Code, article three, Title 42, Sections 601 to 613 and United States Code, Title 42, Sections 651 to 662.

§48-18-112. Cooperation with other states in the enforcement of child support.

(a) The Bureau for Child Support Enforcement shall cooperate with any other state in the following:

(1) In establishing paternity;

(2) In locating an obligor residing temporarily or permanently in this state, against whom any action is being taken for
the establishment of paternity or the enforcement of child and spousal support;

(3) In securing compliance by an obligor residing temporarily or permanently in this state, with an order issued by a court of competent jurisdiction against such obligor for the support and maintenance of a child or children or the parent of such child or children; and

(4) In carrying out other functions necessary to a program of child and spousal support enforcement.

(b) The Commissioner shall establish procedures necessary to extend the Bureau for Child Support Enforcement's system of withholding under article fourteen of this chapter, so that such system may include withholding from income derived within this state in cases where the applicable support orders were issued in other states, in order to assure that child support owed by obligors in this state or any other state will be collected without regard to the residence of the child for whom the support is payable or the residence of such child's custodial parent.

§48-18-113. Disbursements of amounts collected as support.

(a) Amounts collected as child or spousal support by the Bureau for Child Support Enforcement shall be distributed within two business days after receipt from the employer or other source of periodic income. The amounts collected as child support shall be distributed by the Bureau for Child Support Enforcement in accordance with the provisions for distribution set forth in 42 U.S.C. §657. The Commissioner shall promulgate a legislative rule to establish the appropriate distribution as may be required by the federal law.

(b) Any payment required to be made under the provisions of this section to a family shall be made to the resident parent,
12 legal guardian or caretaker relative having custody of or responsibility for the child or children.

14 (c) The Commissioner shall maintain methods of administration which are designed to assure that employees of the Bureau for Child Support Enforcement or any persons employed pursuant to a contract who are responsible for handling cash receipts do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts: Provided, That the Commissioner may provide for exceptions to this requirement in the case of sparsely populated areas in this state where the hiring of unreasonable additional staff in the local office would otherwise be necessary.

25 (d) No penalty or fee may be collected by or distributed to a recipient of Bureau for Child Support Enforcement services from the State Treasury or from the Child Support Enforcement Fund when child support is not distributed to the recipient in accordance with the time frames established herein.

30 (e) For purposes of this section, “business day” means a day on which state offices are open for regular business.

§48-18-117. Obtaining support from federal tax refunds.

1 The Commissioner shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, place in effect procedures necessary for the Bureau for Child Support Enforcement to obtain payment of past due support from federal tax refunds from overpayments made to the Secretary of the Treasury of the United States. The Bureau for Child Support Enforcement shall take all steps necessary to implement and utilize such procedures.

§48-18-118. Obtaining support from state income tax refunds.
(a) The Tax Commissioner shall establish procedures necessary for the Bureau for Child Support Enforcement to obtain payment of past due support from state income tax refunds from overpayment made to the Tax Commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.

(b) The Commissioner shall establish procedures necessary for the Bureau for Child Support Enforcement to enforce a support order through a notice to the Tax Commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) Such legislative rule shall, at a minimum, prescribe:

(A) The time or times at which the Bureau for Child Support Enforcement shall serve on the obligor or submit to the Tax Commissioner notices of past due support;

(B) The manner in which such notices shall be served on the obligor or submitted to the Tax Commissioner;

(C) The necessary information which shall be contained in or accompany the notices;

(D) The amount of the fee to be paid to the Tax Commissioner for the full cost of applying the procedure whereby past due support is obtained from state income tax refunds; and

(E) Circumstances when the Bureau for Child Support Enforcement may deduct a twenty-five dollar fee from the obligor's state income tax refund. This procedure may not require a deduction from the state income tax refund of an applicant who is a recipient of assistance from the Bureau for Children and Families in the form of temporary assistance for needy families.
(2) Withholding from state income tax refunds may not be pursued unless the Bureau for Child Support Enforcement has examined the obligor’s pattern of payment of support and the obligee’s likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past due support which will be owed, at the time the withholding is to be made, will be one hundred dollars or more. In determining whether the amount of past due support will be one hundred dollars or more, the Bureau for Child Support Enforcement shall consider the amount of all unpaid past due support, including that which may have accrued prior to the time that the Bureau for Child Support Enforcement first agreed to enforce the support order.

(c) The Commissioner of the Bureau for Child Support Enforcement shall enter into agreements with the Secretary of the Treasury and the Tax Commissioner, and other appropriate governmental agencies, to secure information relating to the social security number or numbers and the address or addresses of any obligor, in order to provide notice between such agencies to aid the Bureau for Child Support Enforcement in requesting state income tax deductions and to aid the Tax Commissioner in enforcing such deductions. In each such case, the Tax Commissioner, in processing the state income tax deduction, shall notify the Bureau for Child Support Enforcement of the obligor’s home address and social security number or numbers. The Bureau for Child Support Enforcement shall provide this information to any other state involved in processing the support order.

(d) For the purposes of this section, “past due support” means the amount of unpaid past due support owed under the terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is living, regardless of whether the amount has been reduced to a judgment or not.
(e) The Bureau for Child Support Enforcement may, under the provisions of this section, enforce the collection of past due support on behalf of a child who has reached the age of majority.

(f) The procedure shall, at a minimum, provide that prior to notifying the Tax Commissioner of past due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

1. Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;
2. Instruct the obligor of the steps which may be taken to contest the determination of the Bureau for Child Support Enforcement that past due support is owed or the amount of the past due support; and
3. Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the Bureau for Child Support Enforcement is notified by the Tax Commissioner that the refund from which withholding is proposed to be made is based upon a joint return, and if the past due support which is involved has not been assigned to the Department of Health and Human Resources, the Bureau for Child Support Enforcement may delay distribution of the amount withheld until such time as the Tax Commissioner notifies the Bureau for Child Support Enforcement that the other person filing the joint return has received his or her proper share of the refund, but such delay shall not exceed six months.

(h) In any case in which an amount is withheld by the Tax Commissioner under the provisions of this section and paid to the Bureau for Child Support Enforcement, if the Bureau for Child Support Enforcement subsequently determines that the
amount certified as past due was in excess of the amount actually owed at the time the amount withheld is to be distributed, the agency shall pay the excess amount withheld to the obligor thought to have owed the past due support or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing the return.

(i) The amounts received by the Bureau for Child Support Enforcement shall be distributed in accordance with the provisions for distribution set forth in 42 U.S.C. §657.

§48-18-119. Obtaining support from unemployment compensation benefits.

(a) The Commissioner shall enter into a written agreement with the Bureau of Employment Programs for the purpose of withholding unemployment compensation from individuals with unmet support obligations being enforced by the Bureau for Child Support Enforcement. The Commissioner shall, through direct contact with the Bureau of Employment Programs, process cases through the Bureau of Employment Programs in this state, and shall process cases through support enforcement agencies in other states. The Commissioner shall receive all amounts withheld by the Bureau of Employment Programs in this state, forwarding any amounts withheld on behalf of support enforcement agencies in other states to those agencies.

(b) For the purposes of this section:

(1) “Legal process” means a writ, order, summons or other similar process in the nature of garnishment which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order to such court or pursuant to state or local law.
(2) "Unemployment compensation" means any compensa-
tion under state unemployment compensation law (including
amounts payable in accordance with agreements under any
federal unemployment compensation law). It includes extended
benefits, unemployment compensation for federal employees,
unemployment compensation for ex-servicemen, trade readjust-
ment allowances, disaster unemployment assistance, and
payments under the Federal Redwood National Park Expansion
Act.

§48-18-121. Providing information to consumer reporting agen-
cies; requesting consumer credit reports for
child support purposes.

(a) For purposes of this section, the term “consumer
reporting agency” means any person who, for monetary fees,
dues, or on a cooperative nonprofit basis, regularly engages, in
whole or in part, in the practice of assembling or evaluating
consumer credit information or other information on consumers
for the purpose of furnishing consumer reports to third parties.

(b) The Commissioner shall establish procedures whereby
information regarding the amount of overdue support owed by
an obligor will be reported periodically by the Bureau for Child
Support Enforcement to any consumer reporting agency, after
a request by the consumer reporting agency that it be provided
with the periodic reports.

(1) The procedures shall provide that any information with
respect to an obligor shall be made available only after notice
has been sent to the obligor of the proposed action, and such
obligor has been given a reasonable opportunity to contest the
accuracy of the information.

(2) The procedures shall afford the obligor with procedural
due process prior to making information available with respect
to the obligor.
(c) The information made available to a consumer reporting agency regarding overdue support may only be made available to an entity that has furnished evidence satisfactory to the Bureau that the entity is a consumer reporting agency as defined in subsection (a) of this section.

(d) The Bureau for Child Support Enforcement may impose a fee for furnishing such information, not to exceed the actual cost thereof.

(e) The Commissioner of the Bureau for Child Support Enforcement, or her or his designee, may request a consumer reporting agency to prepare and furnish to the Bureau for Child Support Enforcement a consumer report for purposes relating to child support, by certifying to the consumer reporting agency that:

(1) The consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of payments in order to set an initial or modified child support award;

(2) The paternity of the child of the individual has been established or acknowledged by the individual in accordance with state law;

(3) The individual whose report is being requested has been given at least ten days' prior notice of the request by certified mail to his or her last known address that such report is being requested; and

(4) The consumer report will be kept confidential, will be used solely for a purpose described in subdivision (1) of this subsection and will not be used in connection with any other civil, administrative or criminal proceeding or for any other purpose.
ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.


(a) Each Bureau for Child Support Enforcement attorney shall be appointed by the Commissioner of the Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement attorneys shall be duly qualified attorneys licensed to practice in the courts of this state. Bureau for Child Support Enforcement attorneys shall be exempted from the appointments in the indigent cases which would otherwise be required pursuant to article twenty-one, chapter twenty-nine of this code.

(b) Nothing contained herein shall prohibit the Commissioner from temporarily assigning, from time to time as caseload may dictate, a Bureau for Child Support Enforcement attorney from one geographical area to another geographical area.

(c) The Bureau for Child Support Enforcement attorney is an employee of the Bureau for Child Support Enforcement.

CHAPTER 40

(Com. Sub. for H. B. 2492 — By Delegates Long, Spencer, Talbott, Barker, Hunt, Marshall and Overington)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §49-5-13d of the Code of West Virginia, 1931, as amended, relating to teen court programs; and
authorizing counties to adopt a mandatory fee when a county elects to institute a teen court program, to fund the program.

_Belit enacted by the Legislature of West Virginia:_

That §49-5-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-13d. Teen court program.**

(a) Notwithstanding any provision of this article to the contrary, in any county that chooses to institute a teen court program in accordance with the provisions of this section, any juvenile who is alleged to have committed a status offense or an act of delinquency which would be a misdemeanor if committed by an adult and who is otherwise subject to the provisions of this article may be given the option of proceeding in the teen court program as an alternative to the filing of a formal petition under section seven of this article or proceeding to a disposition as provided by section eleven-a or thirteen of this article, as the case may be. The decision to extend the option to enter the teen court program as an alternative procedure shall be made by the circuit court if the court finds that the offender is a suitable candidate for the program. No juvenile may enter the teen court program unless he or she and his or her parent or guardian consent. Any juvenile who does not successfully cooperate in and complete the teen court program and any disposition imposed therein shall be returned to the circuit court for further disposition as provided by section eleven-a or thirteen of this article, as the case may be.

(b) The following provisions apply to all teen court programs:
(1) The judge for each teen court proceeding shall be an acting or retired circuit court judge or an active member of the West Virginia State Bar, who serves on a voluntary basis.

(2) Any juvenile who selects the teen court program as an alternative disposition shall agree to serve thereafter on at least two occasions as a teen court juror.

(3) Volunteer students from grades seven through twelve of the schools within the county shall be selected to serve as defense attorney, prosecuting attorney, court clerk, bailiff and jurors for each proceeding.

(4) Disposition in a teen court proceeding shall consist of requiring the juvenile to perform sixteen to forty hours of community service, the duration and type of which shall be determined by the teen court jury from a standard list of available community service programs provided by the county juvenile probation system and a standard list of alternative consequences that are consistent with the purposes of this article. The performance of the juvenile shall be monitored by the county juvenile probation system. The juvenile shall also perform at least two sessions of teen court jury service and, if considered appropriate by the circuit court judge, participate in an education program. Nothing in this section may be construed so as to deny availability of the services provided under section eleven-a of this article to juveniles who are otherwise eligible therefor.

(c) The rules for administration, procedure and admission of evidence shall be determined by the chief circuit judge, but in no case may the court require a juvenile to admit the allegation against him or her as a prerequisite to participation in the teen court program. A copy of these rules shall be provided to every teen court participant.
(d) Each county that operates, or wishes to operate, a teen court program as provided in this section is hereby authorized to adopt a mandatory fee of up to five dollars to be assessed as provided in this subsection. Assessments collected by the clerk of the court pursuant to this subsection shall be deposited into an account specifically for the operation and administration of a teen court program. The clerk of the court of conviction shall collect the fees established in this subsection and shall remit the fees to the teen court program. Any mandatory fee established by the county commission in accordance with the provisions of this subsection shall be paid by the defendant on a judgment of guilty or a plea of nolo contendere for each violation committed in the county of any traffic regulation or law of the road established under the provisions of chapter seventeen-c of this code or any local ordinance.

CHAPTER 41

(S. B. 585 — By Senators Kessler, Dempsey, Foster, Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §49-5-17 of the Code of West Virginia, 1931, as amended, relating to juvenile proceedings and confidentiality of juvenile records; and permitting disclosure of same under specified circumstances.

Be it enacted by the Legislature of West Virginia:

That §49-5-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-17. Confidentiality of juvenile records.

(a) Records of a juvenile proceeding conducted under this chapter are not public records and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

(b) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile's records shall automatically be disclosed to certain school officials, subject to the following terms and conditions:

(1) Only the records of certain juveniles shall be disclosed. These include, and are limited to, cases in which:

   (A) The juvenile has been charged with an offense which:

   (i) Involves violence against another person;

   (ii) Involves possession of a dangerous or deadly weapon;

   (iii) Involves possession or delivery of a controlled substance as that term is defined in section one hundred one, article one, chapter sixty-a of this code; and

   (B) The juvenile's case has proceeded to a point where one or more of the following has occurred:

   (i) A judge, magistrate or referee has determined that there is probable cause to believe that the juvenile committed the offense as charged;

   (ii) A judge, magistrate or referee has placed the juvenile on probation for the offense;
A judge, magistrate or referee has placed the juvenile into an improvement period in accordance with section nine of this article; or

(iv) Some other type of disposition has been made of the case other than dismissal.

(2) The circuit court for each judicial circuit in West Virginia shall designate one person to supervise the disclosure of juvenile records to certain school officials.

(3) If the juvenile attends a West Virginia public school, the person designated by the circuit court shall automatically disclose all records of the juvenile’s case to the county superintendent of schools in the county in which the juvenile attends school and to the principal of the school which the juvenile attends, subject to the following:

(A) At a minimum, the records shall disclose the following information:

(i) Copies of the arrest report;

(ii) Copies of all investigations;

(iii) Copies of any psychological test results and any mental health records;

(iv) Copies of any evaluation reports for probation or facility placement; and

(v) Any other material that would alert the school to potential danger that the juvenile may pose to himself, herself or others;

(B) The disclosure of the juvenile’s psychological test results and any mental health records shall only be made in accordance with subdivision (14) of this subsection;
(C) If the disclosure of any record to be automatically disclosed under this section is restricted in its disclosure by the Health Insurance Portability and Accountability Act of 1996 and any amendments and regulations under the Act, the person designated by the circuit court shall provide the superintendent and principal any notice of the existence of the record that is permissible under the Act and, if applicable, any action that is required to obtain the record; and

(D) When multiple disclosures are required by this subsection, the person designated by the circuit court is required to disclose only material in the juvenile record that had not previously been disclosed to the county superintendent and the principal of the school which the juvenile attends.

(4) If the juvenile attends a private school in West Virginia, the person designated by the circuit court shall determine the identity of the highest ranking person at that school and shall automatically disclose all records of a juvenile's case to that person.

(5) If the juvenile does not attend school at the time the juvenile's case is pending, the person designated by the circuit court shall not transmit the juvenile's records to any school. However, the person designated by the circuit court shall transmit the juvenile's records to any school in West Virginia which the juvenile subsequently attends.

(6) The person designated by the circuit court shall not automatically transmit juvenile records to a school which is not located in West Virginia. Instead, the person designated by the circuit court shall contact the out-of-state school, inform it that juvenile records exist and make an inquiry regarding whether the laws of that state permit the disclosure of juvenile records. If so, the person designated by the circuit court shall consult with the circuit judge who presided over the case to determine
whether the juvenile records should be disclosed to the out-of-state school. The circuit judge shall have discretion in determining whether to disclose the juvenile records and shall consider whether the other state's law regarding disclosure provides for sufficient confidentiality of juvenile records, using this section as a guide. If the circuit judge orders the juvenile records to be disclosed, they shall be disclosed in accordance with the provisions of subdivision (7) of this subsection.

(7) The person designated by the circuit court shall transmit the juvenile's records to the appropriate school official under cover of a letter emphasizing the confidentiality of such records and directing the official to consult this section of the code. A copy of this section of the code shall be transmitted with the juvenile's records and cover letter.

(8) Juvenile records must be treated as absolutely confidential by the school official to whom they are transmitted, and nothing contained within the juvenile's records shall be noted on the juvenile's permanent educational record. The juvenile records are to be maintained in a secure location and are not to be copied under any circumstances. However, the principal of a school to whom the records are transmitted shall have the duty to disclose the contents of those records to any teacher who teaches a class in which the subject juvenile is enrolled and to the regular driver of a school bus in which the subject juvenile is regularly transported to or from school, except that the disclosure of the juvenile's psychological test results and any mental health records shall only be made in accordance with subdivision (14) of this subsection. Furthermore, any school official to whom the juvenile's records are transmitted may disclose the contents of such records to any adult within the school system who, in the discretion of the school official, has the need to be aware of the contents of those records.
(9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's records, the appropriate official at that school shall seal the records and return them to the circuit court which sent them to that school. If the juvenile has changed schools for any reason, the former school shall inform the circuit court of the name and location of the new school to which the juvenile attends or will be attending. If the new school is located within West Virginia, the person designated by the circuit court shall forward the juvenile's records to the juvenile's new school in the same manner as provided in subdivision (7) of this subsection. If the new school is not located within West Virginia, the person designated by the circuit court shall handle the juvenile records in accordance with subdivision (6) of this subsection.

If the juvenile has been found not guilty of an offense for which records were previously forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit court shall not forward those records to the juvenile's new school. However, this shall not affect records related to other prior or future offenses. If the juvenile has graduated or quit school or will otherwise not be attending another school, the circuit court shall retain the juvenile's records and handle them as otherwise provided in this article.

(10) Under no circumstances shall one school transmit a juvenile's records to another school.

(11) Under no circumstances shall juvenile records be automatically transmitted to a college, university or other post-secondary school.

(12) No one shall suffer any penalty, civil or criminal, for accidentally or negligently attributing certain juvenile records to the wrong person. However, such person shall have the affirmative duty to promptly correct any mistake that he or she has made in disclosing juvenile records when the mistake is
brought to his or her attention. A person who intentionally attributes false information to a certain person shall be subjected to both criminal and civil penalties in accordance with subsection (e) of this section.

(13) If a judge, magistrate or referee has determined that there is probable cause to believe that a juvenile has committed an offense but there has been no final adjudication of the charge, the records which are transmitted by the circuit court shall be accompanied by a notice which clearly states in bold print that there has been no determination of delinquency and that our legal system requires a presumption of innocence.

(14) The county superintendent shall designate the school psychologist or psychologists to receive the juvenile’s psychological test results and any mental health records. The psychologist designated shall review the juvenile’s psychological test results and any mental health records and, in the psychologist’s professional judgment, may disclose to the principal of the school that the juvenile attends and other school employees who would have a need to know the psychological test results, mental health records and any behavior that may trigger violence or other disruptive behavior by the juvenile. Other school employees include, but are not limited to, any teacher who teaches a class in which the subject juvenile is enrolled and the regular driver of a school bus in which the subject juvenile is regularly transported to or from school.

(c) Notwithstanding the provisions of subsection (a) of this section, juvenile records may be disclosed, subject to the following terms and conditions:

(1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to the provisions of subsection (c) or (d), section ten of this article, the juvenile records shall be open to public inspection.
(2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant to the provisions of subsection (e), (f) or (g), section ten of this article, the juvenile records shall be open to public inspection only if the juvenile fails to file a timely appeal of the transfer order, or the Supreme Court of Appeals refuses to hear or denies an appeal which has been timely filed.

(3) If a juvenile is fourteen years of age or older and a court has determined there is a probable cause to believe the juvenile committed an offense set forth in subsection (g), section ten of this article, but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(4) If a juvenile is younger than fourteen years of age and a court has determined there is probable cause to believe that the juvenile committed the crime of murder under section one, two or three, article two, chapter sixty-one of this code, or the crime of sexual assault in the first degree under section three, article eight-b of said chapter, but the case is not transferred to criminal jurisdiction, the juvenile records shall be open to public inspection pending trial only if the juvenile is released on bond and no longer detained or adjudicated delinquent of the offense.

(5) Upon a written petition and pursuant to a written order, the circuit court may permit disclosure of juvenile records to:

(A) A court, in this state or another state, which has juvenile jurisdiction and has the juvenile before it in a juvenile proceeding;

(B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile which requests such
213 records for the purpose of a presentence report or disposition proceeding;

215 (C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;

217 (D) The officials of a public institution to which the juvenile is committed if they require such records for transfer, parole or discharge; or

220 (E) A person who is conducting research. However, juvenile records may be disclosed for research purposes only upon the condition that information which would identify the subject juvenile or the juvenile's family shall not be disclosed.

224 (6) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, to a probation officer upon his or her written request and approved by his or her supervising circuit court judge: Provided, That the clerk of the court shall file the written request and the judge's approval in the juvenile's record and note therein the date and scope of the actual disclosure: Provided, however, That any probation officer may, without a court order, access relevant juvenile case information contained in any electronic database maintained by or for the Supreme Court of Appeals and share it with any other probation officer in the same or a different circuit.

236 (7) Notwithstanding any other provision of this code, juvenile records shall be disclosed, or copies made available, in response to any lawfully issued subpoena from a federal court or federal agency.

240 (d) Any records open to public inspection pursuant to the provisions of this section are subject to the same requirements governing the disclosure of adult criminal records.
(e) Any person who willfully violates this section 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 not more than six months, or both fined and confined and shall be liable for damages in the amount of three hundred dollars or actual damages, whichever is greater.

CHAPTER 42

(H. B. 2150 — By Delegates Amores, Mahan, Pino and Schadler)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §49-6-1 of the Code of West Virginia, 1931, as amended, relating to expanding the possible venues where a child neglect or abuse petition may be filed.

Be it enacted by the Legislature of West Virginia:

That §49-6-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-1. Petition to court when child believed neglected or abused; notice.

1 (a) If the department or a reputable person believes that a child is neglected or abused, the department or the person may present a petition setting forth the facts to the circuit court in the county in which the child resides, or if the petition is being brought by the department, in the county in which the custodial respondent or other named party abuser resides, or in which the
abuse or neglect occurred, or to the judge of the court in
vacation. Under no circumstance may a party file a petition in
more than one county based on the same set of facts. The
petition shall be verified by the oath of some credible person
having knowledge of the facts. The petition shall allege
specific conduct including time and place, how such conduct
comes within the statutory definition of neglect or abuse with
references thereto, any supportive services provided by the
department to remedy the alleged circumstances and the relief
sought. Upon filing of the petition, the court shall set a time and
place for a hearing and shall appoint counsel for the child.
When there is an order for temporary custody pursuant to
section three of this article, the hearing shall be held within
thirty days of the order, unless a continuance for a reasonable
time is granted to a date certain, for good cause shown.

(b) The petition and notice of the hearing shall be served
upon both parents and any other custodian, giving to the parents
or custodian at least ten days’ notice. Notice shall also be given
to the department, any foster or preadoptive parent, and any
relative providing care for the child. In cases wherein personal
service within West Virginia cannot be obtained after due
diligence upon any parent or other custodian, a copy of the
petition and notice of the hearing shall be mailed to the person
by certified mail, addressee only, return receipt requested, to
the last known address of such person. If the person signs the
certificate, service shall be complete and the certificate shall be
filed as proof of the service with the clerk of the circuit court.
If service cannot be obtained by personal service or by certified
mail, notice shall be by publication as a Class II legal advertise-
ment in compliance with the provisions of article three, chapter
fifty-nine of this code. A notice of hearing shall specify the
time and place of the hearing, the right to counsel of the child
and parents or other custodians at every stage of the proceed-
ings and the fact that the proceedings can result in the perma-
nent termination of the parental rights. Failure to object to
defects in the petition and notice shall not be construed as a
waiver.
(c) At the time of the institution of any proceeding under this article, the department shall provide supportive services in an effort to remedy circumstances detrimental to a child.

CHAPTER 43

(Com. Sub. for S. B. 587 — By Senators Bowman, Facemyer, Guills, Love, Edgell and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §49-6-2 of the Code of West Virginia, 1931, as amended, relating to the appointment of counsel in abuse and neglect cases.

Be it enacted by the Legislature of West Virginia:

That §49-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-2. Petition to court when child believed neglected or abused—right to counsel; improvement period; hearing; priority of proceeding; transcript.

1 (a) In any proceeding under the provisions of this article, the child, his or her parents and his or her legally established custodian or other persons standing in loco parentis to him or her shall have the right to be represented by counsel at every stage of the proceedings and shall be informed by the court of their right to be so represented and that if they cannot pay for the services of counsel, that counsel will be appointed. Counsel
of the child shall be appointed in the initial order. If the order
gives physical custody of the child to the state, the initial order
shall appoint counsel for the parents or, if the parents are
separated or divorced, the parents or parent or other person or
persons standing in loco parentis who had physical custody of
the child for the majority of the time in the period immediately
preceding the petition: Provided, That such representation shall
only continue after the first appearance if the parent or other
person standing in loco parentis cannot pay for the services of
counsel. Counsel for other parties shall only be appointed upon
request for appointment of counsel. If the requesting parties
have not retained counsel and cannot pay for the services of
counsel, the court shall, by order entered of record, appoint an
attorney or attorneys to represent the other party or parties and
so inform the parties. Under no circumstances may the same
attorney represent both the child and the other party or parties,
nor shall the same attorney represent both parents or custodians.
However, one attorney may represent both parents or custodians
where both parents or guardians consent to this representation
after the attorney fully discloses to the client the possible
conflict and where the attorney assures the court that she or he
is able to represent each client without impairing her or his
professional judgment; however, if more than one child from a
family is involved in the proceeding, one attorney may repre-
sent all the children. The court may allow to each attorney so
appointed a fee in the same amount which appointed counsel
can receive in felony cases. Any attorney appointed pursuant
to this section shall by the first day of July, one thousand nine
hundred ninety-three, and three hours per year each year
thereafter, receive a minimum of three hours of continuing legal
education training on representation of children, child abuse
and neglect: Provided, however, That where no attorney who
has completed this training is available for such appointment,
the court shall appoint a competent attorney with demonstrated
knowledge of child welfare law to represent the child. Any
attorney appointed pursuant to this section shall perform all
duties required as an attorney licensed to practice law in the State of West Virginia.

(b) In any proceeding brought pursuant to the provisions of this article, the court may grant any respondent an improvement period in accord with the provisions of this article. During such period, the court may require temporary custody with a responsible person which has been found to be a fit and proper person for the temporary custody of the child or children or the state Department or other agency during the improvement period. An order granting such improvement period shall require the Department to prepare and submit to the court a family case plan in accordance with the provisions of section three, article six-d of this chapter.

(c) In any proceeding pursuant to the provisions of this article, the party or parties having custodial or other parental rights or responsibilities to the child shall be afforded a meaningful opportunity to be heard, including the opportunity to testify and to present and cross-examine witnesses. The petition shall not be taken as confessed. A transcript or recording shall be made of all proceedings unless waived by all parties to the proceeding. The rules of evidence shall apply. Where relevant, the court shall consider the efforts of the state Department to remedy the alleged circumstances. At the conclusion of the hearing, the court shall make a determination based upon the evidence and shall make findings of fact and conclusions of law as to whether such child is abused or neglected, which shall be incorporated into the order of the court. The findings must be based upon conditions existing at the time of the filing of the petition and proven by clear and convincing proof.

(d) Any petition filed and any proceeding held under the provisions of this article shall, to the extent practicable, be given priority over any other civil action before the court,
except proceedings under article two-a, chapter forty-eight of this code and actions in which trial is in progress. Any petition filed under the provisions of this article shall be docketed immediately upon filing. Any hearing to be held at the end of an improvement period and any other hearing to be held during any proceedings under the provisions of this article shall be held as nearly as practicable on successive days and, with respect to said hearing to be held at the end of an improvement period, shall be held as close in time as possible after the end of said improvement period and shall be held within sixty days of the termination of such improvement period.

(e) Following the court's determination, it shall be inquired of the parents or custodians whether or not appeal is desired and the response transcribed. A negative response shall not be construed as a waiver. The evidence shall be transcribed and made available to the parties or their counsel as soon as practicable, if the same is required for purposes of further proceedings. If an indigent person intends to pursue further proceedings, the court reporter shall furnish a transcript of the hearing without cost to the indigent person if an affidavit is filed stating that he or she cannot pay therefor.

CHAPTER 44

(H. B. 2271 — By Delegates Mahan and Amores)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §49-6-4 of the Code of West Virginia, 1931, as amended, relating to the payment of expert fees in child abuse and neglect cases.
Be it enacted by the Legislature of West Virginia:

That §49-6-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-4. Medical and mental examinations.

(a) At any time during proceedings under this article the court may, upon its own motion or upon motion of the child or other parties, order the child or other parties to be examined by a physician, psychologist or psychiatrist, and may require testimony from such expert, subject to cross-examination and the rules of evidence: Provided, That the court shall not terminate parental or custodial rights of a party solely because the party refuses to submit to the examination, nor shall the court hold such party in contempt for refusing to submit to an examination. The physician, psychologist or psychiatrist shall be allowed to testify as to the conclusions reached from hospital, medical, psychological or laboratory records provided the same are produced at the hearing. If the child, parent or custodian is indigent, such witnesses shall be compensated out of the Treasury of the State, upon certificate of the court wherein the case is pending. No evidence acquired as a result of any such examination of the parent or any other person having custody of the child may be used against such person in any subsequent criminal proceedings against such person.

(b) If a person with authority to file a petition under the provisions of this article shall have probable cause to believe that evidence exists that a child has been abused or neglected and that such evidence may be found by a medical examination, the person may apply to a circuit judge or juvenile referee for an order to take such child into custody for delivery to a physician or hospital for examination. The application may be on forms prescribed by the Supreme Court of Appeals or
28 prepared by the prosecuting attorney or the applicant, and shall
29 set forth facts from which it may be determined that probable
30 cause exists for such belief. Upon such sworn testimony or
31 other evidence as the judge or referee deems sufficient, the
32 judge or referee may order any law-enforcement officer to take
33 the child into custody and deliver the child to a physician or
34 hospital for examination. If a referee issues such an order the
35 referee shall by telephonic communication have such order
36 orally confirmed by a circuit judge of the circuit or an adjoining
37 circuit who shall on the next judicial day enter an order of
38 confirmation. Any child welfare worker and the child’s parents,
39 guardians or custodians may accompany the officer for such
40 examination. After the examination the officer may return the
41 child to the custody of his or her parent, guardian or custodian,
42 retain custody of the child or deliver custody to the state
43 department until the end of the next judicial day, at which time
44 the child shall be returned to the custody of his or her parent,
45 guardian or custodian unless a petition has been filed and
46 custody of the child has been transferred to the department
47 under the provisions of section three of this article.

CHAPTER 45

(Com. Sub. for H. B. 2174 — By Delegates Spencer,
Perdue and Amores)

[Passed April 5, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §49-6A-2a, relating to
requiring the Department of Health and Human Resources to
develop a procedure to notify persons mandated to report child abuse and neglect of whether an investigation of the report has occurred.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-6A-2a, to read as follows:

ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.

§49-6A-2a. Notification of disposition of reports.

(a) The Department of Health and Human Resources shall develop and implement a procedure to notify any person mandated to report suspected child abuse and neglect under the provisions of section two of this article, of whether an investigation into the reported suspected abuse or neglect has been initiated and when the investigation is completed.

(b) The Department of Health and Human Resources shall develop and implement the above described procedure on or before the first day of January, two thousand six.

CHAPTER 46

(Com. Sub. for H. B. 2334 — By Mr. Speaker, Mr. Kiss, and Delegates Michael, Perdue, Amores, Brown and Palumbo)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-7-34, relating to creating a commission to study the out-of-state placement of children; providing for members and a chair; providing study topics; and requiring certain reporting requirements on specific goals.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-7-34, to read as follows:

ARTICLE 7. GENERAL PROVISIONS.

§49-7-34. Commission to study residential placement of children.

(a) The Legislature finds that the state's current system of serving children and families in need of or at risk of needing social, emotional and behavioral health services is fragmented. The existing categorical structure of government programs and their funding streams discourages collaboration, resulting in duplication of efforts and a waste of limited resources. Children are usually involved in multiple child-serving systems, including child welfare, juvenile justice and special education. More than ten percent of children presently in care are presently in out-of-state placements. Earlier efforts at reform have focused on quick fixes for individual components of the system at the expense of the whole. It is the purpose of this section therefore to establish a mechanism to achieve systemic reform by which all of the state's child-serving agencies involved in the residential placement of at-risk youth jointly and continually study and improve upon this system and make recommendations to their respective agencies and to the Legislature regarding funding and statutory, regulatory and policy changes. It is further the Legislature's intent to build upon these recommendations to establish an integrated system of care for at-risk youth and families that makes prudent and cost-effective use of limited
state resources by drawing upon the experience of successful
models and best practices in this and other jurisdictions, which
focuses on delivering services in the least restrictive setting
appropriate to the needs of the child, and which produces better
outcomes for children, families and the state.

(b) There is hereby created within the Department of Health
and Human Resources a Commission to Study the Residential
Placement of Children. The Commission shall consist of the
Secretary of the Department of Health and Human Resources,
the Commissioner of the Bureau for Children and Families, the
Commissioner for the Bureau for Behavioral Health and Health
Facilities, the Commissioner for the Bureau for Medical
Services, the State Superintendent of Schools, a representative
of local educational agencies, the Director of the Office of
Institutional Educational Programs, the Director of the Office
of Special Education Programs and Assurance, the Director of
the Division of Juvenile Services and the Executive Director of
the Prosecuting Attorney's Institute. At the discretion of the
West Virginia Supreme Court of Appeals, circuit and family
court judges and other court personnel, including the adminis-
trator of the Supreme Court of Appeals and the director of the
Juvenile Probation Services Division, may serve on the
Commission. These statutory members may further designate
additional persons in their respective offices who may attend
the meetings of the Commission if they are the administrative
head of the office or division whose functions necessitate their
inclusion in this process. In its deliberations, the Commission
shall also consult and solicit input from families and service
providers.

(c) The Secretary of the Department of Health and Human
Resources shall serve as chair of the Commission, which shall
meet on a monthly basis at the call of the chairman.

(d) At a minimum, the Commission shall study:
55 (1) The current practices of placing children out-of-home and into in residential placements, with special emphasis on out-of-state placements;

58 (2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve the needs of children requiring residential placements;

61 (3) Strategies and methods to reduce the number of children who must be placed in out-of-state facilities and to return children from existing out-of-state placements, initially targeting older youth who have been adjudicated delinquent;

65 (4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;

67 (5) The availability of and investment in community-based, less restrictive and less costly alternatives to residential placements;

70 (6) Ways in which up-to-date information about in-state placement availability may be made readily accessible to state agency and court personnel, including an interactive secure website;

74 (7) Strategies and methods to promote and sustain cooperation and collaboration between the courts, state and local agencies, families and service providers, including the use of inter-agency memoranda of understanding, pooled funding arrangements and sharing of information and staff resources;

79 (8) The advisability of including “no-refusal” clauses in contracts with in-state providers for placement of children whose treatment needs match the level of licensure held by the provider;

83 (9) Identification of in-state service gaps and the feasibility of developing services to fill those gaps, including funding;
(10) Identification of fiscal, statutory and regulatory barriers to developing needed services in-state in a timely and responsive way;

(11) Ways to promote and protect the rights and participation of parents, foster parents and children involved in out-of-home care; and

(12) Ways to certify out-of-state providers to ensure that children who must be placed out-of-state receive high quality services consistent with this state’s standards of licensure and rules of operation.

(e) Beginning July 1, 2005, the chair, or his or her designee, shall report on the work of the Commission to the Legislative Juvenile Task Force during the Legislature’s monthly interim meetings.

(f) On or before December 1, 2005, the Commission shall report to the Joint Committee on Government and Finance its conclusions and recommendations, including an implementation plan whereby:

(1) Out-of-state placements shall be reduced by at least ten per cent per year and by at least fifty percent within three years;

(2) Child-serving agencies shall develop joint operating and funding proposals to serve the needs of children and families that cross their jurisdictional boundaries in a more seamless way;

(3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in order for agencies to work collaboratively while maximizing the availability of federal funds;

(4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;
(5) System of care components and cooperative relationships shall be incrementally established at the local, state and regional levels, with links to existing resources, such as family resource networks and regional summits, wherever possible; and

(6) Recommendations for changes in fiscal, statutory and regulatory provisions are included for legislative action.

CHAPTER 47

(Com. Sub. for H. B. 2981 — By Delegates H. White, Proudfoot, Cann, Susman, Evans and Hall)

[Passed April 5, 2005; in effect from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Attorney General; Auditor's Office; Bluefield State College; Bureau of Commerce; Community and Technical College of Shepherd; Department of Administration; Department of Administration/Division of Personnel; Department of Agriculture; Department of Education; Department of Education and the Arts; Department of Health and Human Resources; Department of Military Affairs and Public Safety; Department of Revenue; Department of
Transportation; Division of Corrections; Division of Environmental Protection; Division of Highways; Division of Juvenile Services; Division of Motor Vehicles; Division of Natural Resources; Division of Rehabilitation Services; Governor’s Office; Governor’s Office of Technology; Higher Education Policy Commission; Legislative Services; Marshall University; Public Service Commission; Regional Jail and Correctional Facility Authority; Secretary of State; Southern West Virginia Community and Technical College; Supreme Court of Appeals; West Liberty State College; West Virginia Network; West Virginia Northern Community and Technical College; West Virginia Public Port Authority; West Virginia State University; West Virginia University and Workforce Investment Board to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Court of Claims concerning various claims against the State and agencies thereof, and in respect to each of the following claims the Legislature adopts those findings of fact as its own, and in respect of certain claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the Auditor to issue warrants for the payment thereof out of any fund appropriated and available for the purpose.

(a) **Claim against the Attorney General:**

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $31,304.69

(b) **Claim against the Auditor’s Office:**

(TO BE PAID FROM GENERAL REVENUE FUND)
(1) Verizon West Virginia, Inc. ............... $5,290.31

(c) Claim against Bluefield State College:

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc ............... $15,379.21

(d) Claims against Bureau of Commerce:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $11,082.95

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(2) Verizon West Virginia, Inc. ............... $11,696.86

(e) Claim against the Community and Technical College of Shepherd:

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $22,438.77

(f) Claims against the Department of Administration:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Woodrow Lee, dba Lee Contracting .... $13,000.00

(2) Virginia Controls, Inc. ................. $101,544.00

(TO BE PAID FROM GENERAL REVENUE FUND)

(3) Verizon West Virginia, Inc. ............... $10,806.15

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(4) Verizon West Virginia, Inc. ............... $90.91
(g) Claim against the Department of Administration/Division of Personnel:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Specialty Technical Publishers ............... $465.00

(h) Claims against the Department of Agriculture:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $1,324.01

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(2) Verizon West Virginia, Inc. ............... $162.27

(i) Claims against the Department of Education:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Boys' Village, Inc. ................... $56,821.80

(2) Verizon West Virginia, Inc. ............... $122.90

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(3) Verizon West Virginia, Inc. ............... $17,662.00

(j) Claims against the Department of Education and the Arts:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $1,388.56

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(2) Verizon West Virginia, Inc. ............... $23,032.62

(k) Claims against the Department of Health and Human Resources:
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<td>(1) Charleston Area Medical Center, Inc.</td>
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<td>(2) Davis Memorial Hospital</td>
<td>$161.45</td>
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<td>(3) Monongalia General Hospital</td>
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<td>(4) Verizon West Virginia, Inc.</td>
<td>$208,732.82</td>
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<table>
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<td>(1) Verizon West Virginia, Inc.</td>
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<td>(1) Verizon West Virginia, Inc.</td>
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### Claims Against the Division of Corrections:

(To be paid from General Revenue Fund)

1. Charleston Area Medical Center, Inc. .......... $89.87
2. Richard Lawson ........................................ $485.00
3. Regional Jail and Correctional Facility Authority .......... $13,320.00
4. Lawrence E. Scible ...................................... $30.00

### Claims Against the Division of Environmental Protection:

(To be paid from General Revenue Fund)

1. Verizon West Virginia, Inc. ............... $32,210.47

(To be paid from Nongeneral Revenue Fund)

2. Verizon West Virginia, Inc. ............. $9,760.56

### Claims Against the Division of Highways:

(To be paid from State Road Fund)

1. Janette F. Adams .......................... $200.00
2. Thomas A. Adkins and Thomas A. Adkins, II ............ $250.00
3. Roger Amos .......................................... $2,400.00
4. Christina Bernardini ............................. $250.00
5. Nancy Blair ........................................ $75.21
6. Michael J. Bland .............................. $1,002.43
7. David Wayne Boggess, Sr. .................. $500.00
8. Boggs Fork Church .............................. $1,100.00
9. Allena L. Bragg and Dickie R. Bragg ........ $257.52
10. Jeremy C. and Sharon L. Bragg ............. $500.00
11. Gillis F. and Jacqueline Bryant .......... $364.53
12. Reba Burkett ..................................... $250.00
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<th>Name and Description</th>
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<td>(14) Diane Canterbury</td>
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<td>(15) Amanda Casto</td>
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<td>(16) Stephen J. and Sally A. Chandler</td>
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<td>(17) Dannette Constantino</td>
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<td>(18) Curtis H. Copley</td>
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<td>(19) Howard Copley</td>
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<td>(22) John A. Custer</td>
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<td>(23) Debra Sue Day</td>
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<td>(24) Andrea Depta, an infant through her father and next friend, Gary Depta</td>
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<td>(26) Michael T. and Chastity Dillon</td>
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<td>(27) Robin Doty</td>
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<td>(30) Janet M. Emery</td>
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<td>(34) Lynn A. Fish</td>
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<td>(39) Kala Ann Gorbey</td>
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<td>(40) Melissa S. and Paul L. Gregory</td>
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<td>(41) Cynthia G. and Douglas Griffith</td>
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<td>(42) Kim Haynes</td>
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<td>(44) Joeann Isabel</td>
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<td>Sandra and David Johnston</td>
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<td>Michael S. Macaluso</td>
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<td>Diane D. and James R. McClure</td>
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<td>Shawn A. and Herbert McComsey</td>
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<td>Heather and Thomas Miller</td>
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<td>Kathy J. Moles</td>
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<td>Debra Nabors, Jonathan Nabors and Sharrion Settle</td>
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<td>William Kent Nichols</td>
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<td>Patricia A. Payne</td>
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<td>Rosella and William Perry</td>
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<td>David Grant Pevavar</td>
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<td>78</td>
<td>Rudy Rosnick</td>
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Claim against the Division of Juvenile Services:

Claim against the Division of Motor Vehicles:

Claim against the Division of Natural Resources:
(3) Verizon West Virginia, Inc. ............... $162.07
(u) Claims against the Division of Rehabilitation Services:
(TO BE PAID FROM SPECIAL REVENUE FUND)
(1) NDC Health Corporation ................. $31,633.56
(2) R.E. Michel Co., Inc. ................ $2,342.12
(v) Claims against the Governor's Office:
(TO BE PAID FROM GENERAL REVENUE FUND)
(1) Otis L. Laury .......................... $4,128.00
(2) Verizon West Virginia, Inc. ........... $11,207.10
(TO BE PAID FROM NONGENERAL REVENUE FUND)
(3) Verizon West Virginia, Inc. ............. $289.48
(w) Claim against the Governor's Office of Technology:
(TO BE PAID FROM NONGENERAL REVENUE FUND)
(1) Verizon West Virginia, Inc. .............. $53.57
(x) Claim against the Higher Education Policy Commission:
(TO BE PAID FROM NONGENERAL REVENUE FUND)
(1) Verizon West Virginia, Inc. ............... $6,705.95
(y) Claim against Legislative Services:
(TO BE PAID FROM GENERAL REVENUE FUND)
(1) Verizon West Virginia, Inc. ........... $515.14
(z) Claim against Marshall University:
(TO BE PAID FROM NONGENERAL REVENUE FUND)

1 Verizon West Virginia, Inc. ................ $13.28

(aa) Claim against the Public Service Commission:

(1) Verizon West Virginia, Inc. ................. $7.11

(bb) Claims against Regional Jail and Correctional Facility Authority:

(1) James Barnett ......................... $252.99
(2) Larry T. Hardman ..................... $100.00
(3) Larry E. Harmon ..................... $188.99
(4) Joseph A. Mansi ....................... $500.00
(5) Jeffrey A. Nichols ..................... $307.40
(6) Robert D. Smith, Jr. ................... $180.00
(7) Stephanie P. Sprouse ................... $9.40

(cc) Claim against the Secretary of State:

(1) Verizon West Virginia, Inc. ................. $0.92

(dd) Claims against Southern West Virginia Community and Technical College:

(1) Verizon West Virginia, Inc. ............... $109.49

(2) Verizon West Virginia, Inc ................ $7,460.13
Claim against the Supreme Court of Appeals:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ................. $6,627.76

Claim against West Liberty State College:

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $14,550.00

Claim against the West Virginia Network:

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $32,488.78

Claim against West Virginia Northern Community and Technical College:

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $46,293.90

Claim against the West Virginia Port Authority:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Kimley-Horn Associates, Inc.,
and Brown Communications, LLC .... $139,412.98

Claim against West Virginia State University:

(TO BE PAID FROM NONGENERAL REVENUE FUND)

(1) Verizon West Virginia, Inc. ............... $11,066.60

Claims against West Virginia University:

(TO BE PAID FROM SPECIAL REVENUE FUND)
The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants, and that prior to the payments to any claimant provided in this bill, the court of claims shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The court of claims shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 48
(S. B. 492 — By Senators Love, Sharpe, Edgell and Minear)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.
Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Health and Human Resources and Division of Corrections to be moral obligations of the State and directing payments thereof.

The Legislature has heretofore made findings of fact that the State has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agencies thereof, which have arisen due to overexpenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Court of Claims which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Court of Claims on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Court of Claims as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements or other satisfactory documents as required by section ten, article three, chapter twelve of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claims against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)
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<th>Claimant</th>
<th>Amount</th>
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<td>(2) Bailey-Kirk Funeral Home, Inc.</td>
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<td>(3) Barlow-Bonsall Funeral Home</td>
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<td>(4) Bartlett-Chapman Funeral Home, LLC</td>
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<td>(5) Boyle Funeral Home, Inc., and</td>
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<td>Floyd Funeral Home, Inc.</td>
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<td>(6) Brown Funeral Home</td>
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<td>(7) Browning Funeral Home, Inc.</td>
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<td>(8) Calfee Funeral Home, Inc.</td>
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<td>(9) Carpenter &amp; Ford Funeral Home</td>
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<td>(10) Chafin Funeral Home, Inc.</td>
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<td>(15) Davis Funeral Home</td>
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<td>(16) Davis-Weaver Funeral Home</td>
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<td>(17) Dodd &amp; Reed Funeral Home, Inc.</td>
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<td>(18) Donald G. Ford Funeral Home, Inc.</td>
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<td>(21) Ferrell Funeral Home, Inc.</td>
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<td>(22) Ford Funeral Home, Inc.</td>
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<td>(31) J.E. Johnson Funeral Home, Inc.</td>
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<td>62</td>
<td>(34) Jarvis Funeral Homes, Inc.</td>
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<td>(35) Keller Funeral Home, Inc.</td>
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<td>(36) Kepner Funeral Home, Inc.</td>
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<td>65</td>
<td>(37) Kiger-Williams Funeral, Inc., dba Rotruck-Lobb Funeral Homes</td>
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<td>(38) Klingel-Carpenter Mortuary, Inc.</td>
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<td>(39) Koontz Funeral Home</td>
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<td>(40) Lambert-Tatman Funeral Home</td>
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<td>(41) Leavitt Funeral Home, Inc.</td>
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<td>(42) Lohr &amp; Barb Funeral Home, Inc.</td>
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<td>(43) McKee Funeral Home</td>
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<td>(44) Memorial Funeral Chapels, Inc., dba Greene-Robertson Funeral Home</td>
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<td>74</td>
<td>(46) Mercer Funeral Home of Bluefield, Inc.</td>
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<td>(54) Shaffer-Warnick Funeral Home</td>
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<td>(55) Simons-Coleman Funeral Home, Inc.</td>
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<td>86</td>
<td>(58) Stockert-Gibson Funeral Home</td>
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<td>87</td>
<td>(59) Taylor &amp; Vandale Funeral Home, Inc.</td>
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<td>88</td>
<td>(60) Tomblyn Funeral Home</td>
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### Claims against the Division of Corrections:

#### (TO BE PAID FROM GENERAL REVENUE FUND)

<table>
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<tr>
<th>No.</th>
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<th>Amount</th>
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<td>Allegheny General Hospital</td>
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<td>101</td>
<td>Anesthesia Medical Group</td>
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<td>102</td>
<td>Charleston Area Medical Center, Inc.</td>
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<td>Correctional Medical Services, Inc.</td>
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<td>Mirza, Abdul M., M.D.</td>
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<td>113</td>
<td>West Virginia University Physicians of Charleston</td>
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AN ACT to amend and reenact §8-11-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §17E-1-2, §17E-1-3, §17E-1-5, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-14, §17E-1-15, §17E-1-16, §17E-1-17, §17E-1-23 and §17E-1-24 of said code, all relating to updating provisions pertaining to commercial driver’s licenses to conform with federal law.

Be it enacted by the Legislature of West Virginia:

That §8-11-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17E-1-2, §17E-1-3, §17E-1-5, §17E-1-6, §17E-1-7, §17E-1-8, §17E-1-9, §17E-1-10, §17E-1-11, §17E-1-12, §17E-1-13, §17E-1-14, §17E-1-15, §17E-1-16, §17E-1-17, §17E-1-23 and §17E-1-24 of said code be amended and reenacted, all to read as follows:

Chapter

17E. Uniform Commercial Driver’s License Act.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 11. POWERS AND DUTIES WITH RESPECT TO ORDINANCES AND ORDINANCE PROCEDURES.

§8-11-5. Prejudgment alternative disposition of certain traffic offenses.
(a) Municipal courts are hereby authorized to establish a prejudgment alternative disposition procedure for traffic offenses over which the court has jurisdiction.

(b) Under a prejudgment disposition procedure authorized by subsection (a) of this section, if a person is found guilty of a traffic offense, the municipal court may, with the person's consent, withhold for a reasonable time not to exceed ninety days the entry of a judgment of conviction so that the person may attend a driver safety education course designated by the municipal court. If the person attends said course, the municipal court, if satisfied with the person's participation in the course, shall, without entering a judgment of conviction, dismiss the proceeding against the person.

(c) It shall be a condition of any prejudgment alternative disposition authorized by the provisions of this section that the person pay any fine assessed by the court and pay all fees and costs required to be paid by any provision of this code where a person is convicted of a criminal traffic offense. No municipal court shall utilize any prejudgment alternative disposition procedure unless it collects such fees and costs as are required by any provision of this code and transmits the moneys collected as required by law. No municipal court shall utilize any prejudgment alternative disposition procedure unless it conforms with the requirements of this section.

(d) The procedure authorized by the provisions of this section shall not be available to any person who:

(1) Holds a commercial driver's license issued by this state in accordance with chapter seventeen-e of this code, or who holds a commercial driver's license issued by any other state or jurisdiction;

(2) Is arrested while operating a commercial motor vehicle as defined in chapter seventeen-e of this code; or
(3) Is arrested for driving under the influence of alcohol or drugs or any other offense for which a mandatory period of confinement in jail is required.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER’S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-2. Statement of intent and purpose.
§17E-1-3. Definitions.
§17E-1-5. Notification required by driver.
§17E-1-6. Employer responsibilities.
§17E-1-7. Commercial driver’s license required; disqualification for driving without valid license.
§17E-1-8. Exemptions to the commercial driver’s license requirements.
§17E-1-10. Application for commercial driver’s license.
§17E-1-11. Commercial driver’s license.
§17E-1-12. Classifications, endorsements and restrictions.
§17E-1-14. Commercial drivers prohibited from driving with blood alcohol concentration of four hundredths of one percent or more, refusal of preliminary breath test to determine alcohol content of blood; criminal penalties.
§17E-1-15. Implied consent requirements for commercial motor vehicle drivers; disqualification for driving with blood alcohol concentration of four hundredths of one percent or more, by weight.
§17E-1-16. Notification of traffic convictions.
§17E-1-17. Driving record information to be furnished.
§17E-1-23. Funding for the commercial driver's license fees.

§17E-1-2. Statement of intent and purpose.

(a) The purpose of this article is to implement 49 U.S.C et seq., The Federal Motor Carrier Safety Improvement Act of 1999, 49 U.S.C. §5103a, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept or Obstruct Terrorism Act of 2001 and to reduce or prevent commercial motor vehicle accidents, fatalities and injuries by:
(1) Permitting commercial drivers to hold only one license;

(2) Disqualifying commercial drivers who have committed certain serious traffic offenses;

(3) Permitting only commercial drivers who do not present a security threat to operate commercial vehicles carrying a hazardous material; and

(4) Strengthening licensing and testing standards.

(b) This article is a remedial law and shall be liberally construed to promote the public health, safety and welfare. Where this chapter is silent, the general driver licensing provisions and the provisions of Title 49 of the Code of Federal Regulations apply.

§17E-1-3. Definitions.

Notwithstanding any other provision of this code, the following definitions apply to this article:

(1) "Alcohol" means:

(A) Any substance containing any form of alcohol, including, but not limited to, ethanol, methanol, propanol and isopropanol;

(B) Beer, ale, port or stout and other similar fermented beverages (including sake or similar products) of any name or description containing one half of one percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute for malt;

(C) Distilled spirits or that substance known as ethyl alcohol, ethanol or spirits of wine in any form (including all dilutions and mixtures thereof from whatever source or by whatever process produced); or
(D) Wine of not less than one half of one percent of alcohol by volume.

(2) "Alcohol concentration" means:

(A) The number of grams of alcohol per one hundred milliliters of blood;

(B) The number of grams of alcohol per two hundred ten liters of breath; or

(C) The number of grams of alcohol per sixty-seven milliliters of urine.

(D) The number of grams of alcohol per eighty-six milliliters of serum.

(3) "At fault traffic accident" means for the purposes of waiving the road test, a determination, by the official filing the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.

(4) "Commercial driver’s license" means a license issued in accordance with the requirements of this article to an individual which authorizes the individual to drive a class of commercial motor vehicle.

(5) "Commercial driver’s license information system" is the information system established pursuant to the Federal Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(6) "Commercial driver instruction permit" means a permit issued pursuant to subsection (d), section nine of this article.

(7) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property:
(A) If the vehicle has a gross combination vehicle weight rating of 26,001 pounds or more inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;

(B) If the vehicle has a gross vehicle weight rating of more than 26,001 pounds or more;

(C) If the vehicle is designed to transport sixteen or more passengers, including the driver; or

(D) If the vehicle is of any size transporting hazardous materials as defined in this section.

(8) "Commissioner" means the Commissioner of Motor Vehicles of this state.

(9) "Controlled substance" means any substance classified under the provisions of chapter sixty-a of this code (Uniform Controlled Substances Act) and includes all substances listed on Schedules I through V, inclusive, article two of said chapter sixty-a, as they are revised. The term "controlled substance" also has the meaning such term has under 21 U.S.C. § 802.6 and includes all substances listed on Schedules I through V of 21 C.F.R. § 1308 as they may be amended by the United States Department of Justice.

(10) "Conviction" means an unvacated adjudication of guilt; a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal or proceeding; an unvacated forfeiture of bail or collateral deposited to secure the persons appearance in court; a plea of guilty or nolo contendere accepted by the court or the payment of a fine or court cost, or violation of a condition of release without bail regardless of whether or not the penalty is rebated, suspended, or probated.

(11) "Division" means the Division of Motor Vehicles.
(12) "Disqualification" means any of the following three actions:

(A) The suspension, revocation, or cancellation of a driver's license by the state or jurisdiction of issuance.

(B) Any withdrawal of a person's privilege to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control other than parking or vehicle weight except as to violations committed by a special permittee on the coal resource transportation system or vehicle defect violations.

(C) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle under 49 C.F.R. Part §391 (2004).

(13) "Drive" means to drive, operate or be in physical control of a motor vehicle in any place open to the general public for purposes of vehicular traffic. For the purposes of sections twelve, thirteen and fourteen of this article, "drive" includes operation or physical control of a motor vehicle anywhere in this state.

(14) "Driver" means any person who drives, operates or is in physical control of a commercial motor vehicle, in any place open to the general public for purposes of vehicular traffic, or who is required to hold a commercial driver's license.

(15) "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle of a specific class.

(16) "Employee" means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly
employed by or under lease to drive a commercial motor vehicle for an employer.

(17) "Employer" means any person, including the United States, a state or a political subdivision of a state, who owns or leases a commercial motor vehicle or assigns a person to drive a commercial motor vehicle.

(18) "Endorsement" means an authorization to a person to operate certain types of commercial motor vehicles.

(19) "Farm vehicle" includes a motor vehicle or combination vehicle registered to the farm owner or entity operating the farm and used exclusively in the transportation of agricultural or horticultural products, livestock, poultry and dairy products from the farm or orchard on which they are raised or produced to markets, processing plants, packing houses, canneries, railway shipping points and cold storage plants and in the transportation of agricultural or horticultural supplies and machinery to the farms or orchards to be used on the farms or orchards.

(20) "Farmer" includes an owner, tenant, lessee, occupant or person in control of the premises used substantially for agricultural or horticultural pursuits who is at least eighteen years of age with two years' licensed driving experience.

(21) "Farmer vehicle driver" means the person employed and designated by the "farmer" to drive a "farm vehicle" as long as driving is not his or her sole or principal function on the farm who is at least eighteen years of age with two years' licensed driving experience.

(22) "Felony" means an offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year.
(23) "Gross combination weight rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(24) "Gross vehicle weight rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single vehicle. In the absence of a value specified by the manufacturer the GVWR will be determined by the total weight of the vehicle and any load thereon.

(25) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. §5103 and is required to be placarded under subpart F of 49 C.F.R. Part §172 or any quantity of a material listed in 42 C.F.R. Part §73.

(26) "Imminent Hazard" means existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

(27) "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.

(28) "Non-Commercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term "commercial motor vehicle".

(29) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle as a result of a determination by a law-enforcement officer, an authorized
enforcement officer of a federal, state, Canadian, Mexican, county or local jurisdiction including any special agent of the Federal Motor Carrier Safety Administration pursuant to 49 C.F.R. §§386.72, 392.5, 395.13, 396.9 or compatible laws or the North American uniform out-of-service criteria that an imminent hazard exists.

(30) “Violation of an out-of-service order” means:

(A) The operation of a commercial motor vehicle during the period the driver was placed out-of-service; or

(B) The operation of a commercial motor vehicle by a driver after the vehicle was placed out of service and before the required repairs are made.

(30) “School bus” means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home-to-school, from school-to-home, or to and from school sponsored events. School bus does not include a bus used as a common carrier.

(31)”Serious traffic violation” means conviction for any of the following offenses when operating a commercial motor vehicle:

(A) Excessive speeding involving any single offense for any speed of fifteen miles per hour or more above the posted limits;

(B) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, careless, or negligent driving, including, but not limited to, the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;
(C) Erratic or improper traffic lane changes including, but not limited to, passing a school bus when prohibited, improper lane changes and other passing violations;

(D) Following the vehicle ahead too closely;

(E) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(F) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. However, any person who provides proof to the law-enforcement agency that issued the citation, by the date the person must appear in court, or pay any fine for such violation, that the person held a valid commercial driver's license on the date the citation was issued, shall not be guilty of this offense;

(G) Driving a commercial motor vehicle without the proper class of commercial driver's license and/or, endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported; or

(H) A violation of state or local law relating to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal traffic accident.

(I) Vehicle defects are excluded as serious traffic violations, except as to violations committed by a special permittee on the coal resource transportation road system; or

(J) Any other serious violations determined by the United States Secretary of Transportation.

(32) “State” means a state of the United States and the District of Columbia.

(33) “State of Domicile” means the state where a person has his or her true, fixed and permanent home and principle
residence and to which he or she has the intention of returning whenever absent in accordance with chapter seventeen-a, article three, section one-a.

(34) "Suspension, revocation or cancellation" of a driver's license, or a commercial driver's license means the privilege to operate any type of motor vehicle on the roads and highways of this state is withdrawn.

(35) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. These vehicles include, but are not limited to, cargo tanks and portable tanks, as defined in 49 C. F. R. Part 171 (1998). However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

"At fault traffic accident" means for the purposes of waiving the road test, a determination, by the official filing of the accident report, of fault as evidenced by an indication of contributing circumstances in the accident report.

(36) "Transportation Security Administration" means the United States Department of Homeland Security Transportation Security Administration.

(37) "United States" means the fifty states and the District of Columbia.

(38) "Vehicle Group" means a class or type of vehicle with certain operating characteristics.

§17E-1-5. Notification required by driver.

(a) Notification of convictions.
COMMERCIAL DRIVER'S LICENSE

(1) Any driver of a commercial motor vehicle holding a driver's license issued by this state, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control, in any other state or federal, provincial, territorial or municipal laws of Canada, other than parking violations, shall notify the West Virginia Division of Motor Vehicles in the manner specified by the Commissioner and in accordance with C.F.R. §383.31(2004) within thirty days of the date of conviction.

(2) Any driver of a commercial motor vehicle holding a driver's license issued by this state, who is convicted of violating any state law or local ordinance relating to motor vehicle traffic control in this state or any other state or federal, provincial, territorial or municipal laws of Canada, other than parking violations, must notify his or her employer in writing and in accordance with 49 C. F. R. §383.31 (2004) of the conviction within thirty days of the date of conviction.

(b) Each driver whose driver's license is:

(1) Suspended, revoked, canceled or expired, by any state;

(2) Who loses the privilege to drive a commercial motor vehicle in any state for any period; or

(3) Who is disqualified from driving a commercial motor vehicle for any period, shall notify his or her employer of that fact before the end of the business day following the day the driver received notice of the action against his or her driving privileges.

(c) Each person who applies to be a commercial motor vehicle driver shall provide the employer, at the time of the application, with the following information for the ten years preceding the date of application:
(1) A list of the names and addresses of the applicant’s previous employers for which the applicant was a driver of a commercial motor vehicle;

(2) The dates between which the applicant drove for each employer; and

(3) The reason for leaving that employer.

The applicant shall certify that all information furnished is true and complete. An employer may require an applicant to provide additional information.

§17E-1-6. Employer responsibilities.

(a) Each employer must require the applicant to provide the information specified in section five of this article.

(b) No employer may knowingly allow, permit or authorize a driver to drive a commercial motor vehicle during any period:

(1) In which the driver has a driver’s license suspended, revoked or canceled by a state; has lost the privilege to drive a commercial motor vehicle in a state, or has been disqualified from driving a commercial motor vehicle; or

(2) In which the driver has more than one driver’s license at one time.

(3) During any period in which the driver, or the commercial motor vehicle he or she is driving or the motor carrier operation, is subject to an out-of-service order; or

(4) In violation of federal, state or local law or regulation pertaining to railroad highway grade crossings; or

(5) During any period the driver is in violation of any provision of 49 C.F.R., Part §382 related to controlled substances and alcohol use and testing.
§17E-1-7. Commercial driver’s license required; disqualification for driving without valid license.

(a) On or after the first day of April, one thousand nine hundred ninety-two, except when driving under a commercial driver’s instruction permit accompanied by the holder of a commercial driver’s license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds a commercial driver’s license and applicable endorsements valid for the vehicle they are driving.

(b) No person may drive a commercial motor vehicle while their driving privilege is suspended, revoked, canceled, expired, subject to a disqualification or in violation of an out-of-service order.

(c) Drivers of a commercial motor vehicle must have a commercial driver’s license in their possession at all times while driving.

(d) The Commissioner shall suspend for a period of ninety days the driving privileges of any person who is convicted of operating a commercial motor vehicle without holding a valid commercial driver’s license and the applicable endorsements valid for the vehicle he or she is driving or for any conviction for operating a commercial motor vehicle while disqualified from operating a commercial motor vehicle.

(e) Any person not holding a commercial driver’s license who is convicted of an offense that requires disqualification from operating a commercial motor vehicle shall also be disqualified from eligibility for a commercial driver’s license for the same time periods as prescribed in federal law or rule or section thirteen of this article for commercial driver’s license holders.
§17E-1-8. Exemptions to the commercial driver's license requirements.

(a) Bona fide farmers or farm vehicle drivers, as defined, operating a vehicle otherwise covered by the commercial driver's license requirements may be exempted from the provisions of this article only if the vehicle used is:

1. Driven by a farmer or farm vehicle driver;
2. Used only to transport either agricultural products, farm machinery, farm supplies, to or from a farm;
3. Not used in the operation of a common or contract motor carrier; and
4. Used within one hundred fifty miles of the qualifying farm. Farmers who wish to be exempted from the commercial driver's license requirements must apply to the Division of Motor Vehicles for a certificate of exemption.

(b) Military personnel, including the National Guard and Reserve, are exempt from the provisions of this article, only:

1. When in uniform; and
2. Operating equipment owned by the United States Department of Defense, except during declared emergencies or disaster situations; and
3. On duty; and
4. In possession of a valid classified military driver's license for the class of vehicle being driven.

(c) Fire fighting and rescue equipment. Operators of vehicles authorized to hold an "authorized emergency vehicle
permit” for use of red signal lights only are exempt from the provisions of this article while the “authorized emergency vehicle permit” is in force. Vehicles in this class include, but are not limited to, firefighters and rescue equipment:

(1) Owned and operated by state, county and municipal fire departments;

(2) Owned and operated by state, county and municipal civil defense organizations;

(3) Owned and operated by a manufacturer engaged in a type of business that requires firefighter equipment to protect the safety of their plants and its employees; or

(4) Owned and operated by volunteer fire departments.

(d) Operators of off-road construction and mining equipment. Operators of equipment which, by its design, appearance and function, is not intended for use on a public road, including, without limitation, motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenches and bulldozers, are exempt from the provisions of this article: Provided, That the exemption recognized by this subsection shall not be construed to permit the operation of such equipment on any public road except such operation as may be required for a crossing of such road: Provided, however, That no such equipment may be operated on a public road for a distance exceeding five hundred feet from the place where such equipment entered upon the public road.

(e) The Federal Motor Carrier Safety Improvement Act of 1999 exempts vehicles used exclusively for personal use such as recreation vehicles and rental trucks used only to transport the driver’s personal or household property.

(a) No person may be issued a commercial driver’s license unless that person is a resident of this state and has passed a knowledge and skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulations enumerated in 49 C.F.R. part §383, sub-parts G and H, (2004) and has satisfied all other requirements of the Federal Motor Carrier Safety Improvement Act of 1999 in addition to other requirements imposed by state law or federal regulations.

(b) Third party testing. The Commissioner may authorize a person, including an agency of this or another state, an employer, private individual or institution, department, agency or instrumentality of local government, to administer the skills test specified by this section: Provided, That:

(1) The test is the same which would otherwise be administered by the state; and

(2) The party has entered into an agreement with the state which complies with the requirements of 49 C.F.R., part §383.75.

(c) Indemnification of driver examiners. No person who has been officially trained and certified by the state as a driver examiner, who administers a driving test, and no other person, firm or corporation by whom or with which that person is employed or is in any way associated, may be criminally liable for the administration of the tests, or civilly liable in damages to the person tested or other persons or property unless for gross negligence or willful or wanton injury.

(d) The Commissioner may waive the skills test specified in this section for a commercial driver license applicant who
meets the requirements of 49 C.F.R. part §383.77 and those requirements specified by the Commissioner.

(e) A commercial driver's license or commercial driver's instruction permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked or canceled in any state; nor may a commercial driver's license be issued by any other state unless the person first surrenders all such licenses to the division.

(f) Commercial driver's instruction permit may be issued as follows:

(1) A commercial driver's instruction permit may be issued to an individual who holds a valid Class E or Class D driver's license who has passed the vision and written tests required for issuance of a commercial driver's license.

(2) The commercial instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who is twenty-one years of age or older and who occupies a seat beside the individual for the purpose of giving instruction or testing.

(3) A commercial driver's instruction permit may only be issued to a person who is at least eighteen years of age and has held a graduated Class E, Class E or Class D license for at least two years.

(4) The applicant for a commercial driver's instruction permit shall also be otherwise qualified to hold a commercial driver's license.
§17E-1-10. Application for commercial driver’s license.

(a) The application for a commercial driver’s license or commercial driver’s instruction permit must include at least the following:

1. The full name and current mailing and residential address of the person;
2. A physical description of the person including sex, height, weight and eye color;
3. Date of birth;
4. The applicant’s social security number;
5. The person’s signature;
6. The person’s color photograph;
7. Certifications including those required by 49 C.F.R. Part §383.71(a)(2004);
8. Any other information required by the Commissioner; and
9. A consent to release driving record information.

(b) When a licensee changes his or her name, mailing address or residence, the licensee shall submit an application for a duplicate license and obtain a duplicate driver’s license displaying the updated information.

(c) No person who has been a resident of this state for thirty days or more may drive a commercial motor vehicle under the authority of a commercial driver’s license issued by another jurisdiction.
§17E-1-11. Commercial driver’s license.

1 The commercial driver’s license shall be marked “commercial driver’s license” or “CDL” and shall be, to the maximum extent practicable, tamper proof. It must include, but not be limited to, the following information:

5 (a) The name and residential address of the person;
6 (b) The person’s color photograph;
7 (c) A physical description of the person including sex, height, weight, and eye color;
9 (d) Date of birth;
10 (e) The person’s signature;
11 (f) The class or type of commercial motor vehicle or vehicles which the person is authorized to drive, together with any endorsement(s) and or restriction(s);
14 (g) The name of this state; and
15 (h) The dates between which the license is valid.

§17E-1-12. Classifications, endorsements and restrictions.

1 (a) Commercial driver’s licenses may be issued with the following classifications:
3 (1) Class A combination vehicle - Any combination of vehicles with a gross combined vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle being towed is in excess of ten thousand pounds.
8 (2) Class B heavy straight vehicle - Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds
or more and any vehicle towing a vehicle not in excess of ten thousand pounds.

(3) **Class C Small Vehicle** - Any single vehicle or combination vehicle that does not fall under either Class A or Class B but are:

(A) Vehicles designed to transport sixteen or more passengers, including the driver; and

(B) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 C.F.R., Part §172, subpart F (2004).

(4) Each applicant who desires to operate a vehicle in a classification different from the class in which the applicant is authorized shall be required to retake and pass all related tests except the following;

(A) A driver who has passed the knowledge and skills test for a combination vehicle in Class A may operate a heavy straight vehicle in Class B or a small vehicle in Class C provided he or she possesses the required endorsements; and

(B) A driver who has passed the knowledge and skills test for a vehicle in Class B may operate any small vehicle in Class C provided he or she possesses the required endorsements.

(b) *Endorsements and restrictions.* — The Commissioner upon issuing a commercial driver’s license may impose endorsements and or restrictions determined by the Commissioner to be appropriate to assure the safe operation of a motor vehicle and to comply with 49 U.S.C., et seq., and 49 C.F.R. §383.93 (2004) including, but not limited to:

(1) Double/triple trailers which shall require successful completion of a knowledge test;
(2) Passenger vehicles which shall require successful completion of a knowledge and skills test;

(3) Tank vehicles which shall require successful completion of a knowledge test;

(4) Vehicles used for the transportation of hazardous materials as defined in section three of this article which shall require the completion of a knowledge test and a background security risk check in accordance with 49 C.F.R. §1572.5 (2004); or

(5) School buses which shall require successful completion of a knowledge and skills test unless the applicant meets the criteria for waiver of the skills test in accordance with 49 C.F.R. §383.123(b)(2004).

(c) Applicant record check. — Before issuing a commercial driver's license, the Commissioner shall obtain driving record information through the commercial driver's license information system, the national driver register and from each state in which the person has been licensed.

(d) Notification of license issuance. — Within ten days after issuing a commercial driver’s license, the Commissioner shall notify the commercial driver’s license information system of that fact, providing all information required to ensure identification of the person.

(e) Expiration of license. —

(1) Every commercial driver’s license issued to persons who have attained their twenty-first birthday expires on the applicant’s birthday in those years in which the applicant’s age is evenly divisible by five. Except as provided in subdivision (2) of this subsection, no commercial driver’s license may be issued for less than three years nor more than seven years and...
the commercial driver's license shall be renewed by the applicant's birthday and is valid for a period of five years, expiring on the applicant's birthday and in a year in which the applicant's age is evenly divisible by five.

(2) Every commercial driver's license issued to persons who have not attained their twenty-first birthday expires thirty days after the applicant's birthday in the year in which the applicant attains the age of twenty-one years.

(3) Commercial driver's licenses held by any person in the armed forces which expire while that person is on active duty remains valid for thirty days from the date on which that person reestablishes residence in West Virginia.

(4) Any person applying to renew a commercial driver's license which has been expired for six months or more shall follow the procedures for an initial issuance of a commercial driver's license, including the testing provisions.

(f) When applying for renewal of a commercial driver's license, the applicant shall complete the application form and provide updated information and required certifications.

(g) If the applicant wishes to obtain or retain a hazardous materials endorsement, the applicant shall comply with a background check in accordance with 49 U.S.C., § 5103a and 49 C.F.R. Part §1572 (2004) and subject to the following:

(1) The applicant is a citizen of the United States or a lawful permanent resident of the United States;

(2) The applicant completes the application prescribed by the Division and submits fingerprints in a form and manner prescribed by the Division and the United States Department of Homeland Security- Transportation Security Administration at
the time of application or at any other time in accordance with
49 C.F.R. §1572.5(2004);

(3) The applicant pays all fees prescribed by the Transportation Security Administration or its agent and the Division;

(4) The applicant has not been adjudicated as a mental defective or committed to a mental institution as prescribed in 49 C.F.R. §1572.109(2004);

(5) The applicant has not committed a disqualifying criminal offense as described in 49 C.F.R. §1572.103 (2004);

(6) The applicant has passed the Transportation Security Administration security threat assessment and the Division has received a final notification of threat assessment or notification of no security threat from the Transportation Security Administration: Provided, That any appeal of any decision, determination or ruling of the Federal Bureau of Investigation or the Transportation Security Agency shall be directed to that agency; and

(7) The applicant has successfully passed the written test for the issuance or renewal of a hazardous material endorsement.


(a) A person shall not operate a commercial motor vehicle if his or her privilege to operate a commercial motor vehicle is disqualified under the provisions of the Federal Motor Carrier Safety Improvement Act of 1999 (public law 106-159 §1748), 49 C.F.R. Part §383, Subpart D (2004) or in accordance with the provisions of this section.

(1) For the purposes of determining first and subsequent violations of the offenses listed in this section, each conviction
for any offense listed in this section resulting from a separate incident shall include convictions for offenses committed in a commercial motor vehicle or a noncommercial motor vehicle.

(2) Any person disqualified from operating a commercial motor vehicle for life under the provisions of this chapter for offenses described in subsection (b), subdivisions (1) through (8) of this section is eligible for reinstatement of privileges to operate a commercial motor vehicle after ten years and after completion of the safety and treatment program or other appropriate program prescribed by the Division. Any person whose lifetime disqualification has been amended under the provisions of this subdivision and who is subsequently convicted of a disqualifying offense described in subsection (b), subdivisions (1) through (8) of this section shall not be eligible for reinstatement.

(3) Any disqualification imposed by this section shall be in addition to any action to suspend, revoke or cancel the driver’s license or driving privileges if suspension, revocation or cancellation is required under another provision of this code.

(4) The provisions of this section apply to any person operating a commercial motor vehicle and to any person holding a commercial driver’s license.

(b) Any person is disqualified from driving a commercial motor vehicle for the following offenses and time periods if convicted of:

   (1) Driving a motor vehicle under the influence of alcohol or a controlled substance;

   (A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one year.
(B) For a first conviction or for refusal to submit to any
designated secondary chemical test while operating a noncom-
mmercial motor vehicle, a commercial driver's license holder
shall be disqualified from operating a commercial motor
vehicle for a period of one year.

(C) For a first conviction or for refusal to submit to any
designated secondary chemical test while operating a commer-
cial motor vehicle transporting hazardous materials required to
be placarded under 49 C.F.R. Part §172, Subpart F, a driver
shall be disqualified from operating a commercial motor
vehicle for a period of three years.

(D) For a second conviction or for refusal to submit to any
designated secondary chemical test in a separate incident of any
combination of offenses in this subsection while operating a
commercial motor vehicle, a driver shall be disqualified from
operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any
designated secondary chemical test in a separate incident of any
combination of offenses in this subsection while operating a
noncommercial motor vehicle, a commercial motor vehicle
license holder shall be disqualified from operating a commer-
cial motor vehicle for life.

(2) Driving a commercial motor vehicle while the person's
alcohol concentration of the person's blood, breath or urine is
four hundredths of one percent or more, by weight;

(A) For a first conviction or for refusal to submit to any
designated secondary chemical test while operating a commer-
cial motor vehicle, a driver shall be disqualified from operating
a commercial motor vehicle for one year.

(B) For a first conviction or for refusal to submit to any
designated secondary chemical test while operating a commer-
(C) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(3) Refusing to submit to any designated secondary chemical required by the provisions of this code or the provisions of 49 C.F.R. §383.72 (2004);

(A) For the first conviction or refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction or refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a
commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for life.

(4) Leaving the scene of an accident;

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder shall be disqualified for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for life.
(5) Using a motor vehicle in the commission of any felony as defined in section three, article one of this chapter: Provided, That the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance falls under the provisions of subdivision (8) of this subsection;

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder shall be disqualified from operating a commercial motor vehicle for life.

(6) Operating a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, the driver's privilege to operate a motor vehicle has
been suspended, revoked or canceled, or the driver's privilege to operate a commercial motor vehicle has been disqualified.

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(7) Causing a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide and negligent homicide as defined in section five, article three, chapter seventeen-b, and section one, article five, chapter seventeen-c of this code;

(A) For the first conviction while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), a driver shall be disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a
commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for life.

(8) Using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance, or possession with intent to manufacture, distribute or dispense a controlled substance, a driver shall be disqualified from operating a commercial motor vehicle for life and shall not be eligible for reinstatement.

(c) Any person is disqualified from driving a commercial motor vehicle if convicted of;

(1) Speeding excessively involving any speed of fifteen miles per hour or more above the posted speed limit;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(2) Reckless driving as defined in section three, article five, chapter seventeen-c of this code, careless, or negligent driving including, but not limited to, the offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(3) Making improper or erratic traffic lane changes;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
privilege to operate any motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.
(5) Violating any law relating to traffic control arising in connection with a fatal accident, other than a parking violation;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation or cancellation of the commercial driver’s license holder’s privilege to operate any motor vehicle, a commercial motor vehicle license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

(6) Driving a commercial motor vehicle without obtaining a commercial driver’s license;
A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

7) Driving a commercial motor vehicle without a commercial driver’s license in the driver’s possession, provided that any person who provides proof of possession of a commercial driver’s license to the enforcement agency that issued the citation, by the court appearance or fine payment deadline shall not be guilty of this offense;

A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver’s license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

8) Driving a commercial motor vehicle without the proper class of commercial driver’s license or the proper endorsements for the specific vehicle group being operated, or for the passengers or type of cargo being transported;
For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for a period of sixty days.

For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for a period of one hundred twenty days.

Any person convicted of operating a commercial motor vehicle in violation of any federal, state or local law or ordinance pertaining to any of the railroad crossing violations described in subdivisions (1) through (6) of this subsection shall be disqualified from operating a commercial motor vehicle for the period of time specified;

(1) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a
driver shall be disqualified from operating a commercial motor vehicle for one year.

(2) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop, in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(3) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a
driver shall be disqualified from operating a commercial motor vehicle for one year.

(4) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code;

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(5) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of section one, article twelve, chapter seventeen-c of this code; or

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a
driver shall be disqualified from operating a commercial motor vehicle for one year.

(6) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of section three, article twelve, chapter seventeen-c of this code.

(A) For the first conviction, a driver shall be disqualified from operating a commercial motor vehicle for a period of sixty days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one hundred twenty days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver shall be disqualified from operating a commercial motor vehicle for one year.

(e) Any person who is convicted of violating an out-of-service order while operating a commercial motor vehicle shall be disqualified for the following periods of time if:

(1) Convicted of violating a driver or vehicle out-of-service order while transporting nonhazardous materials;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for ninety days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out of service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one year.
(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(2) Convicted of violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under 49 C.F.R. Part §172, Subpart F (2004), or while operating a vehicle designed to transport sixteen or more passengers including the driver;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for one hundred eighty days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(C) For a third or subsequent conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver shall be disqualified from operating a commercial motor vehicle for three years.

(f) After disqualifying, suspending, revoking or canceling a commercial driver’s license, the Division shall update its records to reflect that action within ten days.

(g) In accordance with the provisions of 49 U.S.C. §313119(a)(19)(2004), and 49 C.F.R §384.226 (2004), and notwithstanding the provisions of section twenty-five, article eleven, chapter sixty-one of this code, no record of conviction,
revocation, suspension or disqualification related to any type of
motor vehicle traffic control offense, other than a parking
violation, of a commercial driver's license holder or a person
operating a commercial motor vehicle may be masked, ex-
punged, deferred, or be subject to any diversion program.

(h) Notwithstanding any provision in this code to the
 contrary, the Division shall not issue any temporary driving
permit, work-only driving permit or hardship license or permit
that authorizes a person to operate a commercial motor vehicle
when his or her privilege to operate any motor vehicle has been
revoked, suspended, disqualified or otherwise canceled for any
reason.

(i) In accordance with the provisions of 49 C.F.R.
§391.15(b), a driver is disqualified from operating a commer-
cial motor vehicle for the duration of any suspension, revoca-
tion or cancellation of his or her driver's license or privilege to
operate a motor vehicle by this state or by any other state or
jurisdiction until the driver complies with the terms and
conditions for reinstatement set by this state or by another state
or jurisdiction.

§17E-1-14. Commercial drivers prohibited from driving with
blood alcohol concentration of four hundredths of
one percent or more; refusal of preliminary
breath test to determine alcohol content of blood;
criminal penalties.

(a) In addition to any other penalties provided by this code,
any person who drives, operates or is in physical control of a
commercial motor vehicle while having an alcohol concentra-
tion in his or her blood, breath or urine of four hundredths of
one percent or more, by weight, is guilty of a misdemeanor and,
upon conviction thereof, shall be confined in jail for not less
than twenty-four hours nor more than six months, and shall be
fined not less than one hundred dollars nor more than five
hundred dollars. A person convicted of a second or any subse-
quent offense under the provisions of this subsection shall be
confined in jail for a period of not less than six months nor
more than one year, and the court may, in its discretion, impose
a fine of not less than one thousand dollars nor more than three
thousand dollars.

(b) A person who violates the provisions of subsection (a)
of this section shall be treated in the same manner set forth in
section three, article nineteen, chapter seventeen-c of this code,
as if he or she had been arrested for driving under the influence
of alcohol or of any controlled substance.

(c) In addition to any other penalties provided by this code,
a person who drives, operates or is in physical control of a
commercial motor vehicle having any measurable alcohol in
such person's system or who refuses to take a preliminary
breath test to determine such person's blood alcohol content as
provided by section fifteen of this article, shall be placed out-
of-service for twenty-four hours by the arresting
law-enforcement officer.

§17E-1-15. Implied consent requirements for commercial motor
vehicle drivers; disqualification for driving with
blood alcohol concentration of four hundredths of
one percent or more, by weight.

(a) A person who drives a commercial motor vehicle within
this state is deemed to have given consent, subject to provisions
of section four, article five, chapter seventeen-c of this code, to
take a test or tests of that person's blood, breath or urine for the
purpose of determining that person's alcohol concentration, or
the presence of other drugs.

(b) A test or tests may be administered at the direction of a
law-enforcement officer, who after lawfully stopping or
detaining the commercial motor vehicle driver, has reasonable
cause to believe that driver was driving a commercial motor
vehicle while having alcohol in his or her system.

(c) A person requested to submit to a test as provided in
subsection (a) of this section must be warned by the
law-enforcement officer requesting the test that a refusal to
submit to the test will result in that person being disqualified
from operating a commercial motor vehicle under section
thirteen or fifteen of this article.

(d) If the person refuses testing, or submits to a test which
discloses an alcohol concentration of four hundredths of one
percent or more, by weight, that law-enforcement officer shall
submit a sworn report to the Division of Motor Vehicles
certifying that the test was requested pursuant to subsection (a)
of this section and that the person refused to submit to testing,
or submitted to a test which disclosed an alcohol concentration
of four hundredths of one percent or more, by weight.

(e) Upon receipt of the sworn report of a law-enforcement
officer submitted under subsection (d) of this section, the
Commissioner shall enter an order revoking the person’s
driver’s license in accordance with section seven, article five,
chapter seventeen-c of this code and disqualifying the person
from driving a commercial motor vehicle for the period of time
prescribed in section thirteen of this article.

§17E-1-16. Notification of traffic convictions.

(a) The Commissioner shall notify the licensing authority
of the state where the driver is licensed within thirty days of
the date of conviction of any holder of a commercial driver
license or any person operating a commercial motor vehicle for
any violation of state law or local ordinance relating to motor
vehicle traffic control, other than parking violations, committed
in a commercial motor vehicle.
(b) The Commissioner shall notify the driver licensing authority in the licensing state where the driver is licensed within ten days of the date of disqualification of any holder of a commercial driver license or any person operating a commercial motor vehicle.

(c) Beginning on the thirtieth day of September, two thousand eight, the Commissioner shall notify the driver licensing authority in the licensing state where the driver is licensed within ten days of the date of conviction of any holder of a commercial driver's license or any person operating a commercial motor vehicle for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle.

§17E-1-17. Driving record information to be furnished.

Subject to the provisions of article two-a, chapter seventeen-a of this code, the Commissioner shall furnish full information regarding the driving record of any person:

(a) To the driver license administrator of any other state or province or territory of Canada requesting that information;

(b) To any motor carrier employer or prospective motor carrier employer;

(c) To the United States Secretary of Transportation; and

(d) To the driver:

Provided, That nothing in this section shall be construed to prevent an insurer from obtaining a standard driving record issued in accordance with section two, article two, chapter seventeen-d of this code.

§17E-1-23. Funding for the commercial driver's license fees.
Each application for a commercial driver's license shall be accompanied by the fees provided in this section and the fees shall be deposited in a special revolving fund for the operation by the Division of its functions established by this chapter.

(b) The fee for a commercial driver's license shall be established by the Commissioner to cover all necessary costs for program administration. The fees for knowledge and road testing shall also be established by the Commissioner to cover all program costs projected to be incurred by the Division.


In addition to the officers of the West Virginia State Police, any police officer, or any inspector or weight enforcement officer of the Public Service Commission, Motor Carrier Division, and any special agent of the Federal Motor Carrier Safety Administration may enforce the provisions of this article.

CHAPTER 50

(Com. Sub. for S. B. 456 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §46A-6-102 and §46A-6-106 of the Code of West Virginia, 1931, as amended, all relating to cure offers; definitions; requiring notice of violation prior to initiation of law suits; authorizing and limiting awards for inconvenience;
tolling of statute of limitation during twenty-day period for
consideration of cure offer proposal or during cure period;
inadmissibility of cure offers; exceptions; and authorizing
attorneys fees and costs where seller or lessor sued after perform­
ing agreed upon cure.

Be it enacted by the Legislature of West Virginia:

That §46A-6-102 and §46A-6-106 of the Code of West Virginia,
1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-102. Definitions.

§46A-6-106. Actions by consumers.

§46A-6-102. Definitions.

1 When used in this article, the following words, terms and
2 phrases, and any variations thereof required by the context,
3 shall have the meaning ascribed to them in this article, except
4 where the context indicates a different meaning:

5 (1) "Advertisement" means the publication, dissemination
6 or circulation of any matter, oral or written, including labeling,
7 which tends to induce, directly or indirectly, any person to enter
8 into any obligation, sign any contract or acquire any title or
9 interest in any goods or services and includes every word
10 device to disguise any form of business solicitation by using
11 such terms as "renewal", "invoice", "bill", "statement" or
12 "reminder" to create an impression of existing obligation when
13 there is none or other language to mislead any person in relation
14 to any sought-after commercial transaction.

15 (2) "Consumer" means a natural person to whom a sale or
16 lease is made in a consumer transaction and a "consumer
17 transaction" means a sale or lease to a natural person or persons
18 for a personal, family, household or agricultural purpose.
(3) “Cure offer” means a written offer of one or more things of value, including, but not limited to, the payment of money, that is made by a merchant or seller and that is delivered by certified mail to a consumer claiming to have suffered a loss as a result of a consumer transaction or to the attorney for such person.

(4) “Merchantable” means, in addition to the qualities prescribed in section three hundred fourteen, article two, chapter forty-six of this code, that the goods conform in all material respects to applicable state and federal statutes and regulations establishing standards of quality and safety of goods and, in the case of goods with mechanical, electrical or thermal components, that the goods are in good working order and will operate properly in normal usage for a reasonable period of time.

(5) “Sale” includes any sale, offer for sale or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit.

(6) “Trade” or “commerce” means the advertising, offering for sale, sale or distribution of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the people of this state.

(7) “Unfair methods of competition and unfair or deceptive acts or practices” means and includes, but is not limited to, any one or more of the following:

(A) Passing off goods or services as those of another;

(B) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;
(C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with or certification by another;

(D) Using deceptive representations or designations of geographic origin in connection with goods or services;

(E) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(F) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second-hand;

(G) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another;

(H) Disparaging the goods, services or business of another by false or misleading representation of fact;

(I) Advertising goods or services with intent not to sell them as advertised;

(J) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(K) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresenta-
tion, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

(O) Representing that any person has won a prize, one of a group of prizes or any other thing of value if receipt of the prize or thing of value is contingent upon any payment of a service charge, mailing charge, handling charge or any other similar charge by the person or upon mandatory attendance by the person at a promotion or sales presentation at the seller's place of business or any other location: Provided, That a person may be offered one item or the choice of several items conditioned on the person listening to a sales promotion or entering a consumer transaction if the true retail value and an accurate description of the item or items are clearly and conspicuously disclosed along with the person's obligations upon accepting the item or items; such description and disclosure shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate; or

(P) Violating any provision or requirement of article six-b of this chapter.

(8) "Warranty" means express and implied warranties described and defined in sections three hundred thirteen, three
§46A-6-106. Actions by consumers.

(a) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice prohibited or declared to be unlawful by the provisions of this article may bring an action in the circuit court of the county in which the seller or lessor resides or has his principal place of business or is doing business, or as provided for in sections one and two, article one, chapter fifty-six of this code, to recover actual damages or two hundred dollars, whichever is greater. The court may, in its discretion, provide such equitable relief as it deems necessary or proper.

(b) Notwithstanding the provisions of subsection (a) of this section, no action may be brought pursuant to the provisions of this section until the consumer has informed the seller or lessor in writing and by certified mail of the alleged violation and provided the seller or lessor twenty days from receipt of the notice of violation to make a cure offer: Provided, That the consumer shall have ten days from receipt of the cure offer to accept the cure offer or it is deemed refused and withdrawn.

(c) If a cure offer is accepted, the seller or lessor shall have ten days to begin effectuating the agreed upon cure and such must be completed within a reasonable time.

(d) Any applicable statute of limitations shall be tolled for the twenty-day period set forth in subsection (b) of this section or for the period of time the effectuation of the cure offer is being performed, whichever is longer.
(e) Nothing in this section shall be construed to prevent a consumer that has accepted a cure offer from bringing a civil action against a seller or lessor for failing to timely effect such cure offer.

(f) Any permanent injunction, judgment or order of the court under section one hundred eight, article seven of this chapter for a violation of section one hundred four of this article shall be prima facie evidence in an action brought pursuant to the provisions of this section that the respondent used or employed a method, act or practice declared unlawful by section one hundred four of this article.

(g) Where an action is brought pursuant to the provisions of this section, it shall be a complete defense that a cure offer was made, accepted and the agreed upon cure was performed. If the finder of fact determines that the cure offer was accepted and the agreed upon cure performed, the seller or lessor shall be entitled to reasonable attorney’s fees and costs attendant to defending the action.

(h) No cure offer shall be admissible in any proceeding initiated pursuant to the provisions of this article unless the cure offer is delivered by a seller or lessor to the person claiming loss or to any attorney representing such person prior to the filing of the seller or lessee’s initial responsive pleading in such proceeding. If the cure offer is timely delivered by the seller or lessor, then the seller or lessee may introduce the cure offer into evidence at trial. The seller or lessor shall not be liable for such person’s attorney’s fees and court costs incurred following delivery of the cure offer unless the actual damages found to have been sustained and awarded, without consideration of attorney’s fees and court costs, exceed the value of the cure offer.
CHAPTER 51

(H. B. 2483 — By Delegates Perry, Beach, Hartman, Pino, Leach and Michael)

[Passed March 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on March 21, 2005.]

AN ACT to repeal §28-5-26 of the Code of West Virginia, 1931, as amended, relating to escape of convicts and rewards.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to escape of convicts and rewards.

Section twenty-six, article five, chapter twenty-eight of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 52

(S. B. 699 — By Senators Caruth and Minard)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §31D-7-705 of the Code of West Virginia, 1931, as amended, relating to deleting the provision which allows shareholders to participate in corporate meetings by
means of communication in which all shareholders may simultane­ously hear each other.

Be it enacted by the Legislature of West Virginia:

That §31D-7-705 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. SHAREHOLDERS.

§31D-7-705. Notice of meeting.

(a) A corporation is to notify shareholders of the date, time and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter, the articles of incorporation or bylaws require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section seven hundred three or seven hundred seven of this article, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned
23 meeting is or must be fixed under section seven hundred seven
24 of this article, notice of the adjourned meeting must be given
25 under this section to persons who are shareholders as of the new
26 record date.

CHAPTER 53

(H. B. 2869 — By Mr. Speaker, Mr. Kiss, and Delegates Amores,
Azinger, Craig, Mahan, Armstead and Trump)

[Passed March 21, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 1, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §31D-11-1109, relating
to permitting the conversion of a domestic corporation to a
domestic limited liability company.

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 §31D-11-1109, to read as
follows:

ARTICLE 11. MERGERS AND SHARE EXCHANGES.

§31D-11-1109. Conversion of a domestic corporation to a domes-
tic limited liability company.

1 (a) A corporation of this state may convert to a limited
2 liability company, in accordance with this section.

3 (b) The Board of Directors of the corporation which desires
4 to convert under this section shall adopt a plan of conversion
approving the conversion and recommending the approval of the
conversion by the shareholders of the corporation. Such resolu-
tion shall be submitted to the shareholders of the corporation at
an annual or special meeting. The corporation must notify each
shareholder, whether or not entitled to vote of the meeting of
shareholders at which the plan of conversion is to be submitted
for approval. At the meeting, the plan of conversion shall be
considered and a vote taken for its adoption or rejection.
Approval of the plan of conversion requires the approval of all
of the shareholders, whether or not entitled to vote.

(c) After a plan of conversion is approved pursuant to
subsection (b) of this section, the corporation shall file with the
office of the Secretary of State articles of conversion which
satisfy the requirements for articles of organization under section
two hundred three, article two, chapter thirty-one-b of this code
and which set forth:

(1) The name of the corporation, and if it has been changed,
the name under which it was originally incorporated;

(2) The date of filing of its original articles of incorporation
with the office of the Secretary of State;

(3) The name of the limited liability company into which the
corporation shall be converted; and

(4) That the conversion has been approved in accordance
with the provisions of this section.

(d) Upon the filing of articles of conversion in accordance
with subsection (c) of this section and payment to the Secretary
of State of all fees prescribed, the Secretary of State shall issue
a certificate of conversion. Such certificate of the Secretary of
State shall be prima facie evidence of the conversion of the
corporation.
(e) A conversion takes effect when the articles of conversion are filed in the office of the Secretary of State or at any later date specified in the articles of conversion.

(f) The conversion of a corporation pursuant to articles of conversion under this section shall not be deemed to affect any obligations or liabilities of the corporation incurred prior to the conversion or the personal liability of any person incurred prior to the conversion.

(g) After the time the certificate of conversion becomes effective the corporation shall continue to exist as a limited liability company and the laws of this state shall apply to the entity to the same extent as prior to that time.

(h) Unless otherwise provided in the plan of conversion adopted in accordance with this section, the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not constitute a dissolution of the corporation and shall constitute a continuation of the existence of the converting corporation in the form of a limited liability company of this state.

(i) When a corporation has been converted to a limited liability corporation pursuant to this section, the limited liability company shall, for all purposes of the laws of this state, be deemed to be the same entity as the converting corporation, and all of the rights, privileges and powers of the corporation that has been converted, and all property, real, personal and mixed, and all debts due to the corporation, as well as all other things and causes of action belonging to the corporation, shall remain vested in the limited liability company to which the corporation has been converted and shall be the property of the limited liability company, and the title to any real property vested by deed or otherwise in the corporation shall not revert or in any way be impaired by reason of this chapter; but all rights of
creditors and all liens upon the property of the corporation shall be preserved unimpaired, and all debts, liabilities and duties of the corporation that has been converted shall remain attached to the limited liability company to which the corporation has been converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a limited liability company. The rights, privileges, powers and interests in property of the corporation, as well as the debts, liabilities and duties of the corporation, shall not be deemed, as a consequence of the conversion, to have been transferred to the limited liability company to which the corporation has been converted for any purpose of the laws of this state.

CHAPTER 54

(S. B. 183 — By Senators Love, Sharpe, White, Yoder, Hunter, and Unger)

[Passed April 5, 2005; in effect from passage.]
[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §25-1-3a of the Code of West Virginia, 1931, as amended, relating to inmate accounts and property; and authorizing the warden of a correctional facility to allow an inmate to withdraw money from the inmate’s mandatory savings account for the purpose of preparing the inmate for reentry into society.

Be it enacted by the Legislature of West Virginia:

That §25-1-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

(a) The Commissioner of Corrections is authorized to establish at each institution under his or her jurisdiction a "Trustee Fund". The warden or administrator of each institution shall receive and take charge of the money and personal property, as defined by policy, of all inmates in his or her institution and all money or personal property, as defined by policy, sent to the inmates or earned by the inmates as compensation for work performed while they are domiciled there. The warden or administrator shall credit the money and earnings to the inmate entitled to it and shall keep an accurate account of all the money and personal property so received, which account is subject to examination by the Commissioner of Corrections. The warden or administrator shall deposit the moneys in one or more responsible banks in accounts to be designated a "Trustee Fund".

(b) For all inmates, except those serving life without mercy and those the warden determines are likely to serve the remainder of their natural lives in the custody of the Division of Corrections due to their age and the length of their sentences, the warden or administrator shall keep in an account at least ten percent of all money earned during the inmate's incarceration and pay the money to the inmate at the time of the inmate's release. The warden may authorize the inmate to withdraw money from his or her mandatory savings for the purpose of preparing the inmate for reentry into society.

(c) The Commissioner of Corrections may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state toward the cost of his or her incarceration.
(d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs of his or her incarceration, the Commissioner, or his or her designee, shall consider the following:

(A) The offender’s ability to pay;

(B) The nature and extent of the offender’s responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court’s sentence; and

(D) The effect, if any, that reimbursement might have on the offender’s rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed five hundred dollars per month unless the offender gives his or her express consent.

(3) The Commissioner of Corrections shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the Division for the care and supervision of those individuals in his or her custody.

(e) The chief executive officer of any correctional institution, on request of an inmate, may expend up to one half of the money earned by the inmate on behalf of the family of the inmate if the ten percent mandatory savings has first been set aside and other fees owed by the inmate have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate and be paid to the inmate at times as may be prescribed by rules. The funds so accumulated on behalf of inmates shall be held by the chief executive officer of each institution under a bond approved by the Attorney General.
(f) The warden or administrator shall deliver to the inmate at the time he or she leaves the institution, or as soon as practicable after departure, all personal property, moneys and earnings then credited to the inmate, or in case of the death of the inmate before authorized release from the institution, the warden or administrator shall deliver the property to the inmate’s personal representative. In case a conservator is appointed for the inmate while he or she is domiciled at the institution, the warden or administrator shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate that are in the custody of the warden or administrator.

CHAPTER 55

(Com. Sub. for H. B. 2471 — By Delegates Perry, Beach, Hartman, Pino, Leach and Michael)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §25-1-3c, relating to inmate funds; establishing a financial responsibility program for inmates; requiring wardens to deduct a portion from inmate earnings to be used to satisfy child support payments and legitimate court-ordered financial obligations; providing for administrative fees; and requiring the Division of Corrections to develop policies and procedures for the administration of the program and the maintenance of records.

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 §25-1-3c, to read as follows:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-3c. Financial responsibility program for inmates.

(a) The Legislature finds that:

(1) There is an urgent need for vigorous enforcement of child support, restitution and other court ordered obligations;

(2) The duty of inmates to provide for the needs of dependent children, including their necessary food, clothing, shelter, education and health care should not be avoided because of where the inmate resides;

(3) A person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations; and

(4) Each sentenced inmate should be encouraged to meet his or her legitimate court-ordered financial obligations.

(b) As part of the initial classification process into a correctional facility, the Division of Corrections shall assist the inmate in developing a financial plan for meeting the inmate’s child support obligations, if any exist. At subsequent program reviews, the Division shall consider the inmate’s efforts to fulfill those obligations as indicative of that individual’s acceptance and demonstrated level of responsibility.

(c)(1) The warden shall deduct from the earnings of each inmate, legitimate court-ordered financial obligations. The warden shall also deduct child support payments from the earnings of each inmate who has a court-ordered financial obligation. The Commissioner of the Division of Corrections
shall develop a policy that outlines the formula for the distribution of the offender’s income and the formula shall include a percentage deduction, not to exceed forty percent in the aggregate, for any court ordered victim restitution, court fees and child support obligations owed under a support order, including an administrative fee not to exceed one dollar, consistent with the provisions of subsection (c), section four hundred six, article fourteen, chapter forty-eight of this code, to support the Division of Correction’s administration of this financial service.

(2) In the event that the inmate worker’s income is subject to garnishment for child support enforcement deductions, it shall be calculated on the net wages after taxes, legal financial obligations and garnishment.

(3) The Division of Corrections shall develop the necessary administrative structure to record inmates’ wages and keep records of the amount inmates pay for child support.

(4) Nothing in this section limits the authority of the Bureau for Child Support Enforcement of the Department of Health and Human Resources from taking collection action against an inmate’s moneys, assets or property.

CHAPTER 56

(Com. Sub. for H. B. 3010 — By Delegate Pino)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]
Be it enacted by the Legislature of West Virginia:

That §25-1-11a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-11a. Duties of wardens and administrators; bond; residence.

The warden or administrator is the chief executive officer of his or her assigned correctional institution and has the responsibility for the overall management of all operations within his or her assigned institution. He or she is in charge of its internal police and management, and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the State Commissioner of Corrections: Provided, That the Commissioner of Corrections may authorize the warden or administrator to establish an imprest fund in accordance with the provisions of section two, article two, chapter twelve of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the warden or administrator. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee. The warden or administrator shall promptly enforce all orders and rules made by the Commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the Commissioner of Corrections. The warden or administrator shall have the custody and control of all the real and personal property at the correc-
CHAPTER 57

(S. B. 417 — By Senators Tomblin, Mr. President, and Sprouse)  
[By Request of the Executive]  

[Passed April 4, 2005; in effect ninety days from passage.]  
[Approved by the Governor on April 19, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-12-9b, relating generally to joint development entities; providing that municipalities, county development authorities or municipal development authorities, or both, may organize and jointly own joint development entities for the purpose of developing and owning local economic development projects; describing the powers, duties and authority of joint development entities; and providing that joint development entities, as political subdivisions of the State of West Virginia, are exempt from all state and local taxation.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §7-12-9b, to read as follows:

ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.

§7-12-9b. Joint development entities.
(a) The Legislature hereby finds and declares that the citizens of this state would benefit from coordinated economic development efforts and that to encourage cooperation and coordination, municipalities and county and municipal development authorities should be authorized to organize and jointly own all of the partnership, ownership and membership interests in a partnership, corporation or limited liability company for the sole purpose of undertaking jointly through their joint ownership or membership in the partnership, corporation or limited liability company any project or projects that an authority established pursuant to this article would be permitted to undertake.

(b) Any combination of two or more municipalities, municipal development authorities or county development authorities may jointly form and hold all of the partnership, ownership or membership interests in a partnership, corporation or limited liability company, the sole purpose of which is to develop and own one or more joint economic development projects (for purposes of this section, a "joint development entity"). No person or entity other than a municipality, municipal development authority or county development authority may own any ownership or membership interest in a joint development entity. Any existing partnership, corporation or limited liability company is a joint development entity on and after the effective date of this section if: (i) It was organized for the purposes described in this subsection prior to the effective date of this section; and (ii) the partnership, ownership or membership interests in it meet the requirements of this subsection on and after the effective date of this section.

(c) To the extent consistent with and not prohibited by or in conflict with the restrictions and limitations on, or the rights and attributes of, a joint development entity set forth in this section, the applicable general law governing partnerships, corporations or limited liability companies govern the organiza-
tion, existence, duration, powers, governance and dissolution of
a joint development entity and the rights and responsibilities of
the partners, owners or members of a joint development entity.

(d) A joint development entity is a public corporation and
a political subdivision and instrumentality of its partners,
owners or members and has the powers, rights and privileges of
an authority set forth in sections seven, eight, nine, ten, eleven,
twelve and fourteen of this article in addition to those granted
to partnerships, corporations and limited liability companies
under applicable general law.

(e) For West Virginia tax purposes, a joint development
entity is a political subdivision of the State of West Virginia
and is exempt from all state and local taxation and all real and
personal property owned by a joint development entity, or
which the joint development entity may acquire to be leased,
sold or otherwise disposed of, is exempt from taxation by the
state or any county, municipality or other levying body as
public property.

CHAPTER 58

(S. B. 692 — By Senator Hunter)

[Passed April 6, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §8-5-7 of the Code of West Virginia,
1931, as amended, relating to removing an unconstitutional
provision providing that a mayor, a recorder and councilmen were
required for the year preceding their election to have been
assessed with and paid real or personal property taxes to the municipality; and related exceptions.

Be it enacted by the Legislature of West Virginia:

That §8-5-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. ELECTION, APPOINTMENTS, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-7. Certain officers; wards or election districts; residency and other requirements.

(a) Unless otherwise provided in the charter of a municipality, there shall be elected a mayor, a recorder and councilmen, who together shall form the governing body of the municipality.

(b) When a municipality has not been divided into wards or election districts, there shall be at least five councilmen, but when the municipality has been divided into wards or election districts, the governing body may, by ordinance, determine the number of councilmen to be elected from each ward or election district. When it is deemed necessary, the governing body may, by ordinance, increase the number of wards or election districts and change the boundaries thereof, such wards or election districts to be made as nearly equal as may be, in population, and when the municipality shall be divided into wards or election districts, or there shall be an increase in the number of wards or election districts as aforesaid, the governing body may increase the number of councilmen and direct an election to be held at the next regular municipal election in such ward or wards or election district or districts so that each ward or election district may have its full number of councilmen residing therein and may have equal representation on the governing body. When a municipality has been divided into
22 wards or election districts, the governing body may, by ordi-
23 nance, also provide for the election of councilmen at large in
24 addition to the councilmen to be elected from each ward or
25 election district. The provisions of this subsection shall be
26 applicable to any municipality except to the extent otherwise
27 provided in the charter of such municipality.

28 (c) Unless otherwise provided by charter provision or
29 ordinance, the mayor, recorder and councilmen must be
30 residents of the municipality and must be qualified voters
31 entitled to vote for members of its governing body. A city
32 manager in a manager form of government need only be a
33 resident of the city at the time of his or her appointment.

CHAPTER 59

(S. B. 705 — By Senators Edgell and Helmick)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §8-13C-4, §8-13C-5 and §8-13C-6 of
the Code of West Virginia, 1931, as amended, all relating to
Municipal Sales and Service Tax and Municipal Use Tax;
delaying the effective date of these taxes; establishing a special
revenue account in the State Treasury; and making clerical and
technical changes and corrections.

Be it enacted by the Legislature of West Virginia:

That §8-13C-4, §8-13C-5 and §8-13C-6 of the Code of West
Virginia, 1931, as amended, be amended and reenacted, all to read as
follows:
§8-13C-4. Municipal sales and service taxes.

(a) Pension relief municipal sales tax. — 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: Provided, That: (1) The tax does not apply to any purchase of tangible personal property, custom software or the results of taxable services in a transaction completed within the corporate limits of the municipality before the first day of July, two thousand eight, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(b) Alternative municipal sales tax. — 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.
Provided, That: (1) The tax does not apply to any purchase of tangible personal property, custom software or the results of taxable services in a transaction completed within the corporate limits of the municipality before the first day of July, two thousand eight, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(c) Uniformity of tax base. — Any municipal sales and service tax imposed under the authority granted by this section is subject to the following:

(1) 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.

(d) Notification of Tax Commissioner. — 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.

(e) State level administration required. — 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.

(f) Tax in addition to state use tax. — 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.

(g) Tax in addition to special district tax. — 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) Pension relief municipal use tax. — 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: Provided, That: (1) The tax does not apply to any use of tangible personal property, custom software or the results of taxable services in the corporate limits of the municipality where the first use occurs before the first day of July, two thousand eight, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(b) Alternative municipal use tax. — 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: Provided, That: (1) The tax does not apply to any use of tangible personal property, custom software or the results of taxable services in the corporate limits of the municipality where the first use occurs before the first day of July, two thousand eight, or before such later date specified in the ordinance of the municipality imposing the tax; and (2) the effective date of the tax, or of a change in the rate of the tax, shall be no earlier than the first day of a calendar quarter that at a minimum begins one hundred eighty days after notice of the tax, or of a change in the rate of tax, is provided to the Tax Commissioner as provided in section six of this article.

(c) Uniformity of tax base. — 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) Notification to Tax Commissioner. — 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) State level administration required. — Any municipal-
ity 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) Tax in addition to state use tax. — 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) Tax in addition to special district tax. — Any munici-
pal 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-6. Notification to Tax Commissioner; responsibilities of Tax Commissioner; fee; special revenue account; application of state tax law.

(a) Notification to Tax Commissioner. — 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 at least one hundred eighty days before the effective date of the imposition of the taxes or the change in the rate of the taxes.

(b) State level administration of taxes. — The Tax Commissioner is responsible for administering, collecting and enforcing any municipal sales and service tax and any municipal use tax imposed pursuant to this article in the same manner as the state consumers 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.

(c) Fee for services. — The Tax Commissioner may retain from collections a fee not to exceed the lesser of the cost of the service provided or one percent of the amount of taxes imposed pursuant to this article that are collected by the Tax Commissioner during any fiscal year.

(d) Establishment of special revenue account. — There is created in the State Treasury a special revenue revolving fund account known as the Tax Department Municipal Sales and Use Tax Operations Fund, which shall be an interest-bearing account. The fund shall consist of any future funds received from fees charged by the Tax Commissioner pursuant to this section and any funds appropriated by the Legislature or
transferred by any public agency as contemplated or permitted by applicable federal or state law; and any accrued interest or other return on the moneys in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the state General Revenue Fund.

(e) Application of state sales tax law. — The state consumers sales and service tax law, set forth in article fifteen, 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 sales and service tax imposed pursuant to this article to the extent the rules and laws are applicable.

(f) Application of state use tax law. — 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.

(g) Definitions incorporated. — 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.

(h) Automatic updating. — 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.

(i) Administrative procedures. — 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.

(j) *Criminal penalties.* — 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.

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**CHAPTER 60**

(Com. Sub. for H. B. 2619 — By Mr. Speaker, Mr. Kiss, and Delegates Varner, Pethel, Kominar, Stemple, Ennis and Leach)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended, relating to authorized expenditures from municipal pensions and protection funds and fire protection funds; and providing that moneys from revenues allocated to volunteer and part volunteer fire companies and departments may be expended for the payment of dues to national, state and county associations.

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

That §8-15-8b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-8b. Authorized expenditures of revenues from the municipal pensions and protection fund and the fire protection fund.

Revenues allocated to volunteer and part volunteer fire companies and departments may be expended only for the items listed in subdivisions (1) through (12) of this section.

Funds received from the State for volunteer and part volunteer fire companies and departments, pursuant to sections fourteen-d and thirty-three, article three, and section sixteen-a, article twelve, all of chapter thirty-three of this code, may not be commingled with funds received from any other source. Expenditures may be made for the following:

(1) Personal protective equipment, including protective head gear, bunker coats, pants, boots, combination of bunker pants and boots, coats and gloves;

(2) Equipment for compliance with the national fire protection standard or automotive fire apparatus, NFPA-1901;

(3) Compliance with insurance service office recommendations relating to fire departments;

(4) Rescue equipment, communications equipment and ambulance equipment: Provided, That no moneys received from the municipal pensions and protection fund or the fire protection fund may be used for equipment for personal vehicles owned or operated by volunteer fire company or department members;

(5) Capital improvements reasonably required for effective and efficient fire protection service and maintenance of the capital improvements;
(6) Retirement of debts;

(7) Payment of utility bills;

(8) Payment of the cost of immunizations, including any laboratory work incident to the immunizations, for firefighters against hepatitis-b and other blood borne pathogens: *Provided,*

That the vaccine shall be purchased through the state immunization program or from the lowest cost vendor available: *Provided, however,* That volunteer and part volunteer fire companies and departments shall seek to obtain no cost administration of the vaccinations through local boards of health: *Provided further,* That in the event any volunteer or part volunteer fire company or department is unable to obtain no cost administration of the vaccinations through a local board of health, the company or department shall seek to obtain the lowest cost available for the administration of the vaccinations from a licensed health care provider;

(9) Any filing fee required to be paid to the Legislative Auditor’s Office under section fourteen, article four, chapter twelve of this code relating to sworn statements of annual expenditures submitted by volunteer or part volunteer fire companies or departments that receive state funds or grants;

(10) Property/casualty insurance premiums for protection and indemnification against loss or damage or liability;

(11) Operating expenses reasonably required in the normal course of providing effective and efficient fire protection service, which include, but are not limited to, gasoline, bank fees, postage and accounting costs; and

(12) Dues paid to national, state and county associations.
CHAPTER 61

(H. B. 2782 — By Delegates Beach, Perry, Marshall and Houston)

[Amended and again passed April 16, 2005, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §8-21-3 of the Code of West Virginia, 1931, as amended, relating to municipal board of park and recreation commissioners generally; increasing the number of members the governing body may appoint to a board of park and recreation commissioners to not more than seven; and providing for the appointment of not more than three members from the governing body if the board of park and recreation commissioners consists of six or seven members.

Be it enacted by the Legislature of West Virginia:

That §8-21-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. BOARD OF PARK AND RECREATION COMMISSIONERS.

§8-21-3. Members; quorum; qualifications; election or appointment; terms; disqualification.

The board shall consist of not less than three nor more than seven members as may be provided by charter provision or ordinance, a majority of whom shall constitute a quorum for the transaction of business, except as hereinafter in this article provided. Each member of the board must be a resident and
freeholder of the city. It may be provided either by charter
provision or by ordinance for the appointment of the members
thereof by the governing body, but unless and until such
provision is made, the members of the board shall be elected by
the qualified voters of the city at appropriate regular municipal
elections. Membership on the governing body may not disqual-
ify any member for election to the board. If provision is made
for the appointment of members as aforesaid and the board
consists of three or four members, one member of the govern-
ing body, if otherwise qualified, may be appointed by the
governing body; if the board consists of five members not more
than two members of the governing body so qualified may be
so appointed and if the board consists of six or seven members
not more than three members of the governing body so quali-
fied may be so appointed. The term of the board membership of
any member of the governing body so appointed shall continue
during his or her term as a member of the governing body and
until his or her successor is appointed or elected and qualified.
The terms of other appointed or of elected members shall be for
six years, and until their successors have been duly appointed
or elected and qualified: Provided, That notwithstanding the
fact that there be no charter provision or ordinance for appoint-
ment of the members of the board, the governing body of the
city shall appoint the members of the first board, such appoint-
ees to serve, one for a term of six years, one for a term of four
years, and one for a term of two years. The date upon which the
terms of the board members shall begin shall be specified by
ordinance. When any member of the board, during his or her
term of office, shall cease to be a resident and freeholder of the
city, he or she shall thereby be disqualified as a member of the
board and his or her office shall thereupon become vacant.
CHAPTER 62

(H. B. 2296 — By Delegates Stemple, Campbell, Varner, Swartzmiller and Michael)

[Passed April 8, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §59-1-14 of the Code of West Virginia, 1931, as amended, relating to increasing service of process fees charged by the sheriff; and providing that two dollars of the fees charged and collected by the sheriff for service of process be placed in the Deputy Sheriff Retirement Fund and that three dollars of the increased fees be placed in the general revenue account of the county commission.

Be it enacted by the Legislature of West Virginia:

That §59-1-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE I. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

(a) The county commission shall determine the amount which the sheriff may charge, which charges shall not exceed the following:

For serving on any person an order, notice, summons or other process where the body is not taken, except a subpoena served on a witness, and making return thereof ............... $25.00
8 For summoning a witness .................................. 25.00
9 For serving on any person an attachment or
10 other process under which the body is taken ...... 25.00
11 For levying an attachment on real estate and
12 making the return ...................................... 25.00
13 For making any other levy ............................. 25.00
14 For serving a writ of possession ....................... 25.00
15 (b) The county commission shall determine the amount
16 which the sheriff may charge, which charges shall not exceed
17 the following:
18 For conveying a prisoner to or from jail, for
19 each mile of necessary travel either
20 in going or returning .................................... .25
21 For taking any bond .................................... 1.00
22 When a jury is sworn in court, for
23 summoning and impaneling such jury ............... 1.00
24 For issuing receipt to purchaser at
25 delinquent tax sale ..................................... 1.00
26 (c) The county commission, giving due regard to the cost
27 thereof, may from time to time prescribe the amount which the
28 sheriff may charge for keeping any property or in removing any
29 property. When, after distraining or levying, he or she neither
30 sells nor receives payment, and either takes no bond or takes
31 one which is not forfeited, he or she shall, if guilty of no
32 default, have (in addition to the one dollar for a bond, if one
33 was taken) a fee of three dollars, unless this be more than half
34 of what his or her commission would have amounted to if he or
she had received payment; in which case he or she shall
(whether a bond was taken or not) have a fee of one dollar at
the least, and so much more as is necessary to make the said
half of his or her commission. The commission to be included
in a forthcoming bond (when one is taken) shall be five percent
on the first three hundred dollars of the money for which the
distress or levy is made, and two percent on the residue of the
money; but the commission shall not be received, in whole or
in part, except as hereinbefore provided, unless the bond be
forfeited, or the amount (including the commission) be paid to
the plaintiff. An officer receiving payment in money, or selling
property, shall have the like commission of five percent on the
first three hundred dollars of the money paid or proceeds from
the sale, and two percent on the residue, except that when the
payment or sale is on an execution on a forthcoming bond, his
or her commission shall be only half what it would be if the
execution were not on the bond.

(d) Any amounts collected by the sheriff pursuant to this
section shall be deposited in a separate account of the county
general fund and used by the sheriff for the expenses of
providing the services herein described: Provided, That two
dollars of each fee collected pursuant to the provisions of
subsection (a) of this section shall be deposited by the county
commission in the “West Virginia Deputy Sheriff Retirement
Fund” created in section six, article fourteen-d, chapter seven
of this code and three dollars of each fee collected pursuant to
the provisions of subsection (a) of this section shall be depos-
ited by the county commission in the general revenue account
of the county commission. Any surplus funds that remain in the
separate account of the county general fund required by the
provisions of this subsection on the last day of the fiscal year,
and have not been expended for the purposes herein described,
shall revert to the county general fund.
AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §18-2-37, relating to
requiring a study on the feasibility of requiring flood insurance,
general property insurance or both on all buildings owned by a
county board and the contents of those buildings.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §18-2-37, to read as
follows:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-37. State Board study on flood insurance and general
property insurance.

(a) The Legislature finds the following:

(1) When county boards do not fully insure their buildings
and the contents of those buildings, the Legislature is some-
times expected to cover at least part of the costs of any damages
that are incurred;

(2) Although the Federal Emergency Management Agency
through the Public Assistance Grant Program will provide, in
some instances, grants to repair or replace buildings owned by
a county board, those grants are only provided if those build-
ings are located in an area where a state of emergency has been
declared; and

(3) The Federal Emergency Management Agency requires
a certain amount and type of insurance for certain school
buildings.

(b) The State Board shall conduct a study on the feasibility
of requiring flood insurance, general property insurance or both
on all buildings owned by a county board and the contents of
those buildings. The State Board shall report back to the
Legislative Oversight Commission on Education Accountability
before the first day of December, two thousand five. The report
shall include any recommended legislation.

CHAPTER 64

(S. B. 583 — By Senators Kessler, Dempsey, Foster, Hunter,
Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem,
Harrison, Lanham, McKenzie and Weeks)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]
ARTICLE 2A. FAMILY COURTS.

§51-2A-14. Review by circuit court; record; standard of review; temporary order upon demand.

(a) The circuit court may refuse to consider the petition for appeal may affirm or reverse the order, may affirm or reverse the order in part or may remand the case with instructions for further hearing before the family court judge.

(b) In considering a petition for appeal, the circuit court may only consider the record as provided in subsection (d), section eight of this article.

(c) The circuit court shall review the findings of fact made by the family court judge under the clearly erroneous standard and shall review the application of law to the facts under an abuse of discretion standard.

(d) If the circuit court agrees to consider a petition for appeal, the court shall provide the parties an opportunity to appear for oral argument, upon the request of either party or in the discretion of the court. The provisions of this subsection are effective until the adoption of rules by the Supreme Court of Appeals governing the appellate procedures of family courts.

(e) If the proceeding is remanded to the family court, the circuit court must enter appropriate temporary orders for a parenting plan or other allocation of custodial responsibility or decision-making responsibility for a child, child support, spousal support or such other temporary relief as the circumstances of the parties may require. If the circuit court remands the case to the family court, it must state the legal or factual issues to be considered by the family court on remand. If the
family court determines that the consideration of those issues also requires consideration of collateral or interdependent issues, the family court may also consider those other collateral or interdependent issues.

(f) The circuit court must enter an order ruling on a petition for appeal within sixty days from the last day a reply to the petition for appeal could have been filed. If the circuit court does not enter the order within the sixty-day period or does not, within the sixty-day period, enter an order stating just cause why the order has not been timely entered, the circuit clerk shall send a written notice to the parties that unless the parties both file an objection within fourteen days of the date of the notice, the appeal will be transferred to the Supreme Court of Appeals as provided in section fifteen of this article due to the failure of the circuit court to timely enter an order. The appeal shall be transferred without the necessity of the filing of any petition or further document by the petitioner.

§51-2A-16. Expiration of appellate procedures; exceptions; report requirements.

(a) The provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article shall expire and be of no force and effect after the thirtieth day of June, two thousand ten, except as otherwise provided by subsection (b) of this section.

(b) Appeals that are pending before a circuit court or the Supreme Court of Appeals on the thirtieth day of June, two thousand ten, but not decided before the first day of July, two thousand ten, shall proceed to resolution in accordance with the provisions of sections eleven, twelve, thirteen, fourteen and fifteen of this article, notwithstanding the provisions of subsection (a) of this section that provide for the expiration of those sections. The Supreme Court of Appeals shall, by rule, provide procedures for those appeals that are remanded but not con-
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-24, relating to the apportionment of damages in court actions involving the tortious conduct of more than one person; allowing for several liability for certain defendants; allowing for several liability subject to
reallocated for certain defendants; and providing for several liability for defendants that are found to be less than thirty percent at fault under certain circumstances.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-24, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-24. Apportionment of damages.**

(a) In any cause of action involving the tortious conduct of more than one defendant, the trial court shall:

(1) Instruct the jury to determine, or, if there is no jury, find, the total amount of damages sustained by the claimant and the proportionate fault of each of the parties in the litigation at the time the verdict is rendered; and

(2) Enter judgment against each defendant found to be liable on the basis of the rules of joint and several liability, except that if any defendant is thirty percent or less at fault, then that defendant’s liability shall be several and not joint and he or she shall be liable only for the damages attributable to him or her, except as otherwise provided in this section.

(b) Notwithstanding subdivision (2), subsection (a) of this section, the rules of joint and several liability shall apply to:

(1) Any party who acted with the intention of inflicting injury or damage;

(2) Any party who acted in concert with another person as part of a common plan or design resulting in harm;
(3) Any party who negligently or willfully caused the unlawful emission, disposal or spillage of a toxic or hazardous substance; or

(4) Any party strictly liable for the manufacture and sale of a defective product.

c) Notwithstanding subdivision (2), subsection (a) of this section, if a claimant through good faith efforts is unable to collect from a liable defendant, the claimant may, not later than six months after judgment becomes final through lapse of time for appeal or through exhaustion of appeal, whichever occurs later, move for reallocation of any uncollectible amount among the other parties in the litigation at the time the verdict is rendered.

(1) Upon the filing of such a motion, the court shall determine whether all or part of a defendant's proportionate share of the verdict is uncollectible from that defendant and shall reallocate such uncollectible amount among the other parties in the litigation at the time the verdict is rendered, including a claimant at fault according to their percentages of fault: Provided, That the court shall not reallocate to any defendant an uncollectible amount greater than that defendant's percentage of fault multiplied by such uncollectible amount.

(2) If such a motion is filed, the parties may conduct discovery on the issue of collectability prior to a hearing on such motion.

(3) Any order regarding such motion shall be entered within one hundred twenty days after the date of filing such a motion.

(4) A defendant's share of the obligation to a claimant may not be increased by reason of reallocation under this subsection if:
(A) The percentage of fault of that defendant is equal to or less than the claimant's percentage of fault; or

(B) The percentage of fault of that defendant is less than ten percent.

(5) A party whose liability is reallocated is nonetheless subject to contribution and to any continuing liability to the claimant on the judgment.

(6) If any defendant's share of the obligation to a claimant is not increased by reason of the application of subdivision (4) of this subsection, the amount of that defendant's share of the reallocation shall be considered uncollectible and shall be reallocated among all other parties who are not subject to subdivision four of this subsection, including the claimant, in the same manner as otherwise provided this subsection.

(d) Nothing in this section may be construed to affect, impair or abrogate any right of indemnity or contribution arising out of any contract or agreement or any right of indemnity otherwise provided by law.

(e) Nothing in this section creates or recognizes, either explicitly or impliedly, any new or different cause of action not otherwise recognized by law.

(f) Nothing in this section may be construed to affect, impair or abrogate the provisions of section seven, article twelve-a, chapter twenty-nine of this code or section nine, article seven-b of this chapter.

(g) This section applies only to causes of action that accrue on or after the first day of July, two thousand five.
AN ACT to amend and reenact §62-11B-4 of the Code of West Virginia, 1931, as amended, relating to home confinement; authorizing magistrate courts to order home incarceration as a condition of bail; authorizing magistrate courts to order home incarceration intermittently; and requiring magistrate court orders of home incarceration as a condition of bail be done consistent with Supreme Court guidelines.

Be it enacted by the Legislature of West Virginia:

That §62-11B-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11B. HOME INCARCERATION ACT.

§62-11B-4. Home incarceration; period of home incarceration; applicability.

1 (a) As a condition of probation or bail or as an alternative sentence to another form of incarceration for any criminal violation of this code over which a circuit court has jurisdiction, a circuit court may order an offender confined to the offender’s home for a period of home incarceration. As an alternative sentence to incarceration in jail for any criminal violation of this code over which a magistrate court has jurisdiction or as a
condition of bail for a criminal violation of this code over
which a magistrate court has jurisdiction to set bail, a magis-
trate may order an offender confined to the offender’s home for
a period of electronically monitored home incarceration:
Provided, That electronic monitoring may not be required in a
specific case if a circuit court upon petition thereto finds by
order that electronic monitoring is not necessary.

(b) The period of home incarceration may be continuous or
intermittent, as the circuit court or magistrate court orders.
However, the aggregate time actually spent in home incarce-
ation may not exceed the term of imprisonment or incarceration
prescribed by this code for the offense committed by the
offender.

(c) A grant of home incarceration under this article consti-
tutes a waiver of any entitlement to deduction from a sentence
for good conduct under the provisions of section twenty-seven,
article five, chapter twenty-eight of this code.

(d) When imposing home incarceration as a condition of
bail, a magistrate shall do so consistent with guidelines promul-
gated by the Supreme Court of Appeals.

CHAPTER 67

(Com. Sub. for S. B. 588 — By Senators Unger and Hunter)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as
amended, by adding thereto a new section, designated §49-5-13f;
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §49-5-13f; and that §61-8-19 of said code be amended and reenacted, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13f. Animal Cruelty Early Intervention Program.

(a) Notwithstanding any provision of this article to the contrary, a juvenile who has been alleged to have committed an act of delinquency which involved causing harm to an animal shall be given the option of proceeding in the Animal Cruelty Early Intervention Program as an alternative to the filing of a formal petition under section seven of this article, as the case may be. The decision to extend the option to enter the Animal Cruelty Early Intervention Program shall be made by the circuit court if the court finds that the offender is a suitable candidate for the program. No juvenile may enter the Animal Cruelty Early Intervention Program unless he or she and his or her parent or guardian consent. Any juvenile who does not successfully cooperate in and complete the Animal Cruelty Early Intervention Program shall be returned to the circuit court for further disposition as provided by section eleven-a or thirteen of this article, as the case may be.
17 (b) The Department of Juvenile Services shall establish a task force to create an Animal Cruelty Early Intervention Program. Services provided by the Department for Juvenile Services in the Animal Cruelty Early Intervention Program shall be consistent with the provisions of article five-b of this chapter and shall be designed to develop skills and supports within families and to resolve problems related to the juveniles who have engaged in animal cruelty. Services may include, but are not limited to, referral of juveniles and parents, guardians or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational or other social services, as appropriate to the needs of the juvenile and his or her family.

30 (c) The effective date for this section is the first day of July, two thousand six.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

1 (a) If any person cruelly mistreats, abandons or withholds proper sustenance, including food, water, shelter or medical treatment, necessary to sustain normal health and fitness or to end suffering or abandons any animal to die, or intentionally, knowingly or recklessly leaves an animal unattended and confined in a motor vehicle when physical injury to or death of the animal is likely to result, or rides an animal when it is physically unfit, or baits or harasses any animal for the purpose of making it perform for a person's amusement, or cruelly chains any animal or uses, trains or possesses any domesticated animal for the purpose of seizing, detaining or maltreating any other domesticated animal, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than three
hundred nor more than two thousand dollars or confined in jail
not more than six months, or both.

(b) If any person intentionally tortures, or mutilates or
maliciously kills an animal, or causes, procures or authorizes
any other person to torture, mutilate or maliciously kill an
animal, he or she is guilty of a felony and, upon conviction
thereof, shall be confined in a correctional facility not less than
one nor more than five years and be fined not less than one
thousand dollars nor more than five thousand dollars. For the
purposes of this subsection, "torture" means an action taken for
the primary purpose of inflicting pain.

(c) Any person, other than a licensed veterinarian or a
person acting under the direction or with the approval of a
licensed veterinarian, who knowingly and willfully administers
or causes to be administered to any animal participating in any
contest any controlled substance or any other drug for the
purpose of altering or otherwise affecting said animal's
performance is guilty of a misdemeanor and, upon conviction
thereof, shall be fined not less than five hundred nor more than
two thousand dollars.

(d) Any person convicted of a violation of this section shall
forfeit his or her interest in any animal and all interest in the
animal shall vest in the humane society or county pound of the
county in which the conviction was rendered and the person
shall, in addition to any fine imposed, be liable for any costs
incurred or to be incurred by the humane society or county
pound as a result.

(e) For the purpose of this section, the term "controlled
substance" has the same meaning ascribed to it by subsection
(d), section one hundred one, article one, chapter sixty-a of this
code.
(f) The provisions of this section do not apply to lawful acts of hunting, fishing, trapping or animal training or farm livestock, poultry, gaming fowl or wildlife kept in private or licensed game farms if kept and maintained according to usual and accepted standards of livestock, poultry, gaming fowl or wildlife or game farm production and management, nor to humane use of animals or activities regulated under and in conformity with the provisions of 7 U. S. C. §2131, et seq., and the regulations promulgated thereunder, as both statutes and regulations are in effect on the effective date of this section.

(g) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of said subsection is guilty of a misdemeanor and shall be confined in jail for a period of not less than ninety days nor more than one year, fined not less than five hundred dollars nor more than three thousand dollars, or both. The incarceration set forth in this subsection shall be mandatory unless the provisions of subsection (h) of this section are complied with.

(h) (1) Notwithstanding any provision of this code to the contrary, no person who has been convicted of a violation of the provisions of subsection (a) or (b) of this section may be granted probation until the defendant has undergone a complete psychiatric or psychological evaluation and the court has reviewed the evaluation. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of said evaluation.

(2) For any person convicted of a violation of subsection (a) or (b) of this section, the court may, in addition to the penalties provided in this section, impose a requirement that he or she complete a program of anger management intervention for perpetrators of animal cruelty. Unless the defendant is determined by the court to be indigent, he or she shall be responsible for the cost of the program.
(i) In addition to any other penalty which can be imposed for a violation of this section, a court shall prohibit any person so convicted from possessing, owning or residing with any animal or type of animal for a period of five years following entry of a misdemeanor conviction and fifteen years following entry of a felony conviction. A violation under this subsection is a misdemeanor punishable by a fine not exceeding two thousand dollars and forfeiture of the animal.

CHAPTER 68

(Com. Sub. for H. B. 3049 — By Mr. Speaker, Mr. Kiss, and Delegates Beach, Pino, Stalnaker, Amores, Poling, Varner and Stemple)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-9c, relating to creating a new crime of wanton endangerment involving the use of fire; and imposing a criminal penalty.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-9c, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9c. Wanton endangerment involving the use of fire; penalty.

Any person who, during the manufacture or production of an illegal controlled substance uses fire, the use of which
creates substantial risk of death or serious bodily injury to
another due to the use of fire, is guilty of a felony and, upon
conviction, shall be committed to the custody of the Division of
Corrections for a definite term of years of not less than one nor
more than five years or, in the discretion of the court, confined
in the regional jail for not more than one year, or fined not less
than two hundred fifty dollars or more than two thousand five
hundred dollars, or both.

CHAPTER 69

(Com. Sub. for S. B. 548 — By Senators Love, Sharpe,
Minard, Bailey, White, Jenkins and Dempsey)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §61-2-10b of the Code of West
Virginia, 1931, as amended, relating to the crimes of assault and
battery upon law-enforcement officers; and adding Public Service
Commission motor carrier inspectors to the list of
law-enforcement officers.

Be it enacted by the Legislature of West Virginia:

That §61-2-10b of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. Malicious assault; unlawful assault; battery and
recidivism of battery; assault on police officers,
conservation officers, probation officers, humane
officers, emergency medical service personnel, firefighters, fire marshal, Division of Forestry employees and county or state correctional employees; penalties.

(a) Malicious assault. — Any person who maliciously shoots, stabs, cuts or wounds or by any means causes bodily injury with intent to maim, disfigure, disable or kill a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, State Fire Marshal or employee, Division of Forestry employee, county correctional employee or state correctional employee, employee of an urban mass transportation system or Public Service Commission motor carrier inspector acting in his or her official capacity and the person committing the malicious assault knows or has reason to know that the victim is a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, State Fire Marshal or employee, Division of Forestry employee, county correctional employee, state correctional employee, employee of an urban mass transportation system or Public Service Commission motor carrier inspector acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility for not less than three nor more than fifteen years.

(b) Unlawful assault. — Any person who unlawfully but not maliciously shoots, stabs, cuts or wounds or by any means causes a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, State Fire Marshal or employee, Division of Forestry employee, county correctional employee or state correctional employee, employee of an urban mass transportation system or Public Service Commission motor carrier inspector acting in his or her official capacity bodily injury with intent to maim, disfigure, disable or kill him or her and the
person committing the unlawful assault knows or has reason to
know that the victim is a police officer, probation officer,
conservation officer, humane officer, emergency medical
service personnel, firefighter, State Fire Marshal or employee,
Division of Forestry employee, county correctional employee,
state correctional employee, employee of an urban mass
transportation system or Public Service Commission motor
carrier inspector acting in his or her official capacity is guilty
of a felony and, upon conviction thereof, shall be confined in a
correctional facility for not less than two nor more than five
years.

(c) Battery. — Any person who unlawfully, knowingly and
intentionally makes physical contact of an insulting or provok-
ing nature with a police officer, probation officer, conservation
officer, humane officer, emergency medical service personnel,
firefighter, State Fire Marshal or employee, Division of
Forestry employee, county correctional employee, state
 correctional employee, employee of a mass transportation
system or Public Service Commission motor carrier inspector
acting in his or her official capacity, or unlawfully and inten-
tionally causes physical harm to a police officer, probation
officer, conservation officer, humane officer, emergency
medical service personnel, firefighter, State Fire Marshal or
employee, Division of Forestry employee, county correctional
d employee, state correctional employee, employee of an urban
mass transportation system or a Public Service Commission
 motor carrier inspector acting in such capacity, is guilty of a
misdemeanor and, upon conviction thereof, shall be confined in
jail for not less than one month nor more than twelve months,
fined the sum of five hundred dollars, or both. If any person
 commits a second such offense, he or she is guilty of a felony
and, upon conviction thereof, shall be confined in a correctional
facility for not less than one year nor more than three years or
fine the sum of one thousand dollars or both fined and
confined. Any person who commits a third violation of this
subsection is guilty of a felony and, upon conviction thereof, shall be confined in a correctional facility not less than two years nor more than five years or fined not more than two thousand dollars or both fined and confined.

(d) Assault. — Any person who unlawfully attempts to commit a violent injury to the person of a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, State Fire Marshal or employee, Division of Forestry employee, county correctional employee, state correctional employee, employee of a mass transportation system or Public Service Commission motor carrier inspector acting in his or her official capacity, or unlawfully commits an act which places a police officer, probation officer, conservation officer, humane officer, emergency medical service personnel, firefighter, Division of Forestry employee, county correctional employee or state correctional employee, employee of a mass transportation system or Public Service Commission motor carrier inspector acting in his or her official capacity in reasonable apprehension of immediately receiving a violent injury, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than twenty-four hours nor more than six months, fined not more than two hundred dollars, or both fined and confined.

(e) For purposes of this section:

(1) “Police officer” means any person employed by the State Police, any person employed by the state to perform law-enforcement duties, any person employed by a political subdivision of this state who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this state or employed as a special police officer as defined in section forty-one, article three of this chapter.
(2) "Employee of an urban mass transportation system" means any person employed by an urban mass transportation system as such is defined in section three, article twenty-seven, chapter eight of this code or by a system that receives federal transit administration funding under 49 U. S. C. §5307 or §5311.

(3) "Division of Forestry employee" means an officer, agent, employee or servant, whether full-time or not, of the Division of Forestry.

CHAPTER 70

(H. B. 3153 — By Delegates Boggs, Craig and R. M. Thompson)

[Passed April 9, 2005; in effect ninety days from passage]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend §61-3-28 of the Code of West Virginia, 1931, as amended; and to amend §61-3-41 of said code, all relating to creation of criminal offenses for damaging, stealing or injury to railroad property; defining terms; creating an offense for reckless disregard for railroad property; creating an offense for intentionally damaging railroad property; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §61-3-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §61-3-41 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.
§61-3-28. Offense against railroad property and persons on railroad property; definitions.

§61-3-41. Employees conservators of the peace; special railroad policemen; penalties.

§61-3-28. Offenses against railroad property and persons on railroad property; definitions.

(a) As used in this section:

(1) “Bodily injury” means substantial physical pain, illness or any impairment of physical injury.

(2) “Railroad” means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including:

(i) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area; and

(ii) High-speed ground transportation systems that connect metropolitan areas but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

(3) “Railroad carrier” means a person providing railroad transportation; railroad carrier including a right-of-way, track, bridge, yard, shop, station, tunnel, viaduct, trestle, depot, warehouse, terminal, railroad signal system, train control system, centralized dispatching system, or any other structure, appurtenance, or equipment owned, leased, or used in the operation of any railroad carrier including a train, locomotive, engine, railroad car, work equipment, rolling stock, or safety device. “Railroad property” does not include administrative buildings, administrative offices, or administrative office equipment;

(4) “Right-of-way” means the track or roadbed owned, leased, or operated by a railroad carrier which is located on
either side of its tracks and which is readily recognizable to a reasonable person as being railroad property or is reasonably identified as such by fencing or appropriate signs;

(5) "Yard" means a system of parallel tracks, crossovers, and switches where railroad cars are switched and made up into trains, and where railroad cars, locomotives and other rolling stock are kept when not in use or when awaiting repairs.

(b) Whoever willfully damages or attempts to damage railroad property or willfully endangers or attempts to endanger the safety of another, by:

(1) Taking, removing, altering, or otherwise vandalizing a railroad sign, placard or marker;

(2) Throwing or dropping an object capable of causing significant damage to railroad property at or on a locomotive, railroad car or train;

(3) Shooting a firearm or other dangerous weapon at a locomotive, railroad car or train;

(4) Removing appurtenances from, damaging, or otherwise impairing the operation of any railroad signal system, including a train control system, centralized dispatching system, or highway-railroad grade crossing warning signal, on a railroad owned, leased, or operated by any railroad carrier, and without consent of the railroad carrier involved;

(5) Interfering or tampering with, or obstructing in any way, any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railroad carrier without consent of the railroad carrier involved; or
(6) Taking, stealing, removing, changing, adding to, altering, or in any manner interfering with any part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad carrier in this state without consent of the railroad carrier is guilty of a felony.

If railroad property damage does not exceed one thousand dollars and no bodily injury occurs to another as a result of any of the aforesaid acts, upon conviction thereof, the person shall be fined not more than five thousand dollars, confined in a regional jail for not more than one year, or both. If bodily injury occurs to another not acting with or in connection with the perpetrator as a result of any of the aforesaid acts or if railroad property damage exceeds one thousand dollars, upon conviction thereof, the person shall be fined not more than ten thousand dollars, committed to the custody of the Commission of Corrections for not less than one nor more than ten years, or both.

(d) The provisions of this section do not apply to any person employed by a railroad who is performing the duties assigned by the railroad or who is otherwise performing within the scope of his or her employment.

§61-3-41. Employees conservators of the peace; special railroad policemen; penalties.

The conductor of every passenger car and flag person and brake person employed on such car, as well as the conductor of every train of railroad or traction cars, shall have all the powers of a conservator of the peace while in charge of such car or train.

Any railroad company owning, or leasing and operating, or using any railroad or traction line or system lying wholly or partially within this state, whether such railroad be operated by
steam or electric power, may apply to the Governor to appoint
such citizen or citizens of this state as such railroad company
may designate, to act as special police officers for such railroad
or traction company, with the consent of such citizen or
citizens; and the Governor may, upon such application, appoint
and commission such person or persons, or so many of them as
he may deem proper, as such special police officers. Every
police officer so appointed shall appear before some person
authorized to administer oaths and take and subscribe the oath
prescribed in the fifth section of the fourth article of the
Constitution, and shall file such oath with the clerk of the
county commission, or other tribunal in lieu thereof, of the
county in which he shall reside. He or she shall also file
certified copies of such oath in the office of the Secretary of
State, and in the office of the clerk of the county commission,
or other tribunal established in lieu thereof, of each county
through which such railroad or any portion thereof may extend.
Every police officer appointed under the provisions of this
section shall be a conservator of the peace within each county
in which any part of such railroad may be situated, and in which
such oath or a certified copy thereof shall have been filed with
the clerk of the county commission or other tribunal established
in lieu thereof; and, in addition thereto, he shall possess and
may exercise all the powers and authority, and shall be entitled
to all the rights, privileges and immunities within such counties,
as are now or hereafter may be vested in or conferred upon a
deputy sheriff of such county. Any appointment made by the
Governor under the provisions of this section may be revoked
by him or her for good cause shown, and such police officers
may be removed from office for official misconduct, incompe-
tence, habitual drunkenness, neglect of duty or gross immor-
ality, in the same manner in which regularly elected or appointed
county officers may be removed from office. Whenever any
such railroad company shall desire to dispense with the services
of any police officer, it may file a notice to that effect, under its
corporate seal, attested by its secretary, in each of the several
offices in which such oath or certified copy thereof shall have been filed; and, thereupon, the powers of the police officer shall cease and determine. Police officers may wear such uniform and badge of authority, or either, as the railroad company, upon whose application they were appointed, may designate, and such railroad company shall pay them for all services rendered pursuant to his or her appointment.

CHAPTER 71
(Com. Sub. for S. B. 238 — By Senator Bailey)

[Passed April 6, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended, relating to including steel railroad track and track material under statutory provisions involving the purchase of scrap metals by various commercial entities; and modifying the criminal provision of the law to require knowing and fraudulent intent.

Be it enacted by the Legislature of West Virginia:

That §61-3-49 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49. Purchase of nonferrous metals or steel railroad track and track materials by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.
(a) Any person in the business of purchasing scrap metal, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of copper, aluminum, brass, lead or other nonferrous metal of any kind, or steel railroad track and track material, shall make a record of such purchase. Such record shall accurately list the name, permanent and business addresses and telephone number of the seller, the motor vehicle license number of any vehicle used to transport the nonferrous metal or steel to the place of purchase, the time and date of the transaction and a complete description of the kind and character of the nonferrous metal or steel railroad track and track material purchased. The person purchasing the nonferrous metal or steel railroad track and track material shall also require from the seller, and retain in the record, a signed certificate of ownership of the nonferrous metal or steel railroad track and track material being sold or authorization from the owner to sell. It shall be unlawful for any of the aforementioned persons to purchase any nonferrous metal or steel railroad track and track material without obtaining the certificate of ownership, or authorization from the owner to sell, on the part of the seller. Such record and certificate shall be available for inspection by any law-enforcement officer and must be maintained by the purchaser for not less than one year after the date of the purchase.

(b) Should the transaction involve one hundred or more pounds of copper, steel railroad track, track material or aluminum in any form, the purchaser of the copper, steel railroad track, track material or aluminum, or his or her agent, shall report in writing to the chief of police of the municipality or the sheriff of the county wherein he or she is transacting business and to the local detachment of the Division of Public Safety all the information obtained. The report must be filed within seventy-two hours after the transaction. The provisions of this
subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process.

(c) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial materials having a marginal value per individual unit.

(d) Any person who knowingly or with fraudulent intent violates any provision of this section, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction, shall be fined not less than five hundred nor more than two thousand dollars.

CHAPTER 72

(Com. Sub. for S. B. 473 — By Senators Hunter and Minear)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §61-3A-1 and §61-3A-6 of the Code of West Virginia, 1931, as amended, all relating to the crime of cyber-shoplifting; including in the definition of “shoplifting” customer’s repudiation of a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant; and defining “card-not-present credit or debit transaction” to mean a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not
require the cardholder’s signature or physical presentation of the credit or debit card to the merchant.

Be it enacted by the Legislature of West Virginia:

That §61-3A-1 and §61-3A-6 the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3A. SHOPLIFTING.


(a) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant’s stated price for the merchandise, such person, alone or in concert with another person, knowingly:

(1) Conceals the merchandise upon his or her person or in another manner; or

(2) Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or

(3) Alters, transfers or removes any price marking affixed to the merchandise; or

(4) Transfers the merchandise from one container to another; or

(5) Causes the cash register or other sales recording device to reflect less than the merchant’s stated price for the merchandise; or

(6) Removes a shopping cart from the premises of the mercantile establishment; or
(7) Repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor.

(b) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.


(a) "Card-not-present credit or debit transaction" means a credit or debit sale of merchandise by telephone, mail order, internet or other means that does not require the cardholder's signature or physical presentation of the credit or debit card to the merchant.

(b) "Conceal" means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.

(c) "Merchant" means an owner or operator of any mercantile establishment and includes the merchant's employees, servants, security agents or other agents.

(d) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. "Mercantile establishment" does not include adjoining parking lots or adjoining areas of common use with other establishments.

(e) "Merchandise" means any goods, foodstuffs, wares or personal property, or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.
(f) "Value of the merchandise" means the merchant's stated price of the merchandise, or, in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in section one of this article, the difference between the merchant's stated price of the merchandise and the altered price.

CHAPTER 73

(Com. Sub. for H. B. 2991 — By Delegates Perry, Leach, Miley, Pino, Roberts and Michael)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §61-5-8 of the Code of West Virginia, 1931, as amended, relating to adults and juveniles in custody or confinement; providing criminal penalties for aiding escape; specifying items that are unlawful to deliver to or be possessed by individuals in custody or confinement; providing criminal penalties for possession of certain items by adults or juveniles in custody or confinement in a jail, state correctional facility, juvenile facility or juvenile detention center; providing criminal penalties for transporting certain items onto the grounds of a jail, state correctional facility, juvenile facility or juvenile detention center; and providing definitions.

Be it enacted by the Legislature of West Virginia:

That §61-5-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.
§61-5-8. Aiding escape and other offenses relating to adults and juveniles in custody or confinement; penalties.

(a) Where any adult or juvenile is lawfully detained in custody or confinement in any jail, state correctional facility, juvenile facility or juvenile detention center, if any other person delivers anything into the place of custody or confinement of the adult or juvenile with the intent to aid or facilitate the adult’s or juvenile’s escape or attempted escape therefrom, or if the other person forcibly rescues or attempts to rescue an adult or a juvenile therefrom, the other person is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one nor more than ten years.

(b) Where any adult or juvenile is lawfully detained in custody or confinement in any jail, a state correctional facility or a juvenile facility or juvenile detention center, if any other person delivers any money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, telecommunication device, utensil or instrument of any kind to the adult or juvenile without the express authority and permission of the supervising officer and with knowledge that the adult or juvenile is lawfully detained, the other person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and confined in jail not less than three nor more than twelve months: Provided, That the provisions of this section do not prohibit an attorney or his or her employees from supplying any written or printed material to an adult or juvenile which pertains to that attorney’s representation of the adult or juvenile.

(c) If any person transports any alcoholic liquor, nonintoxicating beer, poison, implement of escape, dangerous material, weapon or any controlled substance as defined by chapter sixty-a of this code onto the grounds of any jail, state correc-
tional facility, juvenile facility or juvenile detention center
within this state and is unauthorized by law to do so, or is
unauthorized by the persons supervising the facility, the person
is guilty of a felony and, upon conviction thereof, shall be fined
not less than one thousand nor more than five thousand dollars
or confined in a state correctional facility not less than two
years nor more than ten years, or both, or, in the discretion of
the court, be confined in jail not more than one year and fined
not more than five hundred dollars.

(d) If any person delivers any alcoholic liquor, nonintoxicating beer, poison, implement of escape, dangerous material,
weapon or any controlled substance as defined by chapter
sixty-a of this code to an adult or juvenile in custody or
confinement in any jail, state correctional facility, juvenile
facility or juvenile detention center within this state and is
unauthorized by law to do so, or is unauthorized by the persons
supervising the facility, the person is guilty of a felony and,
upon conviction thereof, shall be fined not less than one
thousand nor more than five thousand dollars or confined in a
state correctional facility not less than one year nor more than
five years, or both.

(e) Whoever purchases, accepts as a gift, or secures by
barter, trade or in any other manner, any article or articles
manufactured at or belonging to any jail, state correctional
facility, juvenile facility or juvenile detention center from any
adult or juvenile detained therein is guilty of a misdemeanor
and, upon conviction thereof, shall be fined not less than fifty
dollars nor more than five hundred dollars and confined in jail
not less than three nor more than twelve months: Provided,
That the provisions of this subsection do not apply to articles
specially manufactured in any facility under the authorization
of the persons supervising the facility and which are offered for
sale within or outside of the facility.
(f) Whoever persuades, induces or entices or attempts to persuade, induce or entice any person who is in custody or confined in any jail, state correctional facility, juvenile facility or juvenile detention center to escape therefrom or to engage or aid in any insubordination to the persons supervising the facility is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and confined in jail not less than three nor more than twelve months.

(g) (1) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her possession any poison, implement of escape, dangerous material, weapon or any controlled substance as defined by chapter sixty-a of this code is guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand nor more than five thousand dollars or confined in a state correctional facility not less than one year nor more than five years, or both, or, in the discretion of the court, be confined in jail not more than one year and fined not more than five hundred dollars.

(2) An inmate of a jail, state correctional facility, juvenile facility or juvenile detention center having in his or her possession any alcoholic liquor, nonintoxicating beer, money or other thing of value, any written or printed matter, any article of merchandise, food or clothing, any medicine, telecommunication device, utensil or instrument of any kind without the express authority and permission of the supervising officer is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars nor more than five hundred dollars and confined in jail not more than twelve months.

(h) As used in this section:

(1) “Dangerous material” means any incendiary material or device, highly flammable or caustic liquid, explosive, bullet or
other material readily capable of causing death or serious bodily injury.

(2) "Delivers" means to transfer an item to an adult or juvenile who is detained in custody or confinement in any jail, correctional facility, juvenile facility or juvenile detention center, or a building appurtenant to those places. The term includes bringing the item into a jail, correctional facility, juvenile facility or juvenile detention center or a building appurtenant to those places. The term includes putting an item in a place where it may be obtained by an inmate.

(3) "Inmate" means an adult or juvenile who is detained in custody or confinement in any jail, correctional facility, juvenile facility or juvenile detention center, regardless of whether the individual is temporarily absent due to medical treatment, transportation, court appearance or other reason for a temporary absence.

(4) "Implement of escape" means a tool, implement, device, equipment or other item which an inmate is not authorized to possess, capable of facilitating, aiding or concealing an escape or attempted escape by an inmate.

(5) "Telecommunication device" means any type of instrument, device, machine or equipment which is capable of transmitting telephonic, electronic, digital, cellular or radio communications or any part of an instrument, device, machine or equipment which is capable of facilitating the transmission of telephonic, electronic, digital, cellular or radio communications. The term includes, but is not limited to, cellular phones, digital phones and modem equipment devices.

(6) "Weapon" means an implement readily capable of lethal use and includes any firearm, knife, dagger, razor, other cutting or stabbing implement or club. The term includes any item which has been modified or adapted so that it can be used as a
130 firearm, knife, dagger, razor, other cutting or stabbing implement or club. For purposes of this definition, the term “firearm” includes an unloaded firearm or the unassembled components of a firearm.

CHAPTER 74

(H. B. 3098 — By Delegates Amores, Staton, Spencer, Schadler and Hamilton)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §61-8D-1 and §61-8D-5 of the code of West Virginia, 1931, as amended, relating to sexual crimes committed against children; defining position of trust in relation to a child victim; expanding the existing felony offense of sexual exploitation or sexual abuse of a child under article eight-d of chapter sixty-one of the code to include offenses by persons who hold who a position of trust or authority in relation to a child; establishing related criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-8D-1 and 61-8D-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions.
§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.
§61-8D-1. Definitions.

In this article, unless a different meaning plainly is required:

1. "Abuse" means the infliction upon a minor of physical injury by other than accidental means.

2. "Child" means any person under eighteen years of age not otherwise emancipated by law.

3. "Controlled substance" means controlled substance as that term is defined in subsection (d), section one hundred one, article one, chapter sixty-a of this code.

4. "Custodian" means a person over the age of fourteen years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of husband and wife, where such spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian.

5. "Guardian" means a person who has care and custody of a child as the result of any contract, agreement or legal proceeding.

6. "Neglect" means the unreasonable failure by a parent, guardian, or any person voluntarily accepting a supervisory role towards a minor child to exercise a minimum degree of care to assure said minor child’s physical safety or health.

7. "Parent" means the biological father or mother of a child, or the adoptive mother or father of a child.
(8) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(9) "Sexual exploitation" means an act whereby:

(A) A parent, custodian, guardian or other person in a position of trust to a child, whether for financial gain or not, persuades, induces, entices or coerces the child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

(B) A parent, guardian, custodian or other person in a position of trust in relation to a child persuades, induces, entices or coerces the child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, person in a position of trust or a third person, or to display his or her sex organs under circumstances in which the parent, guardian, custodian or other person in a position of trust knows such display is likely to be observed by others who would be affronted or alarmed.

(10) "Sexual intercourse" means sexual intercourse as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(11) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(12) A "person in a position of trust in relation to a child" refers to any person who is acting in the place of a parent and charged with any of a parent’s rights, duties or responsibilities concerning a child or someone responsible for the general supervision of a child’s welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.
§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of or other person in a position of trust in relation to a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty years, or fined not less than five hundred nor more than five thousand dollars and imprisoned in the penitentiary not less than ten years nor more than twenty years.

(b) If any parent, guardian, custodian or other person in a position of trust in relation to the child shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than sixteen years of age, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a
position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more than fifteen years, or fined not less than one thousand nor more than ten thousand dollars and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(c) If any parent, guardian, custodian or other person in a position of trust in relation to the child shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is sixteen years of age or older, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one year nor more than five years.

(d) The provisions of this section shall not apply to a custodian or person in a position of trust whose age exceeds the age of the child by less than four years.

CHAPTER 75

(Com. Sub. for H. B. 2523 — By Delegates Perry, Pino, Long, Tabb, Hrutkay and Armstead)

[Passed April 9, 2005; in effect ninety days from passage.] [Approved by the Governor on May 4, 2005.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-10-32, relating to making it a crime for released inmates to contact correctional employees or members of the parole board in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-10-32, to read as follows:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-32. Unlawful contact with a Division of Corrections employee or member of the parole board; penalty.

(a) It shall be unlawful for a former inmate of the Division of Corrections to make a telephone call to a Division of Corrections employee or member of the parole board when the employee has requested in writing to that former inmate that he or she not call and the former inmate has actually been served with a copy of the written request.

(b) It shall be unlawful for a former inmate of the Division of Corrections to willfully and repeatedly follow a Division of Corrections employee or member of the parole board with whom he or she seeks to establish a personal or social relationship when the Division of Corrections employee or member of the parole board has expressed to the former inmate that he or she wishes not to have contact with the former inmate.

(c) It shall be unlawful for a former inmate of the Division of Corrections to harass or make credible threats against a Division of Corrections employee or member of the parole board.
(d) Any offense committed under subsection (a) may be deemed to have occurred at the place at which the telephone call was made, or the place at which the telephone call was received.

(e) Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall, for a first offense, be fined not more than five hundred dollars. Any person violating this section for a second offense shall be imprisoned not less than ten days nor more than six months, or both fined and imprisoned.

(f) For purposes of this section:

(1) "Harass" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress;

(2) "Credible threat" means a threat of bodily injury made with apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat would be carried out;

(3) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition;

(4) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household.

(g) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his immediate family. The duration of the restraining
order may be longer than five years only in cases when a longer
duration is necessary to protect the safety of the victim or his or
her immediate family.

(h) It is a condition of bond for any person accused of the
offense described in this section that the person is to have no
contact, direct or indirect, verbal or physical with the alleged
victim.

CHAPTER 76

(H. B. 3219 — By Delegates Amores, Webster, Caputo,
Brown, Hatfield and Marshall)

[Passed April 6, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §14-2A-3 of the Code of West
Virginia, 1931, as amended, relating to compensation awards to
victims of crimes, patient; amending the definition of claimant so
as to include persons who are assignees of a crime victim, hold
power of attorney with respect to the crime victim, or otherwise
have been authorized to act on a victim’s behalf.

Be it enacted by the Legislature of West Virginia:

That §14-2A-3 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.


1 As used in this article, the term:
(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim: Provided, That the term victim does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse or minor child of a deceased victim; or in the event that the deceased victim is a minor, the parents, legal guardians and siblings of the victim;

(3) A third person other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim, or of a dependent of a victim, which obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent or a third person who is not a collateral source, including, but not limited to, assignees, persons holding power of attorney or other persons who hold authority to make or submit claims in place of or on behalf of a victim, a dependent or third person who is not a collateral source; and, in the event that the victim, dependent or third person who is not a collateral source is a minor or other legally incompetent person, the duly qualified fiduciary of the minor; and

(5) A person who is a secondary victim in need of mental health counseling due to the person's exposure to the crime committed. An award to a secondary victim may not exceed one thousand dollars.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received, or that is readily available to him or her, from any of the following sources:
(1) The offender, including any restitution received from
the offender pursuant to an order by a court of law sentencing
the offender or placing him or her on probation following a
conviction in a criminal case arising from the criminally
injurious act for which a claim for compensation is made;

(2) The government of the United States or any of its
agencies, a state or any of its political subdivisions or an
instrumentality of two or more states;

(3) Social Security, Medicare and Medicaid;

(4) State-required, temporary, nonoccupational disability
insurance; other disability insurance;

(5) Workers’ Compensation;

(6) Wage continuation programs of any employer;

(7) Proceeds of a contract of insurance payable to the
victim or claimant for loss that was sustained because of the
criminally injurious conduct;

(8) A contract providing prepaid hospital and other health
care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insur-
ance payable to the claimant on account of the death of the
victim which exceeds twenty-five thousand dollars.

(c) “Criminally injurious conduct” means conduct that
occurs or is attempted in this state or in any state not having a
victim compensation program which by its nature poses a
substantial threat of personal injury or death and is punishable
by fine or imprisonment or death or would be so punishable but
for the fact that the person engaging in the conduct lacked
capacity to commit the crime under the laws of this state.
Criminally injurious conduct also includes an act of terrorism,
as defined in 18 U.S.C. §2331, committed outside of the United States against a resident of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance or use of a motor vehicle, except when the person engaging in the conduct intended to cause personal injury or death, or except when the person engaging in the conduct committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs or reckless driving.

(d) “Dependent” means an individual who received over half of his or her support from the victim. For the purpose of determining whether an individual received over half of his or her support from the victim, there shall be taken into account the amount of support received from the victim as compared to the entire amount of support which the individual received from all sources, including support which the individual himself or herself supplied. The term “support” includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term “dependent” includes a child of the victim born after his or her death.

(e) “Economic loss” means economic detriment consisting only of allowable expense, work loss and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent’s economic loss and a dependent’s replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term “economic loss” includes a lost scholarship as defined in this section.

(f)(1) “Allowable expense” means reasonable charges incurred or to be incurred for reasonably needed products, services and accommodations, including those for medical care, mental health counseling, prosthetic devices, eye glasses, dentures, rehabilitation and other remedial treatment and care.
(2) Allowable expense includes a total charge not in excess of six thousand dollars for expenses in any way related to funeral, cremation and burial. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required.

(3) Allowable expense also includes:

(A) A charge, not to exceed one thousand dollars, for crime scene cleanup;

(B) Victim relocation costs, not to exceed one thousand dollars; and

(C) Reasonable travel expenses, not to exceed one thousand dollars, for a claimant to attend court proceedings that are conducted for the prosecution of the offender.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income, reduced by any income from substitute work actually performed or to be performed by him or her, or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but for the benefit of himself or herself or his or her family, if he or she had not been injured.
(i) "Dependent's economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents, not including services they would have received from the victim if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death.

(j) "Dependent's replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury, less expenses of the dependents avoided by reason of the victim's death and not subtracted in calculating dependent's economic loss.

(k) "Victim" means a person who suffers personal injury or death as a result of any one of the following: (1) Criminally injurious conduct; (2) the good faith effort of the person to prevent criminally injurious conduct; or (3) the good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) "Contributory misconduct" means any conduct of the claimant, or of the victim through whom the claimant claims an award, that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has causal relationship to the criminally injurious conduct that is the basis of the claim and shall also include the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance when the intoxication has a causal connection or relationship to the injury sustained. The voluntary intoxication of a victim is not a defense against the estate of a deceased victim.
(m) "Lost scholarship" means a scholarship, academic award, stipend or other monetary scholastic assistance which had been awarded or conferred upon a victim in conjunction with a postsecondary school educational program and, which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.

CHAPTER 77

(H. B. 2482 — By Delegate Pino)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §62-8-1 of the Code of West Virginia, 1931, as amended, relating to including jails within the context certain criminal acts by incarcerated persons; providing a specific crime for setting fire to a correctional facility or jail; and including the Executive Director of the Regional Jail and Correctional Facility Authority relative to the applicability of the phrase "a person imprisoned or otherwise in custody of" to the statutory provisions.

Be it enacted by the Legislature of West Virginia:

That §62-8-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST INMATES.

§62-8-1. Offenses by inmates; conspiracy.

A person imprisoned or otherwise in the custody of the Commissioner of Corrections or the Executive Director of the
Chapter 78

(S. B. 550 — By Senators Prezioso, Foster, Hunter and Jenkins)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-14, relating to designation of rural hospitals for purposes of the Critical Access Hospital Program.

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 §16-5B-14, to read as follows:
ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.


A hospital located in an urban area (Metropolitan Statistical Areas (MSA) County), can be considered rural for the purposes of a designation as a critical access hospital pursuant to 42 U. S. C. §1395i-4(c)(2) if it meets the following criteria:

1. Is enrolled as both a Medicaid and Medicare provider and accepts assignment for all Medicaid and Medicare patients;
2. Provides emergency health care services to indigent patients;
3. Maintains 24-hour emergency services; and
4. Is located in a county that has a rural population of fifty percent or greater as determined by the most recent United States decennial census.

CHAPTER 79

(Com. Sub. for H. B. 2592 — By Delegates Beane, Spencer, Cann and Michael)

[Passed March 30, 2005; in effect July 1, 2005.]
[Approved by the Governor April 18, 2005.]

AN ACT to amend and reenact §5-22A-2, §5-22A-3, §5-22A-4, §5-22A-5, §5-22A-6, §5-22A-7, §5-22A-8, §5-22A-10, §5-22A-11, §5-22A-12 and §5-22A-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-22A-9a, all relating to the Design-Build
Procurement Act; definitions; authorizing reimbursement of expenses for Design-Build Board members; clarifying the duties of the Board; modifying requirements for approval of design-build projects; clarifying that authority to enter into design-build contracts terminates when Board terminates; requiring monthly progress reports on design-build projects; requiring annual reports; revising rule-making authority and requirements; specifying requirements for performance criteria developers; establishing requirements for issuing invitations for qualifications and proposals; providing for selection of qualified design-builders; revising proposal requirements; revising submission requirements; and changing the continuation date for the Board.

Be it enacted by the Legislature of West Virginia:

That §5-22A-2, §5-22A-3, §5-22A-4, §5-22A-5, §5-22A-6, §5-22A-7, §5-22A-8, §5-22A-10, §5-22A-11, §5-22A-12 and §5-22A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said article be amended by adding thereto a new section, designated §5-22A-9a, all to read as follows:

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§5-22A-3. Public policy; conditions for contract.
§5-22A-4. Design-build board and members; appointments; expense reimbursement; meetings.
§5-22A-5. Duties of board to approve and monitor projects.
§5-22A-7. Design-builder qualifications; duties and powers.
§5-22A-9a. Invitation for qualifications; selection of design-builders.
§5-22A-10. Invitation for proposals.
§5-22A-15. Continuation of design-build board.


1 For the purpose of this article:
(1) "Agency" means all state departments, agencies, authorities, quasi-public corporations and all political subdivisions, including cities, counties, boards of education and public service districts and the individual representatives of the agency appointed to oversee or supervise the project.

(2) "Board" means the Design-Build Board established pursuant to section four of this article to determine whether a public project satisfies the requirements of this article.

(3) "Design-build" is defined as providing responsibility within a single contract for design, construction or alteration of a building or buildings, together with incidental approaches, structures and facilities to be constructed, in which services within the scope of the practice of professional engineering or architecture, as defined by the laws of the State of West Virginia, are performed by an engineer or architect duly licensed in the State of West Virginia and in which services within the scope of construction contracting, as defined by the laws of the State of West Virginia, are performed by a contractor qualified and licensed under the applicable statutes. The design-build method of construction may not be used for any other construction projects, such as highway, water or sewer projects.

(4) "Design-build contract" means the contract between an agency and a design-builder to furnish the architecture, engineering, and related services as required, for a given public project, and to furnish the labor, materials and other construction of services for the same public project. A design-build contract may be conditional upon subsequent refinements in scope and price, and may permit the agency to make changes in the scope of the project without invalidating the design-build contract.

(5) "Design-builder" means the entity, whether natural person, partnership, joint venture, corporation, professional
corporation, business association or other legal entity, that
proposes to design and construct any public project governed by
the procedures of section seven, article six of this chapter and
this article.

(6) “Firm” means any individual, firm, partnership,
corporation, limited liability company, limited liability partner-
ship, association, joint venture or other legal entity permitted by
law to practice engineering, architecture or construction
contracting in the State of West Virginia.

(7) “Invitation for proposals” means the document or
publication by which an agency solicits proposals for a design-
build project.

(8) “Invitation for qualifications” means the document or
publication by which an agency solicits a statement of qualifi-
cations from potential design-builders in order to select three to
five design-builders to respond to the agency’s invitation for
proposal.

(9) “Performance criteria” means the requirements for the
public project, including as appropriate, aesthetics, capacity,
durability, production standard, ingress and egress requirements
or other criteria for the intended use of the public project,
expressed in performance-oriented drawings and specifications
suitable to allow the design-builder to make a proposal.

(10) “Performance criteria developer” means an architect
or engineer licensed under the laws of this state and, if applicable,
the architect’s or engineer’s employer, company, partners,
joint venturers, affiliates or subcontractors retained by the
agency to develop performance criteria and to serve as the
agency’s technical advisor.

(11) “Project” means that project described in the public
announcement.
(12) "Proposal" means an offer to enter into a design-build contract, as further defined in this article.

(13) "Qualified design-builder" means one of the three to five design-builders selected by the agency to respond to the invitation for proposals.

(14) "Responsive proposal" means a proposal that scores a minimum of seventy points out of a possible one hundred points in the qualitative evaluation.

(15) "Statement of qualifications" means descriptive information or other data submitted by a design-builder indicating its ability to satisfy the requirements set forth in the invitation for qualifications.

(16) "Substantial completion" means the stage in the progress of the work when the work or designated portion thereof is sufficiently complete in accordance with the design-build contract so the agency can occupy or utilize the work for its intended use.

(17) "Technical review committee" means the group of individuals who have education and experience in the design, construction, operation, administration, and finance requirements of the project and users of the project selected by the agency to review, evaluate and score the statement of qualifications and invitation for proposal.

(18) "Work" means the design, construction and services required by the design-build contract, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the design-builder to fulfill the design-builder's obligations. The work may constitute the whole or a part of the project.
§5-22A-3. Public policy; conditions for contract.

(a) Recognizing that the design-bid-build method provides a viable delivery method for public projects, it is the public policy of this state to permit an agency to enter into design-build contracts for public projects.

(b) An agency may not enter into a design-build contract for a public project unless:

1. The Department of Administration promulgates and publishes legislative rules pursuant to section six of this article, and consistent with this article for the solicitation and award of design-build contracts and adheres to this article and those rules;

2. The agency, for each public project or projects procured pursuant to this article, determines that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects and adheres to this article and the rules; and

3. The Board established pursuant to section four of this article determines that the public project is appropriate as a design-build project utilizing the mandatory criteria as provided in section five of this article.

(c) When the Design-Build Board, established pursuant to section four of this article, is terminated pursuant to the Acts of the Legislature, no agency may enter into a design-build contract. Provided, That agencies may pursue and complete any design-build projects approved by the Board prior to its termination date.

§5-22A-4. Design-Build Board and members; appointments; expense reimbursement; meetings.
(a) The Design-Build Board is continued within the Department of Administration and is composed of the following nine members who are appointed by the Governor with the advice and consent of the Senate: Two contractors licensed in the State of West Virginia; one architect licensed in the State of West Virginia; one professional engineer licensed in the State of West Virginia; the Secretary of the Department of Administration, ex officio; one representative from labor; and three other members of the public at large. Members of the Board are not entitled to compensation for services performed as members, but may be reimbursed for actual and necessary expenses incurred for each day in which he or she is engaged in the discharge of official business, in accordance with rules promulgated pursuant to section eleven, article three, chapter twelve of this code and travel management policies adopted by the Department of Administration. Each member of the Board shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia.

(b) Terms of office are for three years, staggered in accordance with the initial appointments under prior enactment of this section, each term ending on the same day of the same month of the year as did the term which it succeeds. Each member holds office from the date of his or her appointment or until his or her successor qualifies for office. When a vacancy occurs as a result of death, resignation or removal in the membership of the Board, the Governor shall fill the vacancy by an appointment within thirty days of the vacancy for the unexpired portion of the term in the same manner as original appointments.

(c) The Board shall elect a chairperson and other necessary officers. The Board shall adopt rules for its procedures. Five members of the Board is a quorum. A majority of the total membership is necessary to act at all times. Meetings of the Board shall be held upon the call of the Secretary of the
Department of Administration, the call of the chairperson or the call of any two members of the Board: Provided, That the Board shall meet at least four times each calendar year and all meetings of the Board must be held in accordance with the open governmental proceedings act as set out in article nine-a, chapter six of this code.

§5-22A-5. Duties of board to approve and monitor projects.

(a) Upon receipt of information that an agency wants to pursue the design-build method of project delivery, the Board, with the administrative support of the Secretary of the Department of Administration, shall notify the agency that failure to comply with the requirements of this article is a violation of state law. The Board shall notify the Secretary of the Department of Administration of any agency knowingly proceeding without meeting the requirements of this article.

(b) Prior to an agency issuing an invitation for qualifications for public projects, the Board must determine that the public project is appropriate as a design-build project in accordance with all of the following:

1. The agency has the appropriate legal authority to enter into a design-build contract;
2. The agency requires a project design and construction time line that is faster than the traditional design-bid-build process would allow;
3. The project requires close coordination of design and construction expertise or an extreme amount of coordination;
4. The agency requires early cost commitments;
5. The agency provides a written plan for funding the project including, but not limited to, the funding necessary to pay for design services and construction costs; and
(6) The agency has completed and submitted a written application for approval to the Board and requested a meeting with the Board to present its request for approval from the Board.

(c) Upon project approval under subsection (b) of this section, the agency shall submit to the Board monthly reports detailing the progress of the approved project. The reports shall continue until the start of construction to ensure that the agency has complied with any requirements established by the Board in its approval of the project. If any requirement is not satisfied, the Board may withdraw its approval of the project at any time prior to the start of construction. If the Board withdraws its approval, the agency may not proceed with the project as a design-build project until the requirements set forth in the board’s approval and the requirements of this article are met, as determined by the Board.

(d) On or before the first day of January of each year, the Board shall file an annual report with the Joint Committee on Government and Finance, and a copy of the report with the Legislative Librarian, setting forth a description of the projects approved during the preceding year, including copies of monthly monitoring reports submitted to the Board pursuant to subsection (c) of this section.


The Department of Administration shall propose rules for legislative approval pursuant to article three, chapter twenty-nine-a of this code and consistent with this article for the award of design-build contracts, which provide, at a minimum:

(1) The procedures to select or designate a performance criteria developer and prepare performance criteria;

(2) The application process for approval of a design-build project;
(3) The procedures for selecting the most qualified design-builders prior to the release of the invitation for proposals;

(4) The procedures for the preparation and contents of invitations for proposals;

(5) The procedures for preparing and submitting proposals;

(6) The procedures for evaluating proposals;

(7) The procedures for negotiations between the agency and those submitting proposals prior to the acceptance of a proposal, if any such negotiations are contemplated;

(8) The procedures for awarding and executing design-build contracts;

(9) The procedures for awarding design-build contracts in the event of public emergencies as defined in the applicable statutes; and

(10) The procedures for acting on formal protests relating to the solicitation or award of design-build contracts.

§5-22A-7. Design-builder qualifications; duties and powers.

(a) Each design-builder shall be licensed to do business in this state and be a licensed architect or engineer or a general contractor.

(b) Each design-builder may:

(1) Assign or sublet the responsibility for professional design services to an architect or engineer licensed in this state. The architect or engineer shall carry, at all times, professional design liability insurance in an appropriate amount as designated by the agency. The architect or engineer may be a full or part-time employee of the design-builder; and
(2) Assign or sublet responsibility for construction or other services requiring a contractor’s license to persons or entities licensed or otherwise qualified to provide those services in this state.

(c) Each design-builder may contract to provide professional services or construction services to the agency that the design-builder is not licensed, registered or otherwise authorized to provide so long as those services are assigned or sublet to a firm that is registered, licensed and qualified to provide those services.


(a) Each invitation for proposal must contain performance criteria prepared by an architect or engineer licensed under the laws of this state, referred to as the “performance criteria developer.” The agency shall select the performance criteria developer in accordance with the requirements of article one, chapter five-g of this code, and shall retain the performance criteria developer through final completion of the project to monitor adherence to the performance criteria.

(b) The agency may use its own employees to determine whether the agency should seek to construct a project using the design-build method of construction. The agency may use an employee as its performance criteria developer on projects for which construction costs are estimated to be one million dollars or less.

(c) The performance criteria developer and his or her employer, company, partners, joint venturers, affiliates or consultants may not submit a proposal to enter into the design-build contract and may not perform services under the design-build contract.
(d) The performance criteria developer may delegate the development of specific aspects of the design criteria to an architect or engineer licensed by this state and his or her employer, company, partners, joint venturers, affiliates or other consultants.

§5-22A-9a. Invitation for qualifications; selection of design-builders.

(a) The agency shall publish an invitation for qualifications which provides, at a minimum:

(1) A descriptive narrative of the type, scope and size of the proposed work;

(2) The evaluation criteria for selecting the three to five qualified design-builders; and

(3) A request for descriptive information or data supporting a design-builder’s claim to be able to perform the work, including, but not limited to:

(A) Licensing, insurance and evidence of good standing with the State of West Virginia and the agency;

(B) Bonding ability;

(C) Experience and technical expertise;

(D) History of past performance;

(E) Qualifications, experience and licenses of key management and professional staff including contractors, architects and engineers;

(F) Staffing capabilities;

(G) Current workload;
(H) Quality control and quality assurance policies and programs; and

(I) Safety record, including employee modification rating for the past three years.

(b) The agency shall review the statements of qualifications and select not fewer than three nor more than five of the most qualified design-builders to participate in the invitation for proposals. If fewer than three design-builders are determined to be qualified, the agency shall seek approval of the Design-Build Board to continue with the selection process.

(c) The agency shall make the results of the selection available to the design-builders within ten working days of the selection.

§5-22A-10. Invitation for proposals.

(a) The agency shall prepare an invitation for proposals for the qualified design-builders, which must provide at a minimum:

(1) The identity of the agency which will award the design-build contract;

(2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of this article, the legislative rules promulgated pursuant to section six of this article and any specific requirements of the agency;

(3) The proposed terms and conditions for the design-build contract;

(4) The performance criteria;
(5) The description of the drawings, specifications or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;

(6) A schedule for planned commencement and completion of the design-build contract;

(7) Budget limits for the design-build contract, if any;

(8) Requirements or restrictions for the subletting of specific portions of the design-build contract, if any; and

(9) Requirements for performance bonds, payment bonds, insurance, professional liability insurance and workers’ compensation coverage: Provided, That no officer or employee of this state or of any public agency, public authority, public corporation, or other public entity, and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond, or bid bond required or permitted by this section be obtained from any particular surety company, agent, broker, or producer.

(b) The agency shall provide, as applicable, additional information to the design-builder, including, but not limited to, surveys, soils reports, drawings or information regarding existing structures, environmental studies, photographs or references to public records, or other pertinent information.


(a) Proposals shall be submitted in two separate, clearly identified, sealed packages, with the first containing the technical submission and the second containing the cost submission. If the technical submission and cost submission are not submitted in two separate, clearly identified sealed packages, the Board shall disqualify the submission.
(b) Proposals may not be opened until expiration of the time established for making proposals as set forth in the invitation for proposals.

(c) The design-builder shall furnish a bid bond not to exceed five percent of the maximum cost of the design-build contract. In the event the proposal is accepted and the design-builder fails to execute the design-build contract, the bid bond will be forfeited.

(d) To the extent required in the invitation for proposal, the design-builder shall identify each firm to whom the design-builder proposes to sublet obligations under the design-build contract. At a minimum, the design-builder shall identify each firm responsible for the design and primary construction and their affiliation to the design-builder.

(e) The design-builder shall specify in the proposal the cost of the design-build contract that will not be exceeded if the proposal is accepted without change. After award of the proposal, the maximum cost of the proposal may be converted to fixed prices by negotiated agreement between the agency and the design-builder.

(f) Prior to the award of the design-build contract, all drawings, specifications and other information submitted in the proposal shall remain the property of the design-builder submitting the proposal. Additionally, prior to the award of the design-build contract, the agency shall maintain the secrecy and confidentiality of all information contained in the proposal. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications and information therein, shall be determined in accordance with existing law and the terms of the design-build contract.
Proposals may not be amended during the review process.

(h) At the discretion of the agency, a stipend may be paid to the design-builders not ultimately selected.


(a) The design-builder shall submit the proposal to the agency as required in the invitation for proposals. Clarifications may be required to ensure conformance of proposals with the performance criteria. In seeking clarifications, the performance criteria developer may not reveal any aspect of any proposal to any other design-builder. The performance criteria developer must certify that the proposal complies with the performance criteria.

(b) In the event the agency receives fewer than three proposals, the Board shall, in consultation with the Secretary of the Department of Administration, determine whether the agency may proceed or shall start the invitations for qualifications process over.

(c) After receiving the proposals, the technical review committee shall evaluate and score the technical submissions based upon the criteria and procedures set forth in the invitation for proposals.

(d) The agency shall submit the technical submissions, including the scores of the technical submissions, to the Board. The agency shall make the scores of the technical submissions available for public review.

(e) The Board shall ascertain that the technical submissions comply with the requirements of this article and shall notify the agency of its approval. The agency shall open the cost submissions and accept the proposal that receives the best score, as set
forth in the legislative rules promulgated pursuant to section six of this article.

(f) The agency shall notify the design-builder in writing that its proposal was accepted. At the same time notice of acceptance is delivered, the agency shall also inform, in writing, the design-builders whose proposals were not accepted. When a design-builder receives notification that its proposal was not accepted, the design-builder may, within three days after receipt of such notification, request in writing a copy of the scores and all other factors used or considered in the selection process.

§5-22A-15. Continuation of Design-Build Board.

Pursuant to the provisions of article ten, chapter four of this code, the Design-Build Board shall continue to exist until the first day of July, two thousand eight, unless sooner terminated, continued or reestablished.

CHAPTER 80

(S. B. 639 — By Senators Fanning, Harrison and Minard)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §39A-3-1, §39A-3-2 and §39A-3-3 of the Code of West Virginia, 1931, as amended, all relating to digital signatures generally; defining certain terms; providing for use of an electronic postmark; authorizing promulgation of an emergency rule; and authorizing use of a federal certificate authority and repository program.
Be it enacted by the Legislature of West Virginia:

That §39A-3-1, §39A-3-2 and §39A-3-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. DIGITAL SIGNATURES; STATE ELECTRONIC RECORDS AND TRANSACTIONS.

§39A-3-1. Definitions.
§39A-3-3. Duties of the Secretary of State; state agencies use of electronic signatures.

§39A-3-1. Definitions.

1 (1) “Certificate” means a computer-based record that:

2 (A) Identifies the certification authority issuing it;

3 (B) Names or identifies its subscriber;

4 (C) Contains the subscriber’s public key; and

5 (D) Is digitally signed by the certification authority issuing it.

6 (2) “Certification authority” means a person who issues a certificate.

7 (3) “Digital mark” consists of an electronic code indicating approval or confirmation which is entered into a protected digital record following access protocols which identify the user and require a password, personal identification number, encrypted card or other security device which restricts access to one or more authorized individuals; and

8 (4) “Digital signature” consists of a message transformed using an asymmetric cryptosystem so that a person having the
initial message and the signer’s public key can accurately determine:

(A) Whether the transformed message was created using the private key that corresponds to the signer’s public key; and

(B) Whether the initial message has been altered since the message was transformed.

(5) “Electronic postmark” means an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document existed in a certain form at a certain time and that an electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Post Office.

(6) “Federal certificate authority and repository program” means an official program established by an agency of the United States government for the issuance and authentication of digital signature certificates or other secure electronic authorizations to individuals for use in electronic transactions.


(a) Any governmental entity may, by appropriate official action, authorize the acceptance of electronic signatures in lieu of original signatures on messages or filings requiring one or more original signatures, subject to the requirements and limitations of section three of this article.

(b) Any governmental entity may elect to participate and utilize the Secretary of State’s digital signature authority and registry. Upon acceptance of and registration with the Secretary of State’s digital signature authority and registry, the govern-
mental entity's electronic transactions are bound to the regulation of the authority and registry and the rules promulgated thereunder. Any governmental entity not required to participate, but which elects to participate, may withdraw at any time from the program upon notification of the Secretary of State and all others who utilize that entity's digital signature program.

(c) Any governmental entity may adopt, in the manner provided by law, an ordinance, rule or official policy designating the documents on which electronic signatures, electronic postmarks or both are authorized and the type or types of electronic signatures which may be accepted for each type of document. Those governmental entities not subject to the provisions of chapter twenty-nine-a of this code which propose to authorize the acceptance of electronic signatures, electronic postmarks or both on documents filed with that entity shall give public notice of the proposed adoption in a manner prescribed by law, an ordinance, rule or official policy, but in no case for less than thirty days before adoption.

(d) Any governmental entity which intends to extend, modify or revoke the authority to accept electronic signatures or postmarks shall do so by the same means and with the same notice as required in this section for adoption.

§39A-3-3. Duties of the Secretary of State; state agencies use of electronic signatures.

(a) The Secretary of State shall propose emergency and legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish standards and processes to facilitate the use of electronic signatures in all governmental transactions by state agencies subject to chapter twenty-nine-a of this code. The rules shall include minimum standards for secure transactions
to promote confidence and efficiency in legally binding electronic document transactions. The rules may be amended from time to time to keep the rules current with new developments in technology and improvements in secured transaction processes.

(b) The Secretary of State is designated the certification authority and repository for all governmental agencies which are subject to chapter twenty-nine-a of this code and shall regulate transactions and digital signature verifications. The Secretary may enter into reciprocal agreements with all state and federal governmental entities to promote the efficient governmental use of electronic transactions. The Secretary of State may propose legislative rules for issuing certificates that bind public keys to individuals, and other electronic transaction authentication devices as provided in this article. The Secretary of State is further authorized to contract with a public or private entity to serve as certification authority for the State of West Virginia. The certification authority may contract with persons to provide certification services. Any contract entered into must require the certification authority to meet the requirements of this article and any rules promulgated by the Secretary of State.

c) Nothing contained in this article may be construed to mandate any specific form of technology, process or standard to be the only technology, process or standard which may be utilized by state entities. Nor may anything contained in this article be construed to limit the Secretary of State in adopting by legislative rule, alternative technologies to authorize electronic signatures and electronic postmarks.

d) Nothing contained in this article may be construed to authorize the use of electronic signatures, electronic postmarks, or both, to effect service of a summons and complaint.
AN ACT to amend and reenact §19-20A-5 of the Code of West Virginia, 1931, as amended, relating to vaccination of dogs and cats; increasing the veterinary fee for vaccinating dogs and cats for rabies from four dollars to eight dollars each.

Be it enacted by the Legislature of West Virginia:

That §19-20A-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 20A. VACCINATION OF DOGS AND CATS FOR RABIES.

§19-20A-5. Type of vaccine to be furnished; fee.

It shall be the duty of the veterinarian, or person vaccinating each animal to furnish vaccine of a type capable of establishing and maintaining immunity for a period of not less than twenty-four months and he or she shall charge and collect a fee of not more than eight dollars for each animal vaccinated, if done at a clinic established by a county commission or, if vaccinated at any other place, he or she shall charge and collect a reasonable fee for his or her services.
CHAPTER 82

(H. B. 2078 — By Delegate Caputo)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-20B-1, §19-20B-2, §19-20B-3, §19-20B-4, §19-20B-5 and §19-20B-6, all relating to requiring the spaying or neutering of dogs and cats adopted by shelters; requiring all shelters to require that dogs or cats adopted be spayed or neutered; establishing time-frames for spaying or neutering; requiring a deposit for adoptions in which the dog or cat has not yet been spayed or neutered upon adoption; providing for return of deposit upon proof of spaying or neutering; providing for use of deposit upon failure to reclaim deposit; allowing agency to petition for return of any dog or cat not timely neutered or spayed; and establishing 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 §19-20B-1, §19-20B-2, §19-20B-3, §19-20B-4, §19-20B-5 and §19-20B-6, all to read as follows:

ARTICLE 20B. SPAYING OR NEUTERING OF DOGS AND CATS.

§19-20B-1. Short title.
§19-20B-3. Deposit.
§19-20B-4. Petition for compliance.
§19-20B-5. Penalty.
§19-20B-6. Dogs or cats claimed by owner.
§19-20B-1. Short title.

1 This article may be cited as the “West Virginia Spay/Neuter Act.”


(a) No person may adopt a dog or cat from an agency, including, but not limited to, an animal shelter, animal control agency or humane shelter operated by a municipality, county, or other governmental agency within the state, or a private organization operating a shelter from which animals are adopted or reclaimed, unless:

(1) The dog or cat has already been spayed or neutered;

(2) The dog or cat has been spayed or neutered by a licensed veterinarian while in the custody of the agency; or

(3) The new owner signs a written agreement with the agency stating that the new owner will have the dog or cat spayed or neutered by a licensed veterinarian:

(A) Within thirty days of the date of the adoption, if the dog or cat is sexually mature; or

(B) Within thirty days after the dog or cat reaches six months of age, if the dog or cat is not sexually mature at the time of the adoption.

(b) Any agency as set forth in subsection (a) of this section which has written policy of not permitting the adopted dog or cat from being released from the custody of the agency to the new owner until the dog or cat has been spayed or neutered, does not have to comply with the provisions of subdivision (3), subsection (a) of this section.
(c) Nothing in this section precludes the spaying or neutering of a sexually immature dog or cat at the discretion of a licensed veterinarian with the consent of the new owner.

§19-20B-3. Deposit.

(a) If the dog or cat being adopted has not been spayed or neutered, the agency may require a deposit of not more than fifty dollars from the new owner prior to the adoption to ensure that the dog or cat is spayed or neutered. The new owner shall receive a refund of the deposit from the agency upon providing confirmation of the spaying or neutering.

(b) If the new owner fails to have the dog or cat spayed or neutered within the time frame established in section two of this article, or if the spaying or neutering is timely performed, but the new owner fails to request the return of the deposit within an additional thirty days after the date by which the spaying or neutering is required to be performed, the deposit shall be forfeited to the agency holding the deposit and shall be used by the agency to conduct programs to spay or neuter dogs and cats or to conduct educational programs in support of the spaying and neutering of dogs and cats.

§19-20B-4. Petition for compliance.

If a person fails to comply with the provisions of this article, the agency may file a petition with a court of competent jurisdiction seeking compliance or requesting return of the dog or cat to the agency from which it was adopted.

§19-20B-5. Penalty.

A person failing to have a dog or cat spayed or neutered within the time frame established in section two of this article is guilty of a misdemeanor and, upon conviction thereof, shall
be fined not less than one hundred fifty dollars nor more than
two hundred fifty dollars.

§19-20B-6. Dogs or cats claimed by owner.

Nothing in this article authorizes an agency to spay or
neuter a dog or cat if the dog or cat is claimed by and returned
to its lawful owner within five days of being taken into custody
by the agency.

CHAPTER 83

(Com. Sub. for H. B. 3178 — By Delegates Brown,
Amores, Staton, Webster, Hrutkay and Mahan)

[Amended and again passed April 16, 2005, as a result of the objections
of the Governor; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §48-5-608 of the Code of West
Virginia, 1931, as amended; and to amend and reenact §48-27-
said code, all relating to domestic violence generally; extending
protection to any residence; expanding bases for temporary
protective orders; and providing authority to arrest for violations
of out of state court orders.

Be it enacted by the Legislature of West Virginia:

That §48-5-608 of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §48-27-401, §48-27-503,
§48-27-504, §48-27-902 and §48-27-1001 of said code be amended
and reenacted, all to read as follows:
ARTICLE 5. DIVORCE.

§48-5-608. Injunctive relief or protective orders.

(a) When allegations of abuse have been proved, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other or interfering with the custodial or visitation rights of the other. The order may permanently enjoin the offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other or from entering or being present in the immediate environs of the residence of the petitioner or from contacting the other, in person or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other. The relief afforded by the provisions of this subsection may be ordered whether or not there are grounds for relief under subsection (c) of this section and whether or not an order is entered pursuant to such subsection.

(b) Any order entered by the court to protect a party from abuse may grant any other relief authorized to be awarded by the provisions of article twenty-seven of this chapter, if the party seeking the relief has established the grounds for that relief as required by the provisions of said article. The relief afforded by the provisions of this subsection may be ordered whether or not there are grounds for relief under subsection (c) of this section and whether or not an order is entered pursuant to subsection (c) of this section.

(c) The court, in its discretion, may enter a protective order, as provided by the provisions of article twenty-seven of this chapter, as part of the final relief in a divorce action, either as a part of a order for final relief or in a separate written order. A
29 protective order entered pursuant to the provisions of this
30 subsection shall remain in effect for the period of time ordered
31 by the court not to exceed one hundred eighty days: Provided,
32 That the court may extend the protective order for whatever
33 period the court deems necessary to protect the safety of the
34 petitioner and others threatened or at risk, if the court deter-
35 mines:

36 (A) That a violation of a protective order entered during or
37 extended by the divorce action has occurred; or

38 (B) Upon a motion for modification, that a violation of a
39 provision of a final order entered pursuant to this section has
40 occurred.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIO-
LENCE.


§48-27-504. Provisions in protective order for person witnessing or reporting
domestic violence.


1 (a) During the pendency of a divorce action, a person may
2 file for and be granted relief provided by this article until an
3 order is entered in the divorce action pursuant to Part 5-501, et
4 seq.;

5 (b) If a person who has been granted relief under this article
6 should subsequently become a party to an action for divorce,
7 separate maintenance or annulment, such person shall remain
8 entitled to the relief provided under this article including the
9 right to file for and obtain any further relief, so long as no
10 temporary order has been entered in the action for divorce,
11 annulment and separate maintenance, pursuant to Part 5-501, et
12 seq.;
13 (c) Except as provided in section 5-509 of this chapter and section 27-402 of this article for a petition and a temporary emergency protective order, no person who is a party to a pending action for divorce, separate maintenance or annulment in which an order has been entered pursuant to Part 5-501, et seq. of this chapter, shall be entitled to file for or obtain relief against another party to that action under this article until after the entry of a final order which grants or dismisses the action for divorce, annulment or separate maintenance.

22 (d) Notwithstanding the provisions set forth in section 27-505, when an action seeking a divorce, an annulment or separate maintenance, the allocation of custodial responsibility or a habeas corpus action to establish custody, the establishment of paternity, the establishment or enforcement of child support, or other relief under the provisions of this chapter is filed or is reopened by petition, motion or otherwise, then any order issued pursuant to this article which is in effect on the day the action is filed or reopened shall remain in full force and effect by operation of this statute until: (1) A temporary order other than a procedural order or a final order is entered pursuant to the provisions of Part 5-501, et seq. or Part 6-601 et seq. of this chapter; or (2) an order is entered modifying such order issued pursuant to this article; or (3) the entry of a final order granting or dismissing the action.


The terms of a protective order may include:

1 (1) Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

2 (2) Ordering the respondent to refrain from entering or being present in the immediate environs of the residence of the petitioner;
(3) Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;

(4) Establishing terms of temporary visitation with regard to the minor children named in the order including, but not limited to, requiring third party supervision of visitations if necessary to protect the petitioner and/or the minor children;

(5) Ordering the noncustodial parent to pay to the caretaker parent a sum for temporary support and maintenance of the petitioner and children, if any;

(6) Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

(7) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;

(8) Ordering the respondent to participate in an intervention program for perpetrators;

(9) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner;

(10) Providing for either party to obtain personal property or other items from a location, including granting temporary possession of motor vehicles owned by either or both of the parties, and providing for the safety of the parties while this occurs, including ordering a law-enforcement officer to accompany one or both of the parties;

(11) Ordering the respondent to reimburse the petitioner or other person for any expenses incurred as a result of the
domestic violence, including, but not limited to, medical expenses, transportation and shelter; and

(12) Ordering the petitioner and respondent to refrain from transferring, conveying, alienating, encumbering, or otherwise dealing with property which could otherwise be subject to the jurisdiction of the court or another court in an action for divorce or support, partition or in any other action affecting their interests in property.


When the person to be protected is a person who reported or was a witness to the domestic violence, the terms of a protective order may order:

(1) The respondent to refrain from abusing, contacting, telephoning, communicating, harassing, verbally abusing or otherwise intimidating the person to be protected;

(2) The respondent to refrain from entering the school, business or place of employment of the person to be protected for the purpose of violating the protective order; and

(3) The respondent to refrain from entering or being present in the immediate environs of the residence of the petitioner.


(a) When a respondent abuses the petitioner or minor children, or both, or is physically present at any location:

(1) In knowing and willful violation of the terms of an emergency or final protective order under the provisions of this article or sections 5-509 or 5-608 of this chapter granting the relief pursuant to the provisions of this article;
(2) In knowing and willful violation of the terms of a protection order from another jurisdiction that is required to be enforced pursuant to section 3, article 28 of this chapter; or

(3) In knowing and willful violation of the terms of a condition of bail, probation or parole imposed in another state which has the express intent or effect of protecting the personal safety of a particular person or persons in violation of section 28-7(a)(3) of this chapter then any person authorized to file a petition pursuant to the provisions of section 27-305 or the legal guardian or guardian ad litem may file a petition for civil contempt as set forth in section 27-901.

(b) When any such violation of a valid order has occurred, the petitioner may file a criminal complaint. If the court finds probable cause upon the complaint, the court shall issue a warrant for arrest of the person charged.


(a) When a law-enforcement officer observes any respondent abuse the petitioner or minor children or the respondent’s physical presence at any location in knowing and willful violation of the terms of an emergency or final protective order issued under the provisions of this article or section 5-509 or 5-608 of this chapter granting the relief pursuant to the provisions of this article, in knowing and willful violation of the terms of a protection order from another jurisdiction that is required to be enforced pursuant to section four, article twenty-eight of this chapter, he or she shall immediately arrest the respondent.

(b) When a family or household member is alleged to have committed a violation of the provisions of section 27-903 or 28-7, a law-enforcement officer may arrest the perpetrator for said offense where:
(1) The law-enforcement officer has observed credible corroborative evidence, as defined in subsection 27-1002(b), that the offense has occurred; and

(2) The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of the facts constituting a violation of section 27-903; or

(3) The law-enforcement officer has observed credible evidence that the accused committed the offense.

(c) Any person who observes a violation of a protective order as described in this section, or the victim of such abuse or unlawful presence, may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(d) Where there is an arrest, the officer shall take the arrested person before a circuit court or a magistrate and, upon a finding of probable cause to believe a violation of an order as set forth in this section has occurred, the court or magistrate shall set a time and place for a hearing in accordance with the West Virginia rules of criminal procedure.

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CHAPTER 84

(Com. Sub. for S. B. 435 — By Senators Kessler and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-3-3c
and §17B-3-9 of said code, all relating to consequences of not paying fines and fees; requiring notice of possibility of withholding of income tax refund under certain circumstances; providing that Tax Commissioner may withhold income tax refund under certain circumstances; providing for distribution of income tax refund withheld; providing Tax Commissioner's administrative fee; providing Tax Commissioner authority to promulgate rules; authorizing reissuance of notice by municipal court under certain circumstances; providing for continuance of driver's license suspension under certain circumstances; creating fund for administrative fee and providing for expenditures from the fund; providing for consequences of erroneous imposition of fines or fees; and increasing fees.

Be it enacted by the Legislature of West Virginia:

That §8-10-2b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-3-3c and §17B-3-9 of said code be amended and reenacted, all to read as follows:

Chapter
  17B. Motor Vehicle Driver's Licenses.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2b. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) If costs, fines, forfeitures or penalties imposed by the municipal court upon conviction of a person for a criminal offense as defined in section three-c, article three, chapter seventeen-b of this code are not paid in full within one hundred eighty days of the judgment, the municipal court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the
Division of Motor Vehicles of the failure to pay: Provided, That at the time the judgment is imposed, the judge shall provide the person with written notice that failure to pay the same as ordered may result in the withholding of any income tax refund due the licensee and shall result in the suspension of the person's license or privilege to operate a motor vehicle in this state and that the suspension could result in the cancellation of, the failure to renew or the failure to issue an automobile insurance policy providing coverage for the person or the person's family: Provided, however, That the failure of the judge to provide notice does not affect the validity of any suspension of the person's license or privilege to operate a motor vehicle in this state. For purposes of this section, payment shall be stayed during any period an appeal from the conviction which resulted in the imposition of costs, fines, forfeitures or penalties is pending.

Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the costs, fines, forfeitures or penalties are paid.

(b) Notwithstanding the provisions of this section to the contrary, the notice of the failure to pay costs, fines, forfeitures or penalties may not be given where the municipal court, upon application of the person upon whom the costs, fines, forfeitures or penalties were imposed filed prior to the expiration of the period within which these are required to be paid, enters an order finding that the person is financially unable to pay all or a portion of the costs, fines, forfeitures or penalties: Provided, That where the municipal court, upon finding that the person is financially unable to pay a portion of the costs, fines, forfeitures or penalties, requires the person to pay the remaining portion, the municipal court shall notify the Division of Motor Vehicles of the person's failure to pay if not paid within the period of time ordered by the court.
(c) If a person charged with a criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles within fifteen days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the judge. Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

(d) On and after the first day of July, two thousand eight, if the licensee fails to respond to the Division of Motor Vehicles order of suspension within ninety days of receipt of the certified letter, the municipal court of original jurisdiction shall notify the Tax Commissioner that the licensee has failed to pay the costs, fines, forfeitures or penalties assessed by the court or has failed to respond to the citation. The notice provided by the municipal court to the Tax Commissioner must include the licensee's social security number. The Tax Commissioner, or his or her designee, shall withhold from any personal income tax refund due and owing to a licensee the costs, fines, forfeitures or penalties due to the municipality, the Tax Commissioner's administration fee for the withholding and any and all fees that the municipal court would have collected had the licensee appeared: *Provided,* That the Tax Commissioner's administration fee may not exceed twenty-five dollars: *Provided, however,* That the Tax Commissioner may change this maximum amount limitation for this fee for fiscal years beginning on or after the first day of July, two thousand eight, by legislative rule promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code: *Provided further,* That the administrative fees deducted shall be deposited in the special revolving fund hereby created in the state treasury, which shall be designated as the "municipal fines and fees collection fund", and the Tax Commissioner shall
make such expenditures from the fund as he or she deems appropriate for the administration of this subsection. After deduction of the Tax Commissioner’s administration fee, the Tax Commissioner shall remit to the municipality all remaining amounts withheld pursuant to this section and the municipal court shall distribute applicable costs, fines, forfeitures or penalties owed to the municipality, the Regional Jail Authority Fund, the Crime Victims Compensation Fund, the Community Corrections Fund, the Governor’s subcommittee on law-enforcement training or any other fund or payee that may be applicable. After the costs, fines, forfeitures or penalties are withheld, the Tax Commissioner shall refund any remaining balance due the licensee. If the refund is not sufficient to cover all the costs, fines, forfeitures or penalties being withheld pursuant to this section, the Tax Commissioner’s administration fee shall be retained by the Tax Commissioner and the remaining money withheld shall be remitted by the Tax Commissioner to the municipality. The municipality shall then allocate the money so remitted to the municipality in the following manner: (1) Any costs, fines, forfeitures or penalties due to the municipality; (2) seventy-five percent of the remaining balance shall be paid to the appropriate Regional Jail Authority Fund; (3) fifteen percent of the remaining balance shall be paid to the Crime Victims Compensation Fund; (4) six percent of the remaining balance shall be paid into the Community Corrections Fund; and (5) the final four percent shall be paid to the Governor’s subcommittee on law-enforcement training. When the costs, fines, forfeitures or penalties exceed the licensee’s income tax refund, the Tax Commissioner shall withhold the remaining balance in subsequent years until such time as the costs, fines, forfeitures or penalties owed are paid in full. The Tax Commissioner shall remit the moneys that he or she collects to the appropriate municipality no later than the first day of July of each year. If the municipal court or the municipality subsequently determines that any such costs, fines,
forfeitures or penalties were erroneously imposed, the munici-

tality shall promptly notify the tax commissioner. If the

refunds have not been withheld and remitted, the tax commis-

sioner may not withhold and remit payment to the municipality

and shall so inform the municipality. If the refunds have

already been withheld and remitted to the municipality, the tax

commissioner shall so inform the municipality. In either event,

all refunds for erroneously imposed costs, fines, forfeitures or

penalties shall be made by the municipality and not by the tax

commissioner.

(e) Rules and effective date. — The Tax Commissioner may

promulgate such rules as may be useful or necessary to carry

out the purpose of this section and to implement the intent of

the Legislature, to be effective on the first day of July, two

thousand eight. Rules shall be promulgated in accordance with

the provisions of article three, chapter twenty-nine-a of this

code.

(f) On or before the first day of July, two thousand five, the

municipal court may elect to reissue notice as provided in

 subsections (a) and (c) of this section to the Division of Motor

Vehicles for persons who remain noncompliant: Provided, That

the person was convicted or failed to appear on or after the first

day of January, one thousand nine hundred ninety-three. If the

original notification cannot be located, the Division of Motor

Vehicles shall accept an additional or duplicate notice from the

municipal court clerk.

CHAPTER 17B. MOTOR VEHICLE DRIVER’S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF

LICENSES.

§17B-3-3c. Suspending license for failure to pay fines or penalties imposed as the

result of criminal conviction or for failure to appear in court.

§17B-3-9. Surrender and return of license not required.
§17B-3-3c. Suspending license for failure to pay fines or penalties imposed as the result of criminal conviction or for failure to appear in court.

(a) The Division shall suspend the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice from a circuit court, magistrate court or municipal court of this state, pursuant to section two-b, article three, chapter fifty of this code or section two-b, article ten, chapter eight of said code or section seventeen, article four, chapter sixty-two of said code, that such person has defaulted on the payment of costs, fines, forfeitures, penalties or restitution imposed on the person by the circuit court, magistrate court or municipal court upon conviction for any criminal offense by the date such court had required such person to pay the same, or that such person has failed to appear in court when charged with such an offense. For the purposes of this section; section two-b, article three, chapter fifty of said code; section two-b, article ten, chapter eight of said code; and section seventeen, article four, chapter sixty-two of said code, “criminal offense” shall be defined as any violation of the provisions of this code, or the violation of any municipal ordinance, for which the violation thereof may result in a fine, confinement in jail or imprisonment in the a correctional facility of this state: Provided, That any parking violation or other violation for which a citation may be issued to an unattended vehicle shall not be considered a criminal offense for the purposes of this section; section two-b, article ten, chapter eight of said code; section two-b, article three, chapter fifty of said code; or section seventeen, article four, chapter sixty-two of said code.

(b) A copy of the order of suspension shall be forwarded to such person by certified mail, return receipt requested. No order of suspension becomes effective until ten days after receipt of a copy of such order. The order of suspension shall
advise the person that because of the receipt of notice of the 
failure to pay costs, fines, forfeitures or penalties, or the failure 
to appear, a presumption exists that the person named in the 
order of suspension is the same person named in the notice. 
The Commissioner may grant an administrative hearing which 
substantially complies with the requirements of the provisions 
of section two, article five-a, chapter seventeen-c of this code 
upon a preliminary showing that a possibility exists that the 
person named in the notice of conviction is not the same person 
whose license is being suspended. Such request for hearing 
shall be made within ten days after receipt of a copy of the 
order of suspension. The sole purpose of this hearing shall be 
for the person requesting the hearing to present evidence that he 
or she is not the person named in the notice. In the event the 
Commissioner grants an administrative hearing, the Commis-
sioner shall stay the license suspension pending the Commis-
sioner’s order resulting from the hearing.

(c) A suspension under this section and section three-a of 
this chapter will continue until the person provides proof of 
compliance from the municipal, magistrate or circuit court and 
pays the reinstatement fee as provided in section nine of this 
article. The reinstatement fee is assessed upon issuance of the 
order of suspension regardless of the effective date of suspen-
sion.

§17B-3-9. Surrender and return of license not required.

The Division, upon suspending or revoking a license, may 
not require that the license be surrendered to and be retained by 
the Division. The surrender of a license may not be a precondi-
tion to the commencement and tolling of any applicable period 
of suspension or revocation: Provided, That before the license 
may be reinstated, the licensee shall pay a fee of fifty dollars, 
in addition to all other fees and charges, which shall be col-
lected by the Division and deposited in a special revolving fund
to be appropriated to the Division for use in the enforcement of the provisions of this section.

CHAPTER 85

(Com. Sub. for H. B. 2444 — By Delegates Amores, Palumbo, Pethtel, Stemple and Craig)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §17C-5-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-5A-3a, all relating to compliance with federal funding requirements regarding driving under the influence offenders; limiting work release to convictions for a first offense; and the creation of mandatory periods of electronically monitored home confinement.

Be it enacted by the Legislature of West Virginia:

That §17C-5-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17C-5A-3a of said code be amended and reenacted, all to read as follows:

Article
5. Serious Traffic Offenses.

5A. Administration Procedures For suspension And Revocation Of Licenses For Driving Under The Influence Of Alcohol, Controlled Substances Or Drugs.

ARTICLE 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances or drugs; penalties.
(a) Any person who:

1. Drives a vehicle in this state while he or she:
   1. Is under the influence of alcohol; or
   2. Is under the influence of any controlled substance; or
   3. Is under the influence of any other drug; or
   4. Is under the combined influence of alcohol and any controlled substance or any other drug; or
   5. Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight; and

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

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

(b) Any person who:

1. Drives a vehicle in this state while he or she:
   1. Is under the influence of alcohol; or
   2. Is under the influence of any controlled substance; or
(C) Is under the influence of any other drug; or

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

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

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

(c) Any person who:

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

(A) Is under the influence of alcohol; or

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

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

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

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

(2) When so driving does any act forbidden by law or fails to perform any duty imposed by law in the driving of the vehicle, which act or failure proximately causes bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in
the county or regional jail for not less than one day nor more
than one year, which jail term is to include actual confinement
of not less than twenty-four hours, and shall be fined not less
than two hundred dollars nor more than one thousand dollars.

(d) Any person who:

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

(A) Is under the influence of alcohol; or

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

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

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

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

(2) Is guilty of a misdemeanor and, upon conviction
thereof, shall be confined in the county or regional jail for not
less than one day nor more than six months, which jail term is
to include actual confinement of not less than twenty-four
hours, and shall be fined not less than one hundred dollars nor
more than five hundred dollars.

(e) Any person who, being an habitual user of narcotic
drugs or amphetamine or any derivative thereof, drives a
vehicle in this state, is guilty of a misdemeanor and, upon
conviction thereof, shall be confined in the county or regional
jail for not less than one day nor more than six months, which
jail term is to include actual confinement of not less than
twenty-four hours, and shall be fined not less than one hundred
dollars nor more than five hundred dollars.

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

82 (A) Is under the influence of alcohol; or

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

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

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

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

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

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

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

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

(i) Any person who:

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

(A) Is under the influence of alcohol; or

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

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

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

(E) Has an alcohol concentration in his or her blood of eight
hundredths of one percent or more, by weight; and
(2) The person when so driving has on or within the motor vehicle one or more other persons who are unemancipated minors who have not reached their sixteenth birthday, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than two days nor more than twelve months, which jail term is to include actual confinement of not less than forty-eight hours, and shall be fined not less than two hundred dollars nor more than one thousand dollars.

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

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

(l) For purposes of subsections (j) and (k) of this section relating to second, third and subsequent offenses, the following types of convictions are to be regarded as convictions under this section:

(1) Any conviction under the provisions of subsection (a), (b), (c), (d), (e) or (f) of this section or under a prior enactment of this section for an offense which occurred within the ten-year period immediately preceding the date of arrest in the current proceeding;
(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (a), (b), (c), (d), (e), (f) or (g) of this section, which offense occurred within the ten-year period immediately preceding the date of arrest in the current proceeding.

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

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

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

(p) The sentences provided herein upon conviction for a violation of this article are mandatory and may not be subject to suspension or probation: Provided, That the court may apply
the provisions of article eleven-a, chapter sixty-two of this code
to a person sentenced or committed to a term of one year or less
for a first offense under this section. An order for home
detention by the court pursuant to the provisions of article
eleven-b of said chapter may be used as an alternative sentence
to any period of incarceration required by this section for a first
or subsequent offense: Provided, however, That for any period
of home incarceration ordered for a person convicted of second
offense under this section, electronic monitoring shall be
required for no fewer than five days of the total period of home
confinement ordered and the offender may not leave home for
those five days notwithstanding the provisions of section five,
article eleven-b, chapter sixty-two of this code: Provided
further, That for any period of home incarceration ordered for
a person convicted of a third or subsequent violation of this
section, electronic monitoring shall be included for no fewer
than ten days of the total period of home confinement ordered
and the offender may not leave home for those ten days
notwithstanding section five, article eleven-b, chapter sixty-two
of this code.

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

§17C-5A-3a. Establishment of and participation in the motor
vehicle alcohol test and lock program.

(a) The Division of Motor Vehicles shall control and regulate
a motor vehicle alcohol test and lock program for persons
whose licenses have been revoked pursuant to this article or the
provisions of article five of this chapter, or have been convicted
under section two, article five of this chapter. The program shall
include the establishment of a users fee for persons participat-
ing in the program which shall be paid in advance and deposited
into the driver's rehabilitation fund. Except where specified
otherwise, the use of the term "program" in this section refers
to the motor vehicle alcohol test and lock program. The
Commissioner of the Division of Motor Vehicles shall propose
legislative rules for promulgation in accordance with the
provisions of chapter twenty-nine-a of this code for the purpose
of implementing the provisions of this section. The rules shall
also prescribe those requirements which, in addition to the
requirements specified by this section for eligibility to partici-
pat in the program, the Commissioner determines must be met
to obtain the Commissioner's approval to operate a motor
vehicle equipped with a motor vehicle alcohol test and lock
system. For purposes of this section, a "motor vehicle alcohol
test and lock system" means a mechanical or computerized
system which, in the opinion of the Commissioner, prevents the
operation of a motor vehicle when, through the system's
assessment of the blood alcohol content of the person operating
or attempting to operate the vehicle, the person is determined to
be under the influence of alcohol.

(b) (1) Any person whose license is revoked for the first
time pursuant to this article or the provisions of article five of
this chapter is eligible to participate in the program when the
person's minimum revocation period as specified by subsection
(c) of this section has expired and the person is enrolled in or
has successfully completed the safety and treatment program or
presents proof to the Commissioner within sixty days of
receiving approval to participate by the Commissioner that he
or she is enrolled in a safety and treatment program.

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

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

(B) The person will pay all costs of the educational pro-
gram, any administrative costs and all costs assessed for any
suspension hearing.

(3) Notwithstanding the provisions of this section to the
contrary, no person eligible to participate in the program under
this subsection may operate a motor vehicle unless approved to
do so by the Commissioner.

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

(1) For a person whose license has been revoked for a first
offense for six months pursuant to the provisions of section
one-a of this article for conviction of an offense defined in
subsection (d) or (f), section two, article five of this chapter or
pursuant to subsection (i), section two of this article, the
minimum period of revocation for participation in the test and lock program is thirty days and the minimum period for the use of the ignition interlock device is five months;

(2) For a person whose license has been revoked for a first offense pursuant to section seven, article five of this chapter, refusal to submit to a designated secondary chemical test, the minimum period of revocation for participation in the test and lock program is thirty days and the minimum period for the use of the ignition interlock device is nine months;

(3) For a person whose license has been revoked for a first offense pursuant to the provisions of section one-a of this article for conviction of an offense defined in subsection (a), section two, article five of this chapter or pursuant to subsection (f), section two of this article, the minimum period of revocation before the person is eligible for participation in the test and lock program is twelve months and the minimum period for the use of the ignition interlock device is two years;

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

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

(d) Notwithstanding any provision of the code to the contrary, a person shall participate in the program if the person is convicted under section two, article five of this chapter or the person's license is revoked under section two of this article or section seven, article five of this chapter and the person was previously either convicted or license was revoked under any provision cited in this subsection within the past ten years. The minimum revocation period for a person required to participate in the program under this subsection is one year and the minimum period for the use of the ignition interlock device is two years, except that the minimum revocation period for a person required to participate because of a violation of subsection (l), section two of this article or subsection (h), section two, article five of this chapter is two months and the minimum period of participation is one year. The Division will add one year to the minimum period for the use of the ignition interlock device for each additional previous conviction or revocation within the past ten years. Any person required to participate under this subsection must have an ignition interlock device installed on every vehicle he or she owns or operates.

(e) An applicant for the test and lock program may not have been convicted of any violation of section three, article four, chapter seventeen-b of this code for driving while the applicant's driver’s license was suspended or revoked within the six-month period preceding the date of application for admission to the test and lock program; such is necessary for employment purposes.
(f) Upon permitting an eligible person to participate in the program, the Commissioner shall issue to the person, and the person is required to exhibit on demand, a driver's license which shall reflect that the person is restricted to the operation of a motor vehicle which is equipped with an approved motor vehicle alcohol test and lock system.

(g) The Commissioner may extend the minimum period of revocation and the minimum period of participation in the program for a person who violates the terms and conditions of participation in the program as found in this section, or legislative rule, or any agreement or contract between the participant and the Division or program service provider.

(h) A person whose license has been suspended pursuant to the provisions of subsection (l), section two of this article who has completed the educational program, and who has not violated the terms required by the Commissioner of the person's participation in the program, is entitled to the reinstatement of his or her driver's license six months from the date the person is permitted to operate a motor vehicle by the Commissioner. When a license has been reinstated pursuant to this subsection, the records ordering the suspension, records of any administrative hearing, records of any blood alcohol test results and all other records pertaining to the suspension shall be expunged by operation of law: Provided, That a person is entitled to expungement under the provisions of this subsection only once. The expungement shall be accomplished by physically marking the records to show that the records have been expunged and by securely sealing and filing the records. Expungement has the legal effect as if the suspension never occurred. The records may not be disclosed or made available for inspection and in response to a request for record information, the Commissioner shall reply that no information is available. Information from the file may be used by the Commissioner for research and statistical purposes so long as the use of the information does not divulge the identity of the person.
(i) In addition to any other penalty imposed by this code, any person who operates a motor vehicle not equipped with an approved motor vehicle alcohol test and lock system during such person’s participation in the motor vehicle alcohol test and lock program is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period not less than one month nor more than six months and fined not less than one hundred dollars nor more than five hundred dollars. Any person who attempts to bypass the alcohol test and lock system is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not more than six months and fined not less than one hundred dollars nor more than one thousand dollars: Provided, That notwithstanding any provision of this code to the contrary, a person enrolled and participating in the test and lock program may operate a motor vehicle solely at his or her job site, if such is a condition of his or her employment. For the purpose of this section, job site does not include any street or highway open to the use of the public for purposes of vehicular traffic.

CHAPTER 86

(Com. Sub. for S. B. 603 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 4, 2005.]

AN ACT to repeal §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended; to repeal §18B-2-1, §18B-2-2 and §18B-2-3 of said code; to repeal §18B-3-5 and §18B-3-7 of said code; to repeal §18B-5-2d of said code; to amend and reenact §5-
6-4a of said code; to amend and reenact §5G-1-2 of said code; to amend said code by adding thereto a new section, designated §12-1-12d; to amend and reenact §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code; to amend and reenact §18-2-23a of said code; to amend said code by adding thereto a new section, designated §18-2-24; to amend said code by adding thereto a new section, designated §18A-3-11; to amend and reenact §18A-3A-1 and §18A-3A-2b of said code; to amend said code by adding thereto a new section, designated §18A-3A-6; to amend and reenact §18B-1-3 and §18B-1-6 of said code; to amend and reenact §18B-1A-2 and §18B-1A-6 of said code; to amend and reenact §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code; to amend said code by adding thereto a new section, designated §18B-1B-13; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend said code by adding thereto a new section, designated §18B-2A-8; to amend said code by adding thereto a new section, designated §18B-2B-9; to amend and reenact §18B-3-1, §18B-3-2 and §18B-3-3 of said code; to amend said code by adding thereto a new section, designated §18B-3-4; to amend and reenact §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code; to amend and reenact §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-9 of said code; to amend said code by adding thereto a new section, designated §18B-5-10; to amend and reenact §18B-10-1, §18B-10-5 and §18B-10-6 of said code; to amend said code by adding thereto a new section, designated §18B-10-6a; to amend said code by adding thereto a new section, designated §18B-11-7; and to amend and reenact §18B-14-11 of said code, all relating to public and higher education generally; authorizing and requiring certain electronic requisitions; exempting certain institutions from providing certain documentation with requisitions; requiring certain institutions to submit certain documentation to Joint Committee on Government and Finance; expanding certain professional development provisions; establishing a structure to enhance collaboration between certain state and regional entities in providing professional development; requiring
certain state and regional entities to ensure coordination and collaboration in professional development efforts and designating certain priorities for professional development; limiting the circumstances for procuring out-of-state services regarding certain professional development issues; reconstituting the Center for Professional Development Board and modifying its membership, duties and certain required employee provisions; creating position of Chief Executive Officer; requiring certain professional development studies and reports; creating the position of Coordinator of the Principals Academy; prohibiting the required attendance of certain employees at certain professional development programs under certain circumstances until date certain; transferring powers, authorities, responsibilities and duties between certain entities; definitions; requiring transfer of real property under certain circumstances from Higher Education Policy Commission to certain institutions; clarifying requirements for promulgation of higher education rules; requiring certain institutions to promulgate certain rules; establishing certain requirements for rule adoption, validation, enforcement and reporting; limiting certain authorities when rules not adopted; clarifying legislative intent relating to mission of certain institutions; limiting Policy Commission jurisdiction, power, responsibility and authority regarding certain institutions; modifying Policy Commission duties; modifying salary limit of Chancellor for Higher Education; specifying limitation of certain entities on exercising certain authorities and fulfilling certain responsibilities; modifying responsibility for assigning institutions' geographic areas of responsibility; modifying participation requirements and authorization for certain state institutions of higher education to offer graduate programs under certain circumstances and expanding the authorized institutions to offer such programs; modifying certain academic program approval provisions; transferring to certain institutions authority regarding certain capital project management and arrangements; preserving the jurisdiction and authority of certain higher education entities to
manage technology; clarifying authority of Policy Commission to assess certain fees; specifying when discharging certain duties requires consultation among various higher education entities; transferring to certain institutions authority to approve tuition and fee increases and set standards for conferring degrees; exempting certain institutions from Policy Commission approval requirements for executing certain documents, instruments, purchases and procurements; requiring disease awareness initiatives; requiring study and report of recommendations relating to higher education personnel issues; establishing scope of personnel study and charges for implementation; requiring employee participation; modifying requirements and authorities regarding delegation of powers by certain higher education entities; providing for disability insurance for employees; providing flexibility measures for certain state institutions of higher education and providing for future application of flexibility measures to additional state institutions of higher education; modifying governance by the Council For Community and Technical College Education; expanding and modifying the powers and duties of research, doctoral-granting public universities and their governing boards; providing legislative findings, purpose and intent for such expansion and modification; expanding authority for certain institutions and establishing parameters and procedures for donating certain surplus computers and related items; limiting application to certain institutions of certain surplus item disposal authority; defining the relationship between the Policy Commission and certain governing boards and between the West Virginia Council for Community and Technical College Education and certain governing boards; establishing and defining the duties of certain governing boards to address state priorities and the goals for post-secondary education established by the Legislature; defining state priorities; requiring annual report of progress; expanding penalty options and jurisdiction of certain parking and vehicle operating violations for certain institutions; specifying certain acceptable qualifications for employment as campus
police officer at certain institutions; expanding authority of certain campus police officers; expanding responsibility of certain institutions to investigate certain crimes; exempting certain institutions from requirements to participate in certain cooperative purchasing and operating arrangements; modifying format and documentation requirements for acceptance of certain documents by State Auditor; expanding permissible uses for purchase card; transferring to State Auditor certain duties regarding purchase cards; transferring to State Auditor authority to approve certain purchase card payments designated to exceed the purchase amount limits and to set the amount by which such payments may exceed the limits; modifying for certain institutions certain document submission requirements for travel expense reimbursement; specifying responsibility of certain institutions for ensuring fiscal integrity of operations; establishing requirements for implementing best business and management practices for certain institutions, including certain required reports; limiting and clarifying certain document approval authority of the Attorney General; authorizing state medical and health professionals schools to participate in self-insurance retention programs pursuant to certain conditions; authorizing state Board of Risk and Insurance Management to enter into agreements with state medical and health professionals schools to develop and implement self-insurance retention programs; requiring plan review by state Insurance Commissioner prior to implementing self-insurance retention programs; authorizing Insurance Commissioner and state Board of Risk and Insurance Management to promulgate emergency rules; expanding discretion of certain institutions to offer undergraduate- and graduate-level fee waivers, eliminating certain waiver award restrictions and requiring rule governing waivers; requiring certain institutions to establish a nonprofit Regional Brownfield Assistance Center; defining Assistance Center service regions; establishing Assistance Center powers and duties; providing temporary authorization to engage in alternative investment options for certain
moneys of certain state institutions of higher education and including a set expiration date for such authorization; creating Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics; establishing membership; assigning charge to Commission; providing legislative findings and requiring report to Legislative Oversight Commission on Education Accountability; deleting, repealing and updating certain obsolete provisions; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended, be repealed; that sections §18B-2-1, §18B-2-2 and §18B-2-3 of said code be repealed; that §18B-3-5 and §18B-3-7 of said code be repealed; that §18B-5-2d of said code be repealed; that §5-6-4a of said code be amended and reenacted; that §5G-1-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-1-12d; that §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code be amended and reenacted; that §18-2-23a of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-2-24; that said code be amended by adding thereto a new section, designated §18A-3-11; that §18A-3A-1 and §18A-3A-2b of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-3A-6; that §18B-1-3 and §18B-1-6 of said code be amended and reenacted; that §18B-1A-2 and §18B-1A-6 of said code be amended and reenacted; that §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1B-13; that §18B-2A-3 and §18B-2A-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-2A-8; that said code be amended by adding thereto a new section, designated §18B-2B-9; that §18B-3-1, §18B-3-2 and §18B-3-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-3-4; that §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code be
amended and reenacted; that §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-9 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-5-10; that §18B-10-1, §18B-10-5 and §18B-10-6 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-10-6a; that said code be amended by adding thereto a new section, designated §18B-11-7; and that §18B-14-11 of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority Of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

5G. Procurement of Architect-engineer Services By State and its Subdivisions.


18. Education.

18A. School Personnel.

18B. Higher Education.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 6. STATE BUILDINGS.

§5-6-4a. Review of real property contracts and agreements; master plan for office space.

(a) The Secretary of Administration shall provide to the Joint Committee on Government and Finance a copy of a contract or agreement for real property exceeding one million dollars and a report setting forth a detailed summary of the terms of the contract or agreement, including the name of the owner of the property and the agent involved in the sale, at least thirty days prior to any sale, exchange, transfer, purchase, lease
purchase, lease or rental of real property, any refundings of
lease purchases, leases or rental agreements, any construction
of new buildings and any other acquisition or lease of buildings,
office space or grounds by any state agency, including the
Higher Education Policy Commission, but excepting the
transactions of the state institutions of higher education known
as Marshall University and West Virginia University and the
Division of Highways for state road purposes pursuant to article
two-a, chapter seventeen of this code: Provided, That a
contract or agreement for the lease purchase, lease or rental of
real property by any state agency, where the costs of real
property acquisition and improvements are to be financed, in
whole or in part, with bond proceeds, may contain a preliminary
schedule of rents and leases for purposes of review by the
committee.

(b) For renewals of contracts or agreements required to be
reported by the provisions of this section, the Secretary of
Administration shall provide a report setting forth a detailed
summary of the terms of the contract or agreement, including
the name of the owner of the property.

(c) Within thirty days after receipt of the contract, agree-
ment or report, the committee shall meet and review the
contract, agreement or report.

(d) On or before the first day of July, two thousand six, the
Secretary of Administration shall conduct an inventory of
available office space and office space needs and shall develop
and present a master plan for the utilization of office space for
state agencies to the Joint Committee on Government and
Finance.

(e) The governing boards of the state institutions of higher
education known as Marshall University and West Virginia
University shall provide to the Joint Committee on Government
and Finance a copy of any contract or agreement for real property exceeding one million dollars and shall make available to the Joint Committee on Government and Finance upon request a summary of the terms of the contract or agreement, including the name of the owner of the property and the agent involved in the sale.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-2. Definitions.

As used in this section:

(a) The term “agency” means all state departments, agencies, authorities, quasipublic corporations and all political subdivisions, including cities, counties, boards of education and public service districts, except, for the purposes of this section, the term “agency” does not include the state institutions of higher education known as Marshall University and West Virginia University.

(b) The term “architectural and engineering services” includes those professional services of an architectural or engineering nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform.

(c) The term “director of purchasing” means any individual assigned by any agency to procure the services of architects and engineers.

(d) The term “firm” or “professional firm” means any individual, firm, partnership, corporation, association or other
19 legal entity permitted by law to practice the professions of
20 architecture and engineering.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article
1. State Depositories.
3. Appropriations, Expenditures and Deductions.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12d. Pilot program for investments by Marshall University and West Virginia University.

(a) Notwithstanding any provision of this article to the contrary, the governing boards of Marshall University and West Virginia University each may invest certain funds with its respective nonprofit foundation that has been established to receive contributions exclusively for that university and which exists on the first day of January, two thousand five. Any such investment is subject to the limitations of this section.

(b) A governing board, through its chief financial officer may enter into agreements, approved as to form by the State Treasurer, for the investment by its foundation of certain funds subject to their administration. Any interest or earnings on the moneys invested is retained by the investing university.

(c) Moneys of a university that may be invested with its foundation pursuant to this section are those subject to the administrative control of the university that are collected under an act of the Legislature for specific purposes and do not include any funds made available to the university from the state general revenue fund or the funds established in sections eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys permitted to be invested under this section may be aggregated in an investment fund for investment purposes.
(d) Of the moneys authorized for investment by this section, Marshall University and West Virginia University each, respectively, may have invested with its foundation at any time not more than the greater of:

(1) Eighteen million dollars for Marshall University and twenty-five million dollars for West Virginia University; or

(2) Sixty-five percent of its unrestricted net assets as presented in the statement of net assets for the fiscal year end audited financial reports.

(e) Investments by foundations that are authorized under this section shall be made in accordance with and subject to the provisions of the Uniform Prudent Investor Act codified as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each governing board shall establish investment policies in accordance with the Uniform Prudent Investor Act for those moneys invested with its foundation. The governing board shall review, establish and modify, if necessary, the investment objectives as incorporated in its investment policies so as to provide for the financial security of the moneys invested with its foundation. The governing boards shall give consideration to the following:

(1) Preservation of capital;

(2) Diversification;

(3) Risk tolerance;

(4) Rate of return;

(5) Stability;

(6) Turnover;

(7) Liquidity; and
(8) Reasonable cost of fees.

(f) A governing board shall report annually by the thirty-first day of December, to the Governor and to the Joint Committee on Government and Finance on the performance of investments managed by its foundation pursuant to this section.

(g) The authority of a governing board to invest moneys with its foundation pursuant to this section expires on the first day of July, two thousand ten.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§ 12-3-5. When requisition to Auditor sufficient authority for issuing warrant.

§ 12-3-6. Requisitions on behalf of state boards and institutions.

§ 12-3-7. Payment of compensation and expenses of members of state boards and commissions; embezzlement.

§ 12-3-8. Requisition on behalf of institutions to be accompanied by statement showing funds on hand.

§ 12-3-5. When requisition to Auditor sufficient authority for issuing warrant.

(a) When an appropriation has been made by law, subject to the order or payable on the requisition of a particular officer, board or person, the order or written or electronic requisition is sufficient authority to the Auditor to issue a warrant for the same or any party thereof.

(b) The Auditor:

(1) Shall accept an electronic requisition from Marshall University and West Virginia University;

(2) May accept an electronic requisition from any entity other than Marshall University or West Virginia University at his or her discretion; and
(3) May not issue a warrant for an amount that exceeds the appropriation or for an expired appropriation.

§12-3-6. Requisitions on behalf of state boards and institutions.

(a) An appropriation made to or for any state board or institution shall be drawn from the Treasury upon the requisition of an appropriate officer thereof to the Auditor at such times and in such amounts as is necessary for the purposes for which the appropriation is made. The Auditor shall pay the amount named in the requisition at such times and in such installments as are necessary for the purposes for which the appropriation is made.

(b) Except as provided in subsection (c) of this section, a requisition for appropriation for new buildings and substantial betterments shall be accompanied by the architect’s estimate that the amount named in the requisition is needed for immediate use.

(c) The provisions of subsection (b) of this section do not apply to a requisition from:

(1) An institution from which the Auditor is required to accept an electronic requisition. Such an institution is not required to submit the documentation required in subsection (b) of this section, but shall maintain the documentation for inspection at the Auditor’s request; and

(2) The Commissioner of Corrections.

(d) The Auditor may issue a warrant to pay money out of the State Treasury only if the money is needed for the present use.

§12-3-7. Payment of compensation and expenses of members of state boards and commissions; embezzlement.
(a) Unless otherwise provided by law, a member of any state board or commission:

(1) Receives four dollars per day for each day necessarily employed as such, including time spent traveling to and returning from the meeting location;

(2) Receives the actual and necessary expenses incurred in the discharge of his or her duties; and

(3) Does not receive mileage reimbursement.

(b) Prior to receiving compensation or expense reimbursement:

(1) The member prepares in duplicate an itemized statement specifying the number of days spent and the expenses incurred;

(2) The member certifies the accuracy of the itemized statement;

(3) The member delivers the original to the secretary or clerk of the board or commission for preservation in its office; and

(4) The secretary or clerk immediately forwards the duplicate to the Auditor.

(c) If any member willfully makes a greater charge of services or expenses than truth justified, he or she is guilty of embezzlement and punished accordingly.

(d) The governing board of Marshall University and West Virginia University each satisfies the requirements of subsection (b) of this section by maintaining the member's original itemized, certified statement and submitting an electronic requisition to the Auditor.
§12-3-8. Requisition on behalf of institutions to be accompanied by statement showing funds on hand.

A requisition made upon the Auditor for any money appropriated for a state correctional facility; the West Virginia School for the Deaf and Blind; state mental health facilities; state hospitals; corrections facilities; Marshall University; West Virginia University; any other public institution for education, charity or correction; or institutions under the jurisdiction of the Higher Education Policy Commission or the West Virginia Council for Community and Technical College Education shall be accompanied by a written or electronic statement of a financial officer of the institution, showing the amount of money in his or her hands to the credit of the institution, or otherwise in its control, on the day the requisition is forwarded for payment.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-23a. Annual professional staff development goals established by State Board; coordination of professional development programs; program development, approval and evaluation.

§18-2-24. Collaboration of state institutions of higher education having a teacher preparation program with the Center for Professional Development and the regional education service agencies.

§18-2-23a. Annual professional staff development goals established by State Board; coordination of professional development programs; program development, approval and evaluation.

(a) Legislative intent. — The intent of this section is:

(1) To provide for the coordination of professional development programs by the State Board;
(2) To promote high-quality instructional delivery and management practices for a thorough and efficient system of schools; and

(3) To ensure that the expertise and experience of state institutions of higher education with teacher preparation programs are included in developing and implementing professional development programs.

(b) Goals. — The State Board annually shall establish goals for professional staff development in the public schools of the state. As a first priority, the State Board shall require adequate and appropriate professional staff development to ensure high quality teaching that will enable students to achieve the content standards established for the required curriculum in the public schools.

The State Board shall submit the goals to the State Department of Education, the Center for Professional Development, the regional educational service agencies, the Higher Education Policy Commission and the Legislative Oversight Commission on Education Accountability on or before the fifteenth day of January each year.

The goals shall include measures by which the effectiveness of the professional staff development programs will be evaluated. The professional staff development goals shall include separate goals for teachers, principals and paraprofessional service personnel and may include separate goals for classroom aides and others in the public schools.

In establishing the goals, the State Board shall review reports that may indicate a need for professional staff development including, but not limited to, the report of the Center for Professional Development created in article three-a, chapter eighteen-a of this code, student test scores on the statewide student assessment program, the measures of student and school
performance for accreditation purposes, school and school
district report cards and its plans for the use of funds in the
strategic staff development fund pursuant to section thirty-two,
article two, chapter eighteen of this code.

(c) The Center for Professional Development shall design
a proposed professional staff development program plan to
achieve the goals of the State Board and shall submit the
proposed plan to the State Board for approval as soon as
possible following receipt of the State Board goals each year.
In developing and implementing this plan, the Center first shall
rely upon the available expertise and experience of state
institutions of higher education before procuring advice,
technical assistance or consulting services from sources outside
the state.

The proposed plan shall include a strategy for evaluating
the effectiveness of the professional staff development pro-
grams delivered under the plan and a cost estimate. The State
Board shall review the proposed plan and return it to the Center
for Professional Development noting whether the proposed plan
is approved or is not approved, in whole or in part. If a
proposed plan is not approved in whole, the State Board shall
note its objections to the proposed plan or to the parts of the
proposed plan not approved and may suggest improvements or
specific modifications, additions or deletions to address more
fully the goals or eliminate duplication. If the proposed plan is
not wholly approved, the Center for Professional Development
shall revise the plan to satisfy the objections of the State Board.
State board approval is required prior to implementation of the
professional staff development plan.

(d) The State Board approval of the proposed professional
staff development plan shall establish a Master Plan for
Professional Staff Development which shall be submitted by the
State Board to the affected agencies and to the Legislative
Oversight Commission on Education Accountability. The Master Plan shall include the State Board-approved plans for professional staff development by the State Department of Education, the Center for Professional Development, the state institutions of higher education and the regional educational service agencies to meet the professional staff development goals of the State Board. The Master Plan also shall include a plan for evaluating the effectiveness of the professional staff development delivered through the programs and a cost estimate.

The Master Plan shall serve as a guide for the delivery of coordinated professional staff development programs by the State Department of Education, the Center for Professional Development, the state institutions of higher education and the regional educational service agencies beginning on the first day of June in the year in which the Master Plan was approved through the thirtieth day of May in the following year. This section does not prohibit changes in the Master Plan, subject to State Board approval, to address staff development needs identified after the Master Plan was approved.

§18-2-24. Collaboration of state institutions of higher education having a teacher preparation program with the Center for Professional Development and the regional education service agencies.

(a) For the purposes of this section, “teacher preparation institution” means a state institution of higher education with a teacher preparation program.

(b) The intent of this section is to establish a structure to enhance collaboration between the teacher preparation institutions, the Center for Professional Development and the regional education service agencies in providing professional development.
(c) The Legislature finds that:

1. There is insufficient collaboration of the teacher preparation institutions with the Center for Professional Development and each of the regional education service agencies;

2. More collaboration would prevent duplication of services and result in higher quality professional development;

3. Creating a structure and assigning responsibility would promote more effective collaboration;

4. The state's research and doctoral degree-granting public institutions of higher education, West Virginia University and Marshall University, have the most capacity to be important sources of research and expertise on professional development;

5. West Virginia University and Marshall University are the only institutions in the state that offer course work leading to a doctoral degree in education administration;

6. As the largest state institutions of higher education, West Virginia University and Marshall University have more capacity than any other institution in the state to handle the additional responsibilities assigned in this section;

7. The coordination by West Virginia University and Marshall University of the efforts of other teacher preparation institutions to collaborate with the Center for Professional Development and each of the regional education service agencies will provide points of accountability for the collaboration efforts of the other institutions; and

8. The State Board's authority over the regional education service agencies can be used to motivate the agencies to collaborate with the teacher preparation institutions in provid-
ing professional development and will serve as a point of accountability for the collaboration efforts of the agencies.

(d) West Virginia University and Marshall University shall collaborate with the Center for Professional Development in performing the Center’s duties. This collaboration shall include at least the following:

(1) Including the teacher preparation institutions in the proposed professional staff development program plan required to be submitted to the State Board by section twenty-three-a of this article;

(2) Providing any available research-based expertise that would be helpful in the design of the proposed professional staff development program plan;

(3) Providing any available research-based expertise that would be helpful in the implementation of professional development programs; and

(4) Arranging for other state institutions of higher education having a teacher preparation program to assist the Center when that assistance would be helpful.

(e) All teacher preparation institutions shall collaborate with the regional education service agency of the service area in which the institution is located at least to:

(1) Prevent unnecessary duplication of services;

(2) Assist in the implementation of the professional development programs of the regional education service agency; and

(3) Assist the regional education service agency in obtaining any available grants for professional development or to apply for any available grant with the agency collaboratively.
(f) Since no teacher preparation institution exists in the service area of Regional Education Service Agency IV, Marshall University shall collaborate with that Agency for the purposes set forth in subdivision (e) of this section.

(g) In addition to the collaboration required by subsections (e) and (f) of this section of all teacher preparation institutions, West Virginia University and Marshall University shall:

1. Coordinate the collaboration of each of the other teacher preparation institutions in their designated coordination area with the appropriate regional education service agency. This coordination at least includes ensuring that each of the other institutions are collaborating with the appropriate regional education service agency; and

2. Collaborate with each of the other teacher preparation institutions in their designated coordination area. This collaboration at least includes providing assistance to the other institutions in providing professional development and in their collaboration with the appropriate regional education service agency.

(h) The designated coordination area of West Virginia University includes the service areas of Regional Education Service Agencies V, VI, VII and VIII. The designated coordination area of Marshall University includes the service areas of Regional Education Service Agencies I, II, III and IV.

(i) The State Board shall ensure that each of the regional education service agencies is collaborating with the teacher preparation institution or institutions in its service area for the purposes set forth in subsection (e) of this section. Since Regional Education Service Agency IV does not have a teacher preparation institution in its service area, the State Board shall ensure that it is collaborating with Marshall University for the purposes set forth in subsection (e) of this section.
(j) Before a regional education service agency, except for Regional Education Service Agency IV, obtains professional development related services or expertise from any teacher preparation institution outside of that agency’s service area, the agency shall inform the Center for Professional Development Board. Before Regional Education Service Agency IV obtains professional development related services or expertise from any teacher preparation institution other than Marshall University, the agency shall inform the Center Board.

(k) The collaboration and coordination requirements of this section include collaborating and coordinating to provide professional development for at least teachers, principals and paraprofessionals.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.


The Legislative Oversight Commission on Education Accountability shall cause a study to be conducted to determine and to recommend standards and best practices for professional development that are focused on advancing student achievement. The study and a final report of recommendations shall be completed prior to the first day of September, two thousand five. The Commission shall submit the final report to the Joint Committee on Government and Finance. The Commission shall determine if resources to assist in the completion of the study are available from sources other than public funds and shall report such to the Joint Committee.
ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.

§18A-3A-1. Center for Professional Development; intent and mission; Principals Academy curriculum and expenses; authorization to charge fees.


§18A-3A-6. Attendance outside the employment term.

§18A-3A-1. Center for Professional Development; intent and mission; Principals Academy curriculum and expenses; authorization to charge fees.

(a) Teaching is a profession that directly correlates to the social and economic well-being of a society and its citizens. Superior teaching is essential to a well-educated and productive populace. Strong academic leadership provided by principals and administrators skilled in modern management principles is also essential. The intent of this article is to recognize the value of professional involvement by experienced educators, principals and administrators in building and maintaining a superior force of professional educators and to establish avenues for applying this involvement.

(b) The general mission of the Center is to advance the quality of teaching and management in the schools of West Virginia through: (1) The implementation primarily of statewide training, professional staff development, including professional staff development for at least teachers, principals and paraprofessionals, and technical assistance programs and practices as recommended by the State Board to assure the highest quality of teaching and management; and (2) the provision of technical and other assistance and support to regional and local education agencies in identifying and providing high-quality professional staff development, including professional staff development for at least teachers, principals and paraprofessionals, and training programs and implementing best practices to meet their locally identified needs. The Center also may implement local programs if the
State Board, in its Master Plan for Professional Staff Development established pursuant to section twenty-three-a, article two, chapter eighteen of this code, determines that there is a specific local need for the programs. Additionally, the Center shall perform other duties assigned to it by law.

Nothing in this article shall be construed to require any specific level of funding by the Legislature.

(c) The Center for Professional Development Board is reconstituted, and all terms of members elected or appointed prior to the effective date of this section are expired. The Center Board shall consists of thirteen persons as follows:

(1) The Secretary of Education and the Arts, ex officio, and the State Superintendent, ex officio, each of whom is:

   (A) Entitled to vote; and
   (B) A Cochair of the Board.

(2) Two members of the State Board, elected by the State Board;

(3) One person employed by West Virginia University and one person employed by Marshall University, both of whom are:

   (A) Appointed by the President of the employing institution;
   (B) Faculty in the teacher education section of the employing institution; and

   (C) Knowledgeable in matters relevant to the issues addressed by the Center;
(4) One Regional Education Service Agency Executive Director, elected by all of the Regional Education Service Agency Executive Directors;

(5) Three experienced educators, of whom one is a working classroom teacher, one is a school principal and one is a county administrator. All such educators are:

(A) Appointed by the Governor by and with the advice and consent of the Senate;

(B) Experienced educators who have achieved recognition for their superior knowledge, ability and performance in teaching or management, as applicable; and

(C) Knowledgeable in matters relevant to the issues addressed by the Center; and

(6) Three citizens of the state who are:

(A) Knowledgeable in matters relevant to the issues addressed by the Center, including, but not limited to, professional development and management principles; and

(B) Appointed by the Governor by and with the advice and consent of the Senate.

(C) Not more than two such members may be residents within the same congressional district.

(d) Each appointment and election is for a two-year term. Such members may serve no more than two consecutive two-year terms.

(1) The State Board shall elect another member to fill the unexpired term of any person who vacates State Board membership.
(2) The Regional Education Service Agency Executive Directors shall elect an executive director to fill the unexpired term of any executive director who ceases to be employed in that capacity.

(3) Of the initial members appointed by the Governor, three are appointed for one-year terms and three are appointed for two-year terms. Each successive appointment by the Governor is for a two-year term. The Governor shall appoint a new member to fill the unexpired term of any vacancy in the appointed membership.

(4) The President of West Virginia University and Marshall University each appoints an employee to fill the unexpired term of any member who ceases to be employed by that institution.

(e) The Center for Professional Development Board shall meet at least quarterly and the appointed members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of their official duties from funds appropriated or otherwise made available for those purposes upon submission of an itemized statement therefor.

(f) The position of Executive Director is abolished. The Governor shall appoint, by and with the advice and consent of the Senate, a Chief Executive Officer with knowledge and experience in professional development and management principles. Any reference in this code to the Executive Director of the Center for Professional Development means the Chief Executive Officer. From appropriations to the Center for Professional Development, the Center Board sets the salary of the Chief Executive Officer. The Center Board, upon the recommendation of the Chief Executive Officer, may employ other staff necessary to carry out the mission and duties of the Center. The Chief Executive Officer serves at the will and pleasure of the Governor. Annually, the Center Board shall
evaluate the Chief Executive Officer, and shall report the results to the Governor. The duties of the Chief Executive Officer include:

1. Managing the daily operations of the Center;
2. Ensuring the implementation of the Center’s mission;
3. Ensuring collaboration of the Center with other professional development providers;
4. Requesting from the Governor and the Legislature any resources or statutory changes that would help in enhancing the collaboration of all professional development providers in the state, in advancing the quality of professional development through any other means or both;
5. Serving as the chair of the Principals Standards Advisory Council created in section two-c, article three of this chapter and convening regular meetings of this Council to effectuate its purposes; and
6. Other duties as assigned by the Governor or the Center Board.

(g) When practicable, personnel employed by state higher education agencies and state, regional and county public education agencies shall be made available to the Center to assist in the operation of projects of limited duration, subject to the provisions of section twenty-four, article two, chapter eighteen of this code.

(h) The Center shall assist in the delivery of programs and activities pursuant to this article to meet statewide, and if needed as determined by the goals and Master Plan for Professional Staff Development established by the State Board pursuant to section twenty-three-a, article two, chapter eighteen
of this code, the local professional development needs of
paraprofessionals, teachers, principals and administrators and
may contract with existing agencies or agencies created after
the effective date of this section or others to provide training
programs in the most efficient manner. Existing programs
currently based in agencies of the state shall be continued in the
agency of their origin unless the Center establishes a compel-
ling need to transfer or cancel the existing program. The Center
shall recommend to the Governor the transfer of funds to the
providing agency, if needed, to provide programs approved by
the Center.

(i) The Center for Professional Development shall imple-
ment training and professional development programs for the
Principals Academy based upon the minimum qualities,
proficiencies and skills necessary for principals in accordance
with the standards established by the State Board pursuant to
the terms of section two-c, article three of this chapter.

(j) In accordance with section two-c, article three of this
chapter, the Center shall be responsible for paying reasonable
and necessary expenses for persons attending the Principals
Academy: Provided, That nothing in this section shall be
construed to require any specific level of funding by the
Legislature.

(k) Persons attending the professional development
offerings of the Center and other courses and services offered
by the Center for Professional Development, except the
Principals Academy shall be assessed fees which shall be less
than the full cost of attendance. There is hereby created in the
State Treasury a special revenue account known as the "Center
for Professional Development Fund". All moneys collected by
the Center shall be deposited in the fund for expenditure by the
Center Board for the purposes specified in this section. Moneys
remaining in the fund at the end of the fiscal year are subject to
reappropriation by the Legislature.
The Center Board shall make collaboration with the State Board in providing professional development services in the following areas a priority:

1. Services to those public schools selected by the State Superintendent pursuant to section three-g, article two-e, chapter eighteen of this code; and

2. Services in any specific subject matter area that the State Board, the Legislature or both, determine is justified due to a need to increase student achievement in that area.


(a) There is hereby established within the Center for Professional Development the “Principals Academy”. Training through the Principals Academy shall include at least the following:

1. Training designed to build within principals the minimum qualities, proficiencies and skills that will be required of all principals pursuant to the rules of the State Board;

2. Specialized training and professional development programs for all principals; and

3. Specialized training and professional development programs for the following principals:

   (A) Newly appointed principals;

   (B) Principals whose schools have been designated as seriously impaired, which programs shall commence as soon as practicable following the designation;

   (C) Principals subject to improvement plans; and
(D) Principals of schools with significantly different grade level configurations.

(b) The Legislature finds that the quality of the principal of a school is one of the most important factors in determining the academic achievement of students and that well-trained, highly qualified principals should be a priority for the state.

(b) The Legislature further finds that while the Principals Academy has been effective in training quality leaders for the state’s public schools, the training provided is such a significant factor in determining their success that a new position is needed to coordinate and focus primarily on the Principals Academy to increase further the quality of the training.

(c) Therefore, from appropriations to the Center for Professional Development, the Center Board shall employ and fix the compensation of the Coordinator of the Principals Academy. The Coordinator serves at the will and pleasure of the Center Board. It is the duty of the Coordinator, subject to direction and oversight by the Center and the Chief Executive Officer, to lead the Principals Academy, to focus primarily on the Principals Academy and to make a continuous effort to enhance further the quality of the training and professional development programs of the Academy. The Center Board, the Chief Executive Officer, or both, may assign duties to the coordinator other than those that relate to the Principals Academy so long as the Coordinator is able to focus primarily on the Principals Academy.

§18A-3A-6. Attendance outside the employment term.

(a) A professional educator may not be required to attend the principals academy or any other program offered through the Center for Professional Development outside his or her employment term. A professional educator may attend the academy or other program outside his or her employment term
by mutual agreement between the Center, the educator, and his or her employer.

(b) The provisions of this section expire on the first day of July, two thousand six.

CHAPTER 18B. HIGHER EDUCATION.

1A. Compact with Higher Education for the Future of West Virginia.
1B. Higher Education Policy Commission.
2A. Institutional Boards of Governors.
2B. West Virginia Council for Community and Technical College Education.
3. Additional Powers and Duties of Research, Doctoral-granting Public Universities.
4. General Administration.
5. Higher Education Budgets and Expenditures.
10. Fees and Other Money Collected at State Institutions of Higher Education.
11. Miscellaneous Institutes and Centers.

ARTICLE 1. GOVERNANCE.

§18B-1-3. Transfer of powers, duties, property, obligations, etc.
§18B-1-6. Rulemaking.

§18B-1-3. Transfer of powers, duties, property, obligations, etc.

(a) All powers, duties and authorities transferred to the Board of Regents pursuant to former provisions of chapter eighteen of this code and transferred to the Board of Trustees and Board of Directors which were created as the governing boards pursuant to the former provisions of this chapter and all powers, duties and authorities of the Board of Trustees and Board of Directors, to the extent they are in effect on the seventeenth day of June, two thousand, are hereby transferred to the Interim Governing Board created in article one-c of this
chapter and shall be exercised and performed by the Interim Governing Board until the first day of July, two thousand one, as such powers, duties and authorities may apply to the institutions under its jurisdiction.

(b) Title to all property previously transferred to or vested in the Board of Trustees and the Board of Directors and property vested in either of the Boards separately, formerly existing under the provisions of this chapter, are hereby transferred to the Interim Governing Board created in article one-c of this chapter until the first day of July, two thousand one. Property transferred to or vested in the Board of Trustees and Board of Directors shall include:

(1) All property vested in the Board of Governors of West Virginia University and transferred to and vested in the West Virginia Board of Regents;

(2) All property acquired in the name of the State Board of Control or the West Virginia Board of Education and used by or for the state colleges and universities and transferred to and vested in the West Virginia Board of Regents;

(3) All property acquired in the name of the State Commission on Higher Education and transferred to and vested in the West Virginia Board of Regents; and

(4) All property acquired in the name of the Board of Regents and transferred to and vested in the respective Board of Trustees and Board of Directors.

(c) Each valid agreement and obligation previously transferred to or vested in the Board of Trustees and Board of Directors formerly existing under the provisions of this chapter is hereby transferred to the Interim Governing Board until the first day of July, two thousand one, as those agreements and obligations may apply to the institutions under its jurisdiction.
Valid agreements and obligations transferred to the Board of Trustees and Board of Directors shall include:

(1) Each valid agreement and obligation of the Board of Governors of West Virginia University transferred to and deemed the agreement and obligation of the West Virginia Board of Regents;

(2) Each valid agreement and obligation of the State Board of Education with respect to the state colleges and universities transferred to and deemed the agreement and obligation of the West Virginia Board of Regents;

(3) Each valid agreement and obligation of the State Commission on Higher Education transferred to and deemed the agreement and obligation of the West Virginia Board of Regents; and

(4) Each valid agreement and obligation of the Board of Regents transferred to and deemed the agreement and obligation of the respective Board of Trustees and Board of Directors.

(d) All orders, resolutions and rules adopted or promulgated by the respective Board of Trustees and Board of Directors and in effect immediately prior to the first day of July, two thousand, are hereby transferred to the Interim Governing Board until the first day of July, two thousand one, and shall continue in effect and shall be deemed the orders, resolutions and rules of the Interim Governing Board until rescinded, revised, altered or amended by the Commission or the governing boards in the manner and to the extent authorized and permitted by law. Such orders, resolutions and rules shall include:

(1) Those adopted or promulgated by the Board of Governors of West Virginia University and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or
amended by the Board of Regents in the manner and to the extent authorized and permitted by law;

(2) Those respecting state colleges and universities adopted or promulgated by the West Virginia Board of Education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the Board of Regents in the manner and to the extent authorized and permitted by law;

(3) Those adopted or promulgated by the State Commission on Higher Education and in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended by the Board of Regents in the manner and to the extent authorized and permitted by law; and

(4) Those adopted or promulgated by the Board of Regents prior to the first day of July, one thousand nine hundred eighty-nine, unless and until rescinded, revised, altered or amended by the respective Board of Trustees or Board of Directors in the manner and to the extent authorized and permitted by law.

(e) Title to all real property transferred to or vested in the Interim Governing Board pursuant to this section of the code is hereby transferred to the Commission effective the first day of July, two thousand one. The board of governors for each institution may request that the Commission transfer title to the board of governors of any real property specifically identifiable with that institution or the Commission may initiate the transfer. Any such request must be made within two years of the effective date of this section and be accompanied by an adequate legal description of the property. In the case of real property that is specifically identifiable with Marshall University or West Virginia University, the Commission shall transfer
title to all real property, except real property that is used jointly
by institutions or for statewide programs under the jurisdiction
of the Commission or the Council, to the Board of Governors
of Marshall University or West Virginia University, as appro-
priate, upon receipt of a request from the appropriate governing
board accompanied by an adequate legal description of the
property.

The title to any real property that is jointly utilized by
institutions or for statewide programs under the jurisdiction of
the Commission or the Council shall be retained by the Com-
mission.

(f) Ownership of or title to any other property, materials,
equipment or supplies obtained or purchased by the Interim
Governing Board or the previous governing boards on behalf of
an institution is hereby transferred to the board of governors of
that institution effective the first day of July, two thousand one.

(g) Each valid agreement and obligation previously
transferred or vested in the Interim Governing Board and which
was undertaken or agreed to on behalf of an institution or
institutions is hereby transferred to the board of governors of
the institution or institutions for whose benefit the agreement
was entered into or the obligation undertaken effective the first
day of July, two thousand one.

(1) The obligations contained in revenue bonds issued by
the previous governing boards under the provisions of section
eight, article ten of this chapter and article twelve-b, chapter
eighteen of this code are hereby transferred to the Commission
and each institution shall transfer to the Commission those
funds the Commission determines are necessary to pay that
institution’s share of bonded indebtedness.

(2) The obligations contained in revenue bonds issued on
behalf of a state institution of higher education pursuant to any
other section of this code is hereby transferred to the board of
governors of the institution on whose behalf the bonds were
issued.

(h) All orders, resolutions, policies and rules:

(1) Adopted or promulgated by the respective Board of
Trustees, Board of Directors or Interim Governing Board and
in effect immediately prior to the first day of July, two thousand
one, are hereby transferred to the Commission effective the first
day of July, two thousand one, and continue in effect until
rescinded, revised, altered, amended or transferred to the
governing boards by the Commission as provided in this section
and in section six of this article.

(2) Adopted or promulgated by the Commission relating
solely to community and technical colleges or community and
technical college education, or rules which the Council finds
necessary for the exercise of its lawful powers and duties
pursuant to the provisions of this chapter, may be adopted by
the Council and continue in effect until rescinded, revised,
altered, amended or transferred to the governing boards under
the jurisdiction of the Council pursuant to section six of this
article. Nothing in this section requires the initial rules of the
Commission that are adopted by the Council to be promulgated
again under the procedure set forth in article three-a, chapter
twenty-nine-a of this code unless such rules are rescinded,
revised, altered or amended.

(3) Adopted or promulgated by the Commission relating to
multiple types of public institutions of higher education or
community and technical college education as well as baccalaureate and post-baccalaureate education are transferred to the
Council in part as follows:

(A) That portion of the rule relating solely to community
and technical colleges or community and technical college
education is transferred to the Council and continues in effect
until rescinded, revised, altered, amended or transferred to the
governing boards by the Council as provided in this section and
in section six of this article;

(B) That portion of the rule relating to institutions or
education other than community and technical colleges is
retained by the Commission and continues in effect until
rescinded, revised, altered, amended or transferred to the
governing boards by the Commission as provided in this section
and in section six of this article.

(i) The Commission may, in its sole discretion, transfer any
rule, other than a legislative rule, to the jurisdiction of the
governing boards of the institutions under its jurisdiction who
may rescind, revise, alter or amend any rule so transferred
pursuant to rules adopted by the Commission pursuant to
section six of this article.

The Council may, in its sole discretion, transfer any rule,
other than a legislative rule, to the jurisdiction of the governing
boards of the institutions under its jurisdiction who may
rescind, revise, alter or amend any rule so transferred pursuant
to rules adopted by the Council pursuant to section six of this
article.

(j) As to any title, agreement, obligation, order, resolution,
rule or any other matter about which there is some uncertainty,
misunderstanding or question, the matter shall be summarized
in writing and sent to the Commission which shall make a
determination regarding such matter within thirty days of
receipt thereof.

(k) Rules or provisions of law which refer to other provi-
sions of law which were repealed, rendered inoperative or
superseded by the provisions of this section shall remain in full
force and effect to such extent as may still be applicable to
higher education and may be so interpreted. Such references include, but are not limited to, references to sections and prior enactments of article twenty-six, chapter eighteen of this code and code provisions relating to retirement, health insurance, grievance procedures, purchasing, student loans and savings plans. Any determination which needs to be made regarding applicability of any provision of law shall first be made by the Commission.

§18B-1-6. Rulemaking.

(a) The Commission is hereby empowered to promulgate, adopt, amend or repeal rules, in accordance with the provisions of article three-a, chapter twenty-nine-a of this code, subject to the provisions of section three of this article.

(b) The Council is hereby empowered to promulgate, adopt, amend or repeal rules in accordance with the provisions of article three-a, chapter twenty-nine-a of this code and subject to the provisions of section three of this article. This grant of rule-making power extends only to those areas over which the Council has been granted specific authority and jurisdiction by law.

(c) As it relates to the authority granted to governing boards of state institutions of higher education to promulgate, adopt, amend or repeal any rule under the provisions of this code:

(1) "Rule" means any regulation, guideline, directive, standard, statement of policy or interpretation of general application which has institutionwide effect or which affects the rights, privileges or interests of employees, students or citizens. Any regulation, guideline, directive, standard, statement of policy or interpretation of general application that meets this definition is a rule for the purposes of this section.
(2) Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department or school or with academic curricular policies that do not constitute a mission change for the institution, are excluded from this subsection, except for the requirements relating to posting.

(3) The Commission and Council each shall promulgate a rule to guide the development and approval of rules made by their respective governing boards, including the governing boards of Marshall University and West Virginia University. The rules promulgated by the Commission and Council shall include, but are not limited to, the following provisions which shall be included in the rule on rules adopted by each governing board of a state institution of higher education:

(A) A procedure to ensure that public notice is given and that the right of interested parties to have a fair and adequate opportunity to respond is protected, including providing for a thirty-day public comment period prior to final adoption of a rule;

(B) Designation of a single location where all proposed and approved rules, guidelines and other policy statements are posted and can be accessed by the public; and

(C) A procedure to maximize Internet access to all proposed and approved rules, guidelines and other policy statements to the extent technically and financially feasible.

(d) Nothing in this section requires that any rule reclassified or transferred by the Commission or the Council under this section be promulgated again under the procedures set out in article three-a, chapter twenty-nine-a of this code unless the rule is amended or modified.
(e) The Commission and Council each shall file with the Legislative Oversight Commission on Education Accountability any rule it proposes to promulgate, adopt, amend or repeal under the authority of this article.

(f) The governing boards of Marshall University and West Virginia University, respectively, shall promulgate and adopt any rule which they are required to adopt by this chapter or chapter eighteen-c of this code no later than the first day of July, two thousand six. On and after this date:

(1) Any rule of either governing board which meets the definition set out in subsection (c) of this section and which has not been promulgated and adopted by formal vote of the appropriate governing board is void and may not be enforced;

(2) Any authority granted by this code which inherently requires the governing board to promulgate and adopt a rule is void until the governing board complies with the provisions of this section.

(g) Within thirty days of the adoption of a rule, including repeal or amendment of an existing rule, the governing boards of Marshall University and West Virginia University, respectively, shall furnish to the Commission or the Council, as appropriate, a copy of each rule which has been formally adopted;

(h) Not later than the first day of October, two thousand five, and annually thereafter, each governing board of a state institution of higher education shall file with the Commission or the Council, as appropriate, a list of all institutional rules that were in effect for that institution on the first day of July of that year, including the most recent date on which each rule was considered and adopted, amended or repealed by the governing board. For all rules adopted, amended or repealed after the effective date of this section, the list shall include a statement
by the chair of the governing board certifying that the governing board has complied with the provisions of this section when each listed rule was adopted.

ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF WEST VIRGINIA.

§18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.

§18B-1A-6. Graduate education.

§18B-1A-2. Institutional compacts with state institutions of higher education; establishment and review process.

(a) Each state college and university shall prepare an institutional compact for submission to the Commission. Each community and technical college shall prepare an institutional compact for submission to the Council. When the process herein provided is completed, the institutional compacts shall form the agreements between the institutions of higher education and the Commission or Council, respectively, and, ultimately, between the institutions of higher education and the people of West Virginia on how the institutions will use their resources to address the intent of the Legislature and the goals set forth in section one-a, article one of this chapter. The compacts shall contain the following:

(1) A step-by-step process to accomplish the intent of the Legislature and the goals set forth in section one-a, article one of this chapter as organized by the Commission and Council. The step-by-step process shall be delineated by objectives and shall set forth a time line for achieving the objectives which shall, where applicable, include benchmarks to measure institutional progress as defined in subsection (e) of this section.
(2) A determination of the mission of the institution which specifically addresses changes, as applicable, in the areas of research, graduate education, baccalaureate education, revised admission requirements, community and technical colleges and such other areas as the Commission or Council determines appropriate. In the determination of mission, the institutions and the Commission or Council shall consider the report completed by the national center for higher education management systems pursuant to the legislative study as provided in section seven, article three of this chapter;

(3) A plan which is calculated to make any changes in institutional mission and structure within a six-year period;

(4) A statement of the geographic areas of responsibility, where applicable, for each goal to be accomplished as provided in subsection (d) of this section;

(5) A detailed statement of how the compact is aligned with and will be implemented in conjunction with the master plan of the institution;

(6) Such other items, requirements or initiatives, required by the Commission or Council, designed to accomplish the intent of the Legislature and the goals set forth in section one-a, article one of this chapter or other public policy goals established by the Commission or Council.

(b) Each institutional compact shall be updated annually and shall follow the same general guidelines contained in subsection (a) of this section.

(c) Development and updating of the institutional compacts is subject to the following:

(1) The ultimate responsibility for developing and updating the institutional compacts at the institutional level resides with
the institutional board of advisors or the board of governors, as appropriate;

(2) The ultimate responsibility for developing and adopting the final version of the state college and university institutional compacts resides with the Commission and the ultimate responsibility for developing and adopting the final version of the community and technical college institutional compacts resides with the Council;

(3) Each institution shall submit its compact to the Commission or Council annually by the fifteenth day of November;

(4) The Commission and Council shall review each compact of the institutions under their respective jurisdictions and either adopt the compact or return it with specific comments for change or improvement. The Commission and Council, as appropriate, shall continue this process as long as each considers advisable;

(5) By the first day of May annually, if the institutional compact of any institution as presented by that institution is not adopted by the Commission or Council, then the Commission or Council is empowered and directed to develop and adopt the institutional compact for the institution and the institution is bound by the compact so adopted; and

(6) As far as practicable, the Commission and Council each shall establish uniform processes and forms for the development and submission of the institutional compacts by the institutions under their respective jurisdictions. As a part of this function, the Commission and Council shall organize the statements of legislative intent and goals contained in section one-a, article one of this chapter in a manner that facilitates the purposes of this subdivision and the purposes of this section.

(d) Assignment of geographic areas of responsibility. –
(1) The Commission shall assign geographic areas of responsibility to the state institutions of higher education under its jurisdiction, except for the state institutions of higher education known as Marshall University and West Virginia University. For institutions other than the state institutions of higher education known as Marshall University and West Virginia University, the geographic areas of responsibility are made a part of their institutional compacts to ensure that all areas of the state are provided necessary programs and services to achieve the public policy agenda.

(2) Pursuant to the provisions of section four, article three-c of this chapter, the Council shall assign geographic areas of responsibility to the state institutions of higher education under its jurisdiction, including the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology and the regional campus known as West Virginia University at Parkersburg.

(3) The geographic areas of responsibility for the state institutions of higher education known as Marshall University and West Virginia University are assigned by the Legislature.

(4) The benchmarks established in the institutional compacts shall include measures of programs and services by geographic area throughout the assigned geographic area of responsibility.

(e) The compacts shall contain benchmarks used to determine progress toward meeting the goals established in the compacts. The benchmarks shall meet the following criteria:

(1) They shall be as objective as possible;
(2) They shall be directly linked to the goals in the compacts;

(3) They shall be measured by the indicators described in subsection (f) of this section; and

(4) Where applicable, they shall be used to measure progress in geographic areas of responsibility.

(f) The Commission and Council each shall establish by legislative rule indicators which measure the degree to which the goals and objectives set forth in section one-a, article one of this chapter are being addressed and met by the institutions under their respective jurisdictions. The benchmarks established in subsection (e) of this section shall be measured by the indicators.

(1) The rules pertaining to benchmarks and indicators in effect for the Commission and the Council on the effective date of this section remain in effect for the institutions under their respective jurisdictions.

(2) The legislative rules shall set forth at the least the following as pertains to all state institutions of higher education:

(A) The indicators used to measure the degree to which the goals and objectives are being met;

(B) Uniform definitions for the various data elements to be used in establishing the indicators;

(C) Guidelines for the collection and reporting of data; and

(D) Sufficient detail within the benchmarks and indicators to:
(i) Provide measurable evidence that the pursuits of the institution are targeting the educational needs of the citizens of the state and the components of the compacts and master plans;

(ii) Delineate the goals and benchmarks for an institution so that the Commission, or Council can precisely measure the degree to which progress is being made toward achieving the goals for post-secondary education provided in section one-a, article one of this chapter; and

(iii) Distinctly identify specific goals within the master plan or compact of an institution that are not being met or toward which sufficient progress is not being made.

(3) In addition to any other requirement, the legislative rule established by the Council shall set forth at the least the following as pertains to community and technical college education:

(A) Benchmarks and indicators which are targeted to identify:

(i) The degree to which progress is being made by institutions toward meeting the goals for post-secondary education and the essential conditions provided in section three, article three-c of this chapter;

(ii) Information and data necessary to be considered by the Council in making the determination required by section three, article two-c of this chapter;

(iii) The degree to which progress is being made in the areas considered by the Council for the purpose of making the determination required by section three, article two-c of this chapter; and

(B) Sufficient detail within the benchmarks and indicators to provide clear evidence to support an objective determination
by the Council that an institution’s progress toward achieving
the goals for post-secondary education and the essential
conditions is so deficient that implementation of the provisions
of section four, article two-c of this chapter is warranted and
necessary.

(g) The Commission or the Council, as appropriate, shall
approve the master plans developed by the boards of governors
and the institutional boards of advisors pursuant to section four,
article two-a of this chapter or section one, article six of this
chapter, as appropriate.

§18B-1A-6. Graduate education.

(a) Intent. — It is the intent of the Legislature to address the
need for high quality graduate education programs to be
available throughout the state.

(b) Findings. — The Legislature makes the following
findings:

(1) Since West Virginia ranks below its competitor states
in graduate degree production, particularly in the areas that are
important to the state’s competitive position in the new econ-
omy of the twenty-first century, there is a considerable need for
greater access to graduate education, especially at the master’s
degree level;

(2) There is a significant disparity in access to part-time
graduate degree programs among the different regions of the
state and part-time graduate enrollments are heavily concen-
trated in the counties immediately surrounding Marshall
University and West Virginia University;

(3) There is a particular need for increased access to
graduate programs linked directly to the revitalization of the
regional economies of the state; and
(4) There is a particular need for improved quality and accessibility of preservice and in-service programs for teachers in subject matter fields.

(c) In order to meet the need for graduate education, the Commission is responsible for accomplishing the following:

(1) Ensuring that West Virginia University and Marshall University assist in the expansion of access to master's degree programs throughout West Virginia. These institutions shall place a strong emphasis on collaboration with the baccalaureate colleges and community and technical colleges in each region when funds are available;

(2) Ensuring that any institution providing a master's degree program under the provisions of this section provides a meaningful, coherent program by offering courses in such a way that students, including place-bound adults, have ample opportunity to complete a degree in a reasonable period of time;

(3) Focusing on providing courses that enhance the professional skills of teachers in their subject areas;

(4) Ensuring that programs are offered in the most cost-effective manner to expand access throughout the region and the state; and

(5) Determining the graduate program needs of each region.

(d) Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty State College and West Virginia State University shall meet the need for graduate education in their regions pursuant to this subsection and subsection (c) of this section.

(1) If an institution's proposal to offer a Master's degree receives the approval of the Commission, that Master's degree may be offered solely by the institution.
If an institution does not receive the approval of the Commission for a proposal to offer a Master's degree, that institution may broker or collaborate with another higher education institution to develop a revised proposal for offering that brokered or collaborative Master's degree.

(e) There is an urgent need for master's degree programs for teachers in disciplines or subject areas, such as mathematics, science, history, literature, foreign languages and the arts. Currently, master's-level courses in education that are offered in the regions served by the state universities are primarily in areas such as guidance and counseling, administration, special education and other disciplines unrelated to teaching in subject areas. If this need is not being met in a region through the procedure established in subsection (d) of this section, then the graduate center in that region may plan a master's degree program in education focused on teaching in subject area fields in which the demand is not being met. No institution may begin a graduate program under the provisions of this section until the program has been reviewed and approved by the Commission. The Commission shall approve only those programs, as authorized by this subsection, that emphasize serving the needs of teachers and schools in the colleges' immediate regions. In determining whether a program should be approved, the Commission also shall rely upon the recommendations of the statewide task force on teacher quality provided in section eight, article fourteen of this chapter.

(f) The Commission shall review all graduate programs being offered under the provisions of this section and, using the criteria established for program startup in subsection (d) of this section, determine which programs should be discontinued.

(g) At least annually, the governing boards shall evaluate graduate programs developed pursuant to the provisions of this section and report to the Commission on the following:
(1) The number of programs being offered and the courses offered within each program;

(2) The disciplines in which programs are being offered;

(3) The locations and times at which courses are offered;

(4) The number of students enrolled in the program; and

(5) The number of students who have obtained master’s degrees through each program.

The governing boards shall provide the Commission with any additional information the Commission requests in order to make a determination on the viability of a program.

(h) In developing any graduate program under the provisions of this section, institutions shall consider delivering courses at times and places convenient to adult students who are employed full time. Institutions shall place an emphasis on extended degree programs, distance learning and off-campus centers which utilize the cost-effective nature of extending existing university capacity to serve the state rather than duplicating the core university capacity and incurring the increased cost of developing master’s degree programs at other institutions throughout the state.

(i) Brokering institutions shall invite proposals from other public institutions of higher education for service provision prior to contracting with other institutions: Provided, That if institutions propose providing graduate programs in service areas other than in their responsibility district, the institution seeking to establish a program shall work through the district’s lead institution in providing those services.

(j) In addition to the approval required by the Commission, authorization for any institution to offer a master’s degree
program under the provisions of this section is subject to the formal approval processes established by the governing boards.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of higher education policy Commission.
§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors.
§18B-1B-6. Appointment of institutional presidents; evaluation.
§18B-1B-13. Study of issues affecting employees in public higher education.

§18B-1B-4. Powers and duties of higher education policy Commission.

(a) The primary responsibility of the Commission is to develop, establish and implement policy that will achieve the goals and objectives found in section one-a, article one of this chapter. The Commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for community and technical college education and the powers and duties assigned to the governing boards of Marshall University and West Virginia University, respectively. To that end, the Commission has the following powers and duties relating to the institutions under its jurisdiction:

(1) Develop, oversee and advance the public policy agenda pursuant to section one, article one-a of this chapter to address major challenges facing the state, including, but not limited to, the goals and objectives found in section one-a, article one of this chapter and including specifically those goals and objectives pertaining to the compacts created pursuant to section two, article one-a of this chapter and to develop and implement the master plan described in section nine of this article for the purpose of accomplishing the mandates of this section;

(2) Develop, oversee and advance the implementation jointly with the Council of a financing policy for higher
education in West Virginia. The policy shall meet the following criteria:

(A) Provide an adequate level of education and general funding for institutions pursuant to section five, article one-a of this chapter;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and deferred maintenance;

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in section one-a, article one of this chapter; and

(D) Incorporate the plan for strategic funding to strengthen capacity for support of community and technical college education established by the West Virginia Council for Community and Technical College Education pursuant to the provisions of section six, article two-b of this chapter;

(3) In collaboration with the Council, create a policy leadership structure capable of the following actions:

(A) Developing, building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the Commission and Council shall seek input from the Legislature and the Governor and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;
(B) Ensuring that the governing boards carry out their duty effectively to govern the individual institutions of higher education; and

(C) Holding the higher education institutions and the higher education systems as a whole accountable for accomplishing their missions and implementing the provisions of the compacts;

(4) Develop and adopt each institutional compact;

(5) Review and adopt the annual updates of the institutional compacts;

(6) Serve as the accountability point to:

(A) The Governor for implementation of the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(7) Jointly with the Council, promulgate legislative rules pursuant to article three-a, chapter twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

(8) Establish and implement a peer group for each institution as described in section three, article one-a of this chapter;

(9) Establish and implement the benchmarks and performance indicators necessary to measure institutional achievement towards state policy priorities and institutional missions pursuant to section two, article one-a of this chapter;

(10) Annually report to the Legislature and to the Legislative Oversight Commission on Education Accountability during the January interim meetings on a date and at a time and
location to be determined by the President of the Senate and the Speaker of the House of Delegates. The report shall address at least the following:

(A) The performance of its system of higher education during the previous fiscal year, including, but not limited to, progress in meeting goals stated in the compacts and progress of the institutions and the higher education system as a whole in meeting the goals and objectives set forth in section one-a, article one of this chapter;

(B) An analysis of enrollment data collected pursuant to section one, article ten of this chapter and recommendations for any changes necessary to assure access to high-quality, high-demand education programs for West Virginia residents;

(C) The priorities established for capital investment needs pursuant to subdivision (11) of this subsection and the justification for such priority;

(D) Recommendations of the Commission for statutory changes needed to further the goals and objectives set forth in section one-a, article one of this chapter;

(11) Establish a formal process for identifying needs for capital investments and for determining priorities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process. It is the responsibility of the Commission to assure a fair distribution of funds for capital projects between the Commission and the Council. To that end the Commission shall take the following steps:

(A) Receive the list of priorities developed by the Council for capital investment for the institutions under the Council’s jurisdiction pursuant to subsection (b), section six, article two-b of this chapter;
(B) Place the ranked list of projects on the agenda for action within sixty days of the date on which the list was received;

(C) Select a minimum of three projects from the list submitted by the Council to be included on the ranked list established by the Commission. At least one of the three projects selected must come from the top two priorities established by the Council.

(12) Maintain guidelines for institutions to follow concerning extensive capital project management except the governing boards of Marshall University and West Virginia University are not subject to the provisions of this subdivision as it relates to the state institutions of higher education known as Marshall University and West Virginia University. The guidelines shall provide a process for developing capital projects, including, but not limited to, the notification by an institution to the Commission of any proposed capital project which has the potential to exceed one million dollars in cost. Such a project may not be pursued by an institution without the approval of the Commission. An institution may not participate directly or indirectly with any public or private entity in any capital project which has the potential to exceed one million dollars in cost;

(13) Acquire legal services as are considered necessary, including representation of the Commission, its institutions, employees and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the Commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(14) Employ a Chancellor for Higher Education pursuant to section five of this article;
(15) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the Commission and the Council, in accordance with the provisions of article four of this chapter;

(16) Provide suitable offices in Charleston for the chancellor, vice chancellors and other staff;

(17) Advise and consent in the appointment of the presidents of the institutions of higher education under its jurisdiction pursuant to section six of this article. The role of the Commission in approving an institutional president is to assure through personal interview that the person selected understands and is committed to achieving the goals and objectives as set forth in the institutional compact and in section one-a, article one of this chapter;

(18) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, as proposed by the governing boards. The governing boards must obtain approval from the Commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package;

(19) Establish and implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(20) Approve and implement a uniform standard jointly with the Council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used
in West Virginia and shall be applied uniformly by the governing boards throughout the public higher education system. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the State Superintendent of schools;

(21) Review and approve or disapprove capital projects as described in subdivision (11) of this subsection;

(22) Jointly with the Council, develop and implement an oversight plan to manage systemwide technology such as the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the Council, Commission and state institutions of higher educations are not subject to the jurisdiction of the Chief Technology Officer for any purpose.

(23) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a bachelor's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(24) Establish and implement policies and procedures to ensure that students may transfer and apply toward the require-
ments for a degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(25) Establish and implement policies and procedures to ensure that students may transfer and apply toward the requirements for a master’s degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as is consistent with sound academic policy;

(26) Establish and implement policies and programs, in cooperation with the Council and the institutions of higher education, through which students who have gained knowledge and skills through employment, participation in education and training at vocational schools or other education institutions, or internet-based education programs, may demonstrate by competency-based assessment that they have the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate degree or a bachelor’s degree at a state institution of higher education;

(27) Seek out and attend regional, national and international meetings and forums on education and workforce development-related topics, as in the Commission’s discretion is critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals and objectives pursuant to section one-a, article one of this chapter;

(28) Develop, establish and implement a rule for higher education governing boards and institutions to follow when
considering capital projects. The guidelines shall assure that
the governing boards and institutions do not approve or
promote capital projects involving private sector businesses
which would have the effect of reducing property taxes on
existing properties or avoiding, in whole or in part, the full
amount of taxes which would be due on newly developed or
future properties;

(29) Consider and submit to the appropriate agencies of the
executive and legislative branches of state government a budget
that reflects recommended appropriations from the Commission
and the institutions under its jurisdiction. The Commission
shall submit as part of its budget proposal the separate recom-
mended appropriations it received from the Council, both for
the Council and the institutions under the Council's jurisdiction.
The Commission annually shall submit the proposed institu-
tional allocations based on each institution's progress toward
meeting the goals of its institutional compact;

(30) The Commission has the authority to assess institu-
tions under its jurisdiction, including the state institutions of
higher education known as Marshall University and West
Virginia University, for the payment of expenses of the
Commission or for the funding of statewide higher education
services, obligations or initiatives related to the goals set forth
for the provision of public higher education in the state;

(31) Promulgate rules allocating reimbursement of appro-
priations, if made available by the Legislature, to institutions of
higher education for qualifying noncapital expenditures
incurred in the provision of services to students with physical,
learning or severe sensory disabilities;

(32) Make appointments to boards and commissions where
this code requires appointments from the State College System
Board of Directors or the University of West Virginia System
Board of Trustees which were abolished effective the thirtieth day of June, two thousand, except in those cases where the required appointment has a specific and direct connection to the provision of community and technical college education, the appointment shall be made by the Council. Notwithstanding any provisions of this code to the contrary, the Commission or the Council may appoint one of its own members or any other citizen of the state as its designee. The Commission and Council shall appoint the total number of persons in the aggregate required to be appointed by these previous governing boards;

(33) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill the purposes of this chapter. The Commission and the Council shall promulgate a uniform joint legislative rule for the purpose of standardizing, as much as possible, the administration of personnel matters among the institutions of higher education;

(34) Determine when a joint rule among the governing boards of the institutions under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards of all the institutions under its jurisdiction, promulgate the joint rule;

(35) In consultation with the Governing Boards of Marshall University and West Virginia University, implement a policy jointly with the Council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(36) Promulgate a joint rule with the Council establishing tuition and fee policy for all institutions of higher education, other than state institutions of higher education known as
Marshall University and West Virginia University which are subject to the provisions of section one, article ten of this chapter. The rule shall include, but is not limited to, the following:

(A) Comparisons with peer institutions;

(B) Differences among institutional missions;

(C) Strategies for promoting student access;

(D) Consideration of charges to out-of-state students; and

(E) Such other policies as the Commission and Council consider appropriate; and

(37) Implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The Commission shall encourage institutions that provide medical care to students to provide access to the vaccine for those who wish to receive it.

(b) In addition to the powers and duties listed in subsection (a) of this section, the Commission has the following general powers and duties related to its role in developing, articulating and overseeing the implementation of the public policy agenda:

(1) Planning and policy leadership including a distinct and visible role in setting the state’s policy agenda and in serving as an agent of change;

(2) Policy analysis and research focused on issues affecting the system as a whole or a geographical region thereof;
(3) Development and implementation of institutional mission definitions including use of incentive funds to influence institutional behavior in ways that are consistent with public priorities;

(4) Academic program review and approval for institutions under its jurisdiction, including the use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes. The Commission's authority to review and approve academic programs for either the state institution of higher education known as Marshall University or West Virginia University is limited to programs that are proposed to be offered at a new location not presently served by that institution;

(5) Distribution of funds appropriated to the Commission, including incentive and performance-based funding;

(6) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of any rules necessary to administer those programs;

(7) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(8) Development, establishment and implementation of information, assessment and accountability systems, including maintenance of statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(9) Jointly with the Council, developing, establishing and implementing policies for licensing and oversight for both public and private degree-granting and nondegree-granting
institutions that provide post-secondary education courses or programs in the state pursuant to the findings and policy recommendations required by section eleven of this article;

(10) Development, implementation and oversight of statewide and region-wide projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funding from any source; and

(11) Quality assurance that intersects with all other duties of the Commission particularly in the areas of research, data collection and analysis, planning, policy analysis, program review and approval, budgeting and information and accountability systems.

(c) In addition to the powers and duties provided in subsections (a) and (b) of this section and any other powers and duties as may be assigned to it by law, the Commission has such other powers and duties as may be necessary or expedient to accomplish the purposes of this article.

(d) The Commission is authorized to withdraw specific powers of any governing board of an institution under its jurisdiction for a period not to exceed two years, if the Commission makes a determination that:

(1) The governing board has failed for two consecutive years to develop an institutional compact as required in article one of this chapter;

(2) The Commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the board of governors according to state law; or
(3) Other circumstances which, in the view of the Commission, severely limit the capacity of the board of governors to carry out its duties and responsibilities.

The period of withdrawal of specific powers may not exceed two years during which time the Commission is authorized to take steps necessary to reestablish the conditions for restoration of sound, stable and responsible institutional governance.

§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors.

(a) The Commission, created pursuant to section one of this article, shall employ a Chancellor for Higher Education who is the Chief Executive Officer of the Commission and who serves at its will and pleasure.

(b) The Commission shall set the qualifications for the position of Chancellor and shall conduct a thorough nationwide search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

(1) Possesses an excellent academic and administrative background;

(2) Demonstrates strong communication skills;

(3) Has significant experience and an established national reputation as a professional in the field of higher education;

(4) Is free of institutional or regional biases; and

(5) Holds or retains no other administrative position within a system of higher education while employed as chancellor.
(c) The Commission shall conduct written performance evaluations of the Chancellor annually and may offer the Chancellor a contract not to exceed three years. At the end of each contract period, the Commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level.

(d) When filling a vacancy in the position of Chancellor, the Commission shall enter into an initial employment contract for one year with the candidate selected. At the end of the initial contract period, and each contract period thereafter, the Commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level for the Chancellor.

(e) The Commission sets the Chancellor’s salary. The salary may not exceed by more than twenty percent the average annual salary of chief executive officers of state systems of higher education in the states that comprise the membership of the Southern Regional Education Board.

(f) The Commission may employ a Vice Chancellor for Health Sciences who serves at the will and pleasure of the Commission. The Vice Chancellor for Health Sciences shall coordinate the West Virginia University School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The Vice Chancellor for Health Sciences shall perform all duties assigned by the Chancellor, the Commission and state law. In the case of a vacancy in the office of Vice Chancellor of Health Sciences, the duties assigned to this Office by law are the responsibility of the Chancellor or a designee.
(g) The Commission shall employ a Vice Chancellor for Administration pursuant to section two, article four of this chapter.

(h) The Commission may employ a Vice Chancellor for State Colleges who serves at the will and pleasure of the Commission. It is the duty and responsibility of the Vice Chancellor for State Colleges to:

(1) Provide assistance to the Commission, the Chancellor and the state colleges on matters related to or of interest and concern to these institutions;

(2) Advise, assist and consult regularly with the institutional presidents and institutional boards of governors of each state college;

(3) Serve as an advocate and spokesperson for the state colleges to represent them and to make their interests, views and issues known to the Chancellor, the Commission and governmental agencies;

(4) Perform all duties assigned by the Chancellor, the Commission and state law.

In addition, the Vice Chancellor for State Colleges has the responsibility and the duty to provide staff assistance to the institutional presidents and governing boards to the extent practicable.

(i) On behalf of the Commission, the Chancellor may enter into agreements with any state agency or political subdivision of the state, any state higher education institution or any other person or entity to enlist staff assistance to implement the powers and duties assigned by the Commission or by state law.
(j) The Chancellor is responsible for the daily operations of the Commission and has the following responsibilities relating to the Commission and the institutions under its jurisdiction:

1. To carry out policy and program directives of the Commission;

2. To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in section one-a, article one of this chapter and in the institutional compacts;

3. To prepare and submit to the Commission for its approval the proposed budget of the Commission including the offices of the Chancellor and the Vice Chancellors;

4. To assist the governing boards in developing rules, subject to the provisions of section six, article one of this chapter. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in article three-a, chapter twenty-nine-a of this code. The Commission and the Council, either separately or jointly as appropriate, are responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

5. To perform all other duties and responsibilities assigned by the Commission or by state law.

(k) The Chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

(l) The Chancellor, with the Commission, advises the Legislature on matters of higher education in West Virginia. The Chancellor shall work closely with the Legislative Oversight Commission on Education Accountability and with the
elected leadership of the state to ensure that they are fully informed about higher education issues and that the Commission fully understands the goals for higher education that the Legislature has established by law.

(m) The Chancellor may design and develop for consideration by the Commission new statewide or regional initiatives in accordance with the goals set forth in section one-a, article one of this chapter and the public policy agenda articulated by the Commission. In those instances where the initiatives to be proposed have a direct and specific impact or connection to community and technical college education as well as to baccalaureate and graduate education, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education shall design and develop the initiatives jointly for consideration by the Commission and the Council.

(n) The Chancellor shall work closely with members of the State Board of Education and with the State Superintendent of Schools to assure that the following goals are met:

1. Development and implementation of a seamless kindergarten-through-college system of education; and

2. Appropriate coordination of missions and programs. To further the goals of cooperation and coordination between the Commission and the State Board of Education, the Chancellor serves as an ex officio, nonvoting member of the State Board of Education.

§18B-1B-6. Appointment of institutional presidents; evaluation.

(a) Appointment of institutional presidents. — Appointment of presidents of the state institutions of higher education shall be made as follows:
Subject to the approval of the Commission, the governing board of the institution appoints a president for Bluefield State College, Concord University, Fairmont State University, Glenville State College, Marshall University, Shepherd University, West Liberty State College, West Virginia School of Osteopathic Medicine, West Virginia State University and West Virginia University.

Subject to the approval of the Council and to the provisions of article three-c of this chapter, the Governing Board of West Virginia University appoints the President of the regional campus known as West Virginia University at Parkersburg. When selecting candidates for consideration to fill the office of president, the Governing Board shall use the search and screening process provided in section one, article six of this chapter.

Subject to the approval of the Commission, the Governing Board of West Virginia University appoints the President of the regional campus known as West Virginia University Institute of Technology. The president of each regional campus serves at the will and pleasure of the appointing governing board.

Subject to the approval of the Council, the governing board of the community and technical college appoints a president for Eastern West Virginia Community and Technical College, Southern West Virginia Community and Technical College and West Virginia Northern Community and Technical College.

Subject to the approval of the Council, the governing board of the sponsoring institution appoints a president for each administratively linked community and technical college which shares a physical campus location with the sponsoring institution, including Fairmont State Community and Technical College, Marshall Community and Technical College, the
Community and Technical College at West Virginia University
Institute of Technology and West Virginia State Community
and Technical College.

Subject to the approval of the Council, the governing board of the community and technical college appoints a president for each administratively linked community and technical college which does not share a physical campus location with the sponsoring institution, including New River Community and Technical College and the Community and Technical College of Shepherd.

(b) Other appointments. — The institutional president appoints a provost to be the administrative head of the Potomac campus of West Virginia University.

(c) Evaluation of presidents. — The appointing governing board shall conduct written performance evaluations of each institution's president, including the presidents of administratively linked community and technical colleges. Evaluations shall be done in every fourth year of employment as president, recognizing unique characteristics of the institution and utilizing institutional personnel, institutional boards of advisors as appropriate, staff of the appropriate governing board and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact.

§18B-1B-13. Study of issues affecting employees in public higher education.

(a) In consultation with the Council, the governing boards, the State Advisory Council of Faculty established pursuant to section two, article six of this chapter and the State Advisory Council of Classified Employees established pursuant to section
five, article six of this chapter, the Commission shall conduct a study relating to issues affecting employees in public higher education.

(b) The study includes, but is not limited to, the following:

(1) Reviewing statutes, rules, guidelines, interpretations and other statements of policy;

(2) Surveying the capacity, professional training and practices of human resources staff by institution, including the number of staff employed in each institutional human resources office, their job titles and responsibilities;

(3) Evaluating the strengths and weaknesses of the statewide classification and compensation system and examining alternatives;

(4) Reviewing job titles and responsibilities to determine if certain families of jobs should be classified or nonclassified;

(5) Evaluating and recommending best practices and methods to establish salary rates for faculty, classified employees, nonclassified employees and administrators, including:

(A) Developing measurable indicators of “merit” and “performance” if these terms are to be used in a system for determining benefits;

(B) Developing reliable instruments of performance evaluation for all classes of employees; and

(C) Exploring the feasibility of authorizing employee bonuses under a merit or performance-based system;

(6) Determining the most effective and efficient method to train administrators who perform employee evaluations and assuring that they use these instruments appropriately;
(7) Exploring justifications for maintaining or removing the internal preference for hiring, promoting and transferring classified employees pursuant to article seven of this chapter;

(8) Developing recommendations for a fair and rational policy covering reductions in force;

(9) Identifying unnecessary state-level paperwork requirements related to personnel and recommending methods to eliminate them while maintaining strict fiscal accountability;

(10) Evaluating the strengths and weaknesses of statewide tenure and promotion policies for faculty and examining alternatives;

(11) Evaluating the feasibility of implementing differential salary rates based on cost of living or other relevant factors;

(12) Determining whether employees whose salaries are derived from funds other than state appropriations should be subject to the provisions of article seven of this chapter and how such employees should be treated in any policy on reductions in force; and

(13) Determining the true costs or benefits as well as the advantages and disadvantages that may accrue as a result of decisions to outsource certain institutional functions. In order to perform a cost/benefit analysis, the Commission must first develop an accurate database of institutional practices including the number of positions being outsourced or filled by temporary employees and the true amount of cost savings, if any.

(c) The Commission shall report to the Legislative Oversight Commission on Education Accountability by the first day of October, two thousand five, and every six months thereafter on the progress of the study.
(d) The Commission shall complete its work and report its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate the recommendations, to the Legislative Oversight Commission on Education Accountability by the first day of December, two thousand eight.

(1) In making its recommendations, the Commission shall take into account the impact of proposed changes on employees and the communities in which state institutions of higher education are located; and

(2) The Commission shall include documentation to support any conclusion or recommendation included as a part of their findings and shall attach estimates of cost or savings to each recommendation, if that recommendation has a fiscal impact on any public agency or institution.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.


(a) The governing boards are subject to the supervision of the Commission or the Council, as appropriate, except for the governing boards of Marshall University and West Virginia University as it relates to the state institutions of higher education know as Marshall University and West Virginia University. The Chancellor for Higher Education and the Chancellor for Community and Technical College Education, under the supervision of their respective boards, are responsible for the coordination of policies and purposes of the governing boards and shall provide for and facilitate sufficient interaction among the governing boards and between the governing boards
and the State Board of Education to meet the goals and objectives provided in the compacts and in section one-a, article one of this chapter.

(b) The governing boards and the State Board of Education shall provide any and all information requested by the Commission or the Council in an appropriate format and in a timely manner.


Each governing board separately has the following powers and duties:

(a) Determine, control, supervise and manage the financial, business and education policies and affairs of the state institutions of higher education under its jurisdiction;

(b) Develop a master plan for the institutions under its jurisdiction, except the administratively linked community and technical colleges which retain an institutional board of advisors shall develop their master plans subject to the provisions of section one, article six of this chapter.

(1) The ultimate responsibility for developing and updating the master plans at the institutional level resides with the board of governors, or board of advisors, as applicable, but the ultimate responsibility for approving the final version of the institutional master plans, including periodic updates, resides with the Commission or Council, as appropriate.

(2) Each master plan shall include, but not be limited to, the following:

(A) A detailed demonstration of how the master plan will be used to meet the goals and objectives of the institutional compact;
(B) A well-developed set of goals outlining missions, degree offerings, resource requirements, physical plant needs, personnel needs, enrollment levels and other planning determinates and projections necessary in such a plan to assure that the needs of the institution’s area of responsibility for a quality system of higher education are addressed;

(C) Documentation of the involvement of the Commission or Council, as appropriate, institutional constituency groups, clientele of the institution and the general public in the development of all segments of the institutional master plan.

(3) The plan shall be established for periods of not less than three nor more than six years and shall be revised periodically as necessary, including the addition or deletion of degree programs as, in the discretion of the appropriate governing board, may be necessary;

(c) Prescribe for the institutions under its jurisdiction, in accordance with its master plan and the compact for each institution, specific functions and responsibilities to meet the higher education needs of its area of responsibility and to avoid unnecessary duplication;

(d) Direct the preparation of a budget request for the institutions under its jurisdiction, such request to relate directly to missions, goals and projections as found in the institutional master plans and the institutional compacts;

(e) Consider, revise and submit to the Commission or Council, as appropriate, a budget request on behalf of the institutions under its jurisdiction;

(f) Review, at least every five years, all academic programs offered at the institutions under its jurisdiction. The review shall address the viability, adequacy and necessity of the programs in relation to its institutional master plan, the institu-
(g) The governing boards shall ensure that the sequence and availability of academic programs and courses offered by the institutions under their jurisdiction is such that students have the maximum opportunity to complete programs in the time frame normally associated with program completion. Each governing board is responsible to see that the needs of nontraditional college-age students are appropriately addressed and, to the extent it is possible for the individual governing board to control, to assure core course work completed at institutions under its jurisdiction is transferable to any other state institution of higher education for credit with the grade earned;

(h) Subject to the provisions of article one-b of this chapter, the appropriate governing board has the exclusive authority to approve the teacher education programs offered in the institution under its control. In order to permit graduates of teacher education programs to receive a degree from a nationally accredited program and in order to prevent expensive duplication of program accreditation, the Commission may select and utilize one nationally recognized teacher education program accreditation standard as the appropriate standard for program evaluation;

(i) Utilize faculty, students and classified employees in institutional-level planning and decisionmaking when those groups are affected;
Subject to the provisions of federal law and pursuant to the provisions of article nine of this chapter and to rules adopted by the Commission and the Council, administer a system for the management of personnel matters, including, but not limited to, personnel classification, compensation and discipline for employees at the institutions under their jurisdiction;

(k) Administer a system for hearing employee grievances and appeals. Notwithstanding any other provision of this code to the contrary, the procedure established in article six-a, chapter twenty-nine of this code is the exclusive mechanism for hearing prospective employee grievances and appeals. In construing the application of said article to grievances of higher education employees, the following apply:

(1) "Chief administrator" means the president of a state institution of higher education as to those employees employed by the institution and the appropriate chancellor as to those employees employed by the Commission or Council;

(2) The State Division of Personnel may not be a party to nor have any authority regarding a grievance initiated by a higher education employee; and

(3) The provisions of this section supersede and replace the grievance procedure set out in article twenty-nine, chapter eighteen of this code for any grievance initiated by a higher education employee after the first day of July, two thousand one;

(l) Solicit and utilize or expend voluntary support, including financial contributions and support services, for the institutions under its jurisdiction;
114. (m) Appoint a president for the institutions under its jurisdiction subject to the provisions of section six, article one-b of this chapter;

117. (n) Conduct written performance evaluations of the president pursuant to section six, article one-b of this chapter;

119. (o) Employ all faculty and staff at the institution under its jurisdiction. Such employees operate under the supervision of the president, but are employees of the governing board;

122. (p) Submit to the Commission or Council, as appropriate, no later than the first day of November of each year an annual report of the performance of the institution under its jurisdiction during the previous fiscal year as compared to stated goals in its master plan and institutional compact;

127. (q) Enter into contracts or consortium agreements with the public schools, private schools or private industry to provide technical, vocational, college preparatory, remedial and customized training courses at locations either on campuses of the public institution of higher education or at off-campus locations in the institution's responsibility district. To accomplish this goal, the boards are permitted to share resources among the various groups in the community;

135. (r) Provide and transfer funding and property to certain corporations pursuant to section ten, article twelve of this chapter;

138. (s) Delegate, with prescribed standards and limitations, the part of its power and control over the business affairs of the institution to the president in any case where it considers the delegation necessary and prudent in order to enable the institution to function in a proper and expeditious manner and to meet the requirements of its institutional compact. If a governing board elects to delegate any of its power and control under the
provisions of this subsection, it shall enter such delegation in
the minutes of the meeting when the decision was made and
shall notify the Commission or Council, as appropriate. Any
such delegation of power and control may be rescinded by the
appropriate governing board, the Commission or Council, as
appropriate, at any time, in whole or in part, except that the
Commission may not revoke delegations of authority made by
the governing boards of Marshall University or West Virginia
University as they relate to the state institutions of higher
education known as Marshall University and West Virginia
University;

(t) Unless changed by the Commission or the Council, as
appropriate, the governing boards shall continue to abide by
existing rules setting forth standards for acceptance of advanced
placement credit for their respective institutions. Individual
departments at institutions of higher education may, upon
approval of the institutional faculty senate, require higher
scores on the advanced placement test than scores designated
by the appropriate governing board when the credit is to be used
toward meeting a requirement of the core curriculum for a
major in that department;

(u) Each governing board, or its designee, shall consult,
cooperate and work with the State Treasurer and the State
Auditor to update as necessary and maintain an efficient and
cost-effective system for the financial management and
expenditure of special revenue and appropriated state funds at
the institutions under its jurisdiction that ensures that properly
submitted requests for payment be paid on or before due date
but, in any event, within fifteen days of receipt in the State
Auditor’s office;

(v) The governing boards in consultation with the appropri-
ate chancellor and the Secretary of the Department of Adminis-
tration shall develop, update as necessary and maintain a plan
to administer a consistent method of conducting personnel transactions, including, but not limited to, hiring, dismissal, promotions and transfers at the institutions under their jurisdiction. Each such personnel transaction shall be accompanied by the appropriate standardized system or forms which will be submitted to the respective governing board and the Department of Finance and Administration;

(w) Transfer of funds. –

(1) Notwithstanding any other provision of this code to the contrary, the governing boards may transfer funds from any account specifically appropriated for their use to any corresponding line item in a general revenue account at any agency or institution under their jurisdiction as long as such transferred funds are used for the purposes appropriated.

(2) The governing boards may transfer funds from appropriated special revenue accounts for capital improvements under their jurisdiction to special revenue accounts at agencies or institutions under their jurisdiction as long as such transferred funds are used for the purposes appropriated.

(x) Notwithstanding any other provision of this code to the contrary, the governing boards may acquire legal services as are considered necessary, including representation of the governing boards, their institutions, employees and officers before any court or administrative body. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the governing boards may, but are not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(y) Each governing board which has under its jurisdiction an administratively linked community and technical college or a regional campus offering community and technical college education programs shall create within the administrative
structure of its governing board a subcommittee for community and technical college education. The subcommittee shall have at least four members, one of whom is the chairperson of the board of advisors of the community and technical college or, in the case of the Governing Board of West Virginia university, both the member representing the community and technical college and the member representing the regional campus; and

(z) A governing board may contract and pay for disability insurance for a class or classes of employees at a state institution of higher education under its jurisdiction.


(a) A state institution of higher education is granted the powers, duties and authorities previously granted to the state institutions of higher education known as Marshall University and West Virginia University, subject to the following:

(1) The institutional operating budgets of all institutions to which this section applies have achieved a level of funding comparable with, but not less than ninety percent of, their respective peers, as established pursuant to section three, article one-a of this chapter;

(2) The Commission approves granting the powers, duties and authorities to that institution; and

(3) The powers, duties and authorities may not be granted to any institution prior to the first day of July, two thousand twelve.

(b) The powers, duties and authorities granted pursuant to this section are those provided in:

(1) Section four-a, article six, chapter five of this code;

(2) Section two, article one, chapter five-g of this code;
(3) Section twelve-b, article one, chapter twelve of this code;

(4) Sections five, six, seven and eight, article three, chapter twelve of this code;

(5) Sections three and six, article one of this chapter;

(6) Section two, article one-a of this chapter;

(7) Section four, article one-b of this chapter;

(8) Sections three and four of this article;

(9) Sections two and three, article three of this chapter;

(10) Sections five, five-a, six and seven, article four of this chapter;

(11) Sections three, four, seven and nine, article five of this chapter; and

(12) Sections one and six-a, article ten of this chapter.

(c) This section does not apply to any community and technical college.

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§18B-2B-9. Permits required for correspondence, business, occupational and trade schools; surety bonds and fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.

(a) The following words when used in this section have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:
(1) "Proprietary schools that award specialized associate degrees" means institutions of higher education; and

(2) "Specialized associate degrees" means degrees awarded by such institutions pursuant to a program of not fewer than two academic years.

(b) Nothing in this section qualifies proprietary schools for additional state moneys not otherwise qualified under other provisions of this code.

c) It is unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state, as these are defined by the Council by rule promulgated in accordance with article three-a, chapter twenty-nine-a of this code, to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, from the Council in the manner and on the terms herein prescribed, except this section does not apply to private organizations which offer only tax return preparation courses. The rule previously promulgated by the State College System Board of Directors and transferred to the Council by section six, article two-b, chapter eighteen-b of this code remains in effect until rescinded or amended by the Council.

(1) All private training or educational institutions, schools or academies or other organizations shall apply for a permit from the Council on forms provided by the Council.

(2) Each initial application shall be accompanied by a nonrefundable fee of two thousand dollars. The Council also may assess an additional fee based on any additional expense required to evaluate the application.
(3) The Council shall make a determination on the initial permit application within ninety days after receipt of the application and fee.

(4) An applicant for an initial permit shall show proof at the time of filing an application that adequate facilities are available and ready for occupancy and that all instructional equipment, books and supplies and personnel are in place and ready for operation. A representative of the Council shall make an on-site visit to the facilities of all new applicants to confirm their readiness for operation prior to issuance of the initial permit if the facilities are located in West Virginia.

(5) A school is considered to be established under the provisions of this article on the date it first begins to operate lawfully. An established school is not required to reapply for a permit as a result of changes in governance; administration; ownership; or form of operation.

(6) After the first permit year, an annual fee of five hundred dollars is imposed on each school for each campus it operates in this state.

(d) Each application shall be accompanied by a surety bond in the penal sum of thirty-five thousand dollars for any school which has its physical facilities located in this state and which has operated in this state for at least ten years:

(1) If the school has changed ownership within the last ten years by transfer of ownership control to a person who is a spouse, parent, sibling, child or grandchild of the previous owner, the surety bond shall continue in the penal sum of thirty-five thousand dollars.

(2) Any school which has operated in West Virginia for fewer than ten years, excluding those schools which have changed ownership within the last ten years as provided in
subdivision (1) of this section, and any school located in another state which applies for a permit hereunder, shall provide a surety bond of fifty thousand dollars.

(3) Any school may be required to increase its bond to one hundred fifty thousand dollars if either of the following conditions apply:

(A) The school’s accreditation is terminated for cause; or

(B) The school’s institutional eligibility under the Higher Education Act of 1965, as amended, has been terminated for cause. Expiration, nonrenewal or voluntary relinquishment of accreditation or institutional eligibility under the Higher Education Act, or failure to meet the requirements of one or more programs under the Act, are not considered to be a termination for cause.

(4) Any school may be required to increase its bond to an amount not to exceed four hundred thousand dollars if, in accordance with the standards of the American Institute of Certified Public Accountants, the school’s audited financial statements are qualified because the school’s continued financial viability as an ongoing concern is in doubt and the Council determines an increased bond is reasonably necessary to protect the financial obligations legally due the students then enrolled at the institution.

(A) A school may be required to maintain the increased bonding requirements described above until all students attending classes at the date of termination either graduate or withdraw.

(B) The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring the student’s enrollment, failure of the school to meet contractual
obligations, or failure of the school to meet the requirements of this section.

(C) The bond shall be given by the school itself as a blanket bond covering all of its representatives.

(D) The surety on a bond may cancel the same upon giving thirty days’ notice in writing to the principal on the bond and to the state Council and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the cancellation.

(e) A permit shall be valid for one year corresponding to the effective date of the bond and may be renewed upon application, accompanied by the required fee and the surety bond as herein required. All fees collected for the issuance or renewal of a permit shall be deposited in the State Treasury to the credit of the Council.

(f) The Council may refuse a permit to any school if the Council finds that the school engages in practices which are inconsistent with this section or with rules issued pursuant thereto.

(g) A permit issued hereunder may be suspended or revoked by the Council for fraud or misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its contract with one or more students who are residents of West Virginia or for violation of or failure to comply with any provision of this section or with any regulation of the Council pertinent thereto.

(1) Before taking any action to suspend or revoke a school’s permit, the Council shall give the school fifteen days’ notice and convene a hearing, if a hearing is requested by the school.
 Prior to the Council taking any adverse action, including refusal, suspension or revocation of a permit, the Council shall give the school reasonable opportunity to take corrective measures.

(3) Any refusal, suspension or revocation of a permit, or any other adverse action against a school, shall comply with all constitutional provisions, including due process, relating to the protection of property rights.

(h) All correspondence, business, occupational or trade schools which have been issued a permit shall make annual reports to the Council on forms furnished by the Council and shall provide such appropriate information as the Council reasonably may require. All correspondence, business, occupational or trade schools which have been issued a permit shall furnish to the Council a list of its official representatives. Each school shall be issued a certificate of identification by the Council for each of its official representatives.

(i) The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school, nor any representative of a school, may make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the State of West Virginia, Council or any other department or agency of the state.

(j) The Council is hereby authorized to adopt rules and conduct on-site reviews to evaluate academic standards maintained by schools for the awarding of certificates, diplomas, associate degrees and specialized associate degrees.

(1) These standards may include curriculum, personnel, facilities, materials and equipment.
(2) For accredited correspondence, business, occupational
and trade schools under permit on the first day of July, one
thousand nine hundred seventy-nine, which have their physical
facilities located in this state and which are accredited by the
appropriate nationally recognized accrediting agency or
association approved by the United States Department of
Education, the accrediting agency’s standards, procedures and
criteria are accepted as meeting applicable laws, standards and
rules of the Council.

(3) Institutions which are institutionally accredited by
accrediting agencies recognized by the United States Depart-
ment of Education to establish academic standards for post-
secondary education may offer post-secondary educational
programs leading to certificates, diplomas and associate degrees
and may award certificates, diplomas and associate degrees to
graduates who successfully complete required programs in
accordance with the academic standards required by such
accrediting agency.

(4) If a review undertaken by the Council indicates there
may be deficiencies in the academic standards the institution
maintains in its educational programs and if such deficiencies
are of such a material nature that they jeopardize continued
accreditation, the Council shall notify the institution. If the
Council and the institution are unable to agree on the deficien-
cies or the steps necessary to correct the deficiencies, the
Council shall consult with the institution’s accrediting agency
regarding an academically appropriate resolution which may
include a joint on-site review by the Council and the accrediting
agency.

(5) The Council also may review the academic standards of
unaccredited institutions and may require such institutions to
maintain recognized academic standards that are reasonably
appropriate to the nature of the institution and the training
offered.
(k) The Council may authorize an investigation of written student complaints alleging a violation of this section, Council rules or accreditation standards and may take appropriate action based on the findings of such an investigation.

(l) All evaluations or investigations of correspondence, business, occupational and trade schools and actions resulting from such evaluations or investigations shall be made in accordance with rules promulgated by the Council pursuant to article three-a, chapter twenty-nine-a of this code.

(m) In regard to private, proprietary educational institutions operating under this section of the code, accredited by a national or regional accrediting agency or association recognized by the United States Department of Education and which provide training at a campus located in this state:

(1) Any rule or standard which is authorized by this or any section of the code or other law and which is now in effect or promulgated hereafter by the Council (or other agency with jurisdiction) shall be clearly, specifically and expressly authorized by narrowly construed enabling law and shall be unenforceable and without legal effect unless authorized by an Act of the Legislature under the provisions of article three-a, chapter twenty-nine-a of this code.

(2) Notwithstanding any other provision of this section or other law to the contrary, the institution's accrediting agency standards, procedures and criteria shall be accepted as the standards and rules of the Council (or other agency with jurisdiction) and as meeting other law or legal requirements relating to the operation of proprietary institutions which such Council or other agency has the legal authority to enforce under any section of the code or other law. Nothing in this section denies students the use of remedies that would otherwise be available under state or federal consumer laws or federal law relating to federal college financial assistance programs.
221 (3) Accredited institutions operating hereunder are hereby recognized as postsecondary. Academic progress is measured and reported in credit hours and all reports/documents are filed on a credit-hour basis unless the institution notifies the Council that it utilizes clock hours as its unit of measurement.

226 (n) A representative of any school who solicits, sells or offers to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than two hundred dollars per day per violation, or imprisoned in jail not more than sixty days, or both fined and imprisoned. No correspondence, business, occupational or trade school shall maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school if the school did not hold a valid permit at the time the contract was signed by any of the parties thereto. The Attorney General or any county prosecuting attorney, at the request of the Council or upon his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.

243 (o) In regard to institutions operating under this section, all substantive standards and procedural requirements established by the Council (or the West Virginia state program review entity or other agency with jurisdiction over institutions operating hereunder) shall meet all substantive and procedural standards of due process relating to the protection of an individual citizen’s property rights as provided under the United States Constitution and shall follow the substantive standards and procedural requirements established by or under authority of this section.
ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH, DOCTORAL-GRA NTING PUBLIC UNIVERSITIES.

§18B-3-1. Legislative findings, purpose; intent; definition.

§18B-3-2. Computer and computer equipment donation program.

§18B-3-3. Relationship of governing boards to the Commission and the Council.

§18B-3-4. Duty of governing boards to address state priorities.

§18B-3-1. Legislative findings, purpose; intent; definition.

(a) The Legislature finds that an effective and efficient system of doctoral-level education is vital to providing for the economic well-being of the citizens of West Virginia and for accomplishing established state goals and objectives. As the only research and doctoral-granting public universities in the state, Marshall University and West Virginia University are major assets to the citizens of West Virginia and must be an integral part of any plan to strengthen and expand the economy.

(b) The Legislature further finds that these two institutions must compete in both a national and global environment that is rapidly changing, while they continue to provide high quality education that is both affordable and accessible and remain accountable to the people of West Virginia for the most efficient and effective use of scarce resources.

(c) The Legislature further finds that Marshall University and West Virginia University, under the direction of their respective governing boards, have sufficient staff and internal expertise to manage operational governance of their institutions in an efficient and accountable manner and can best fulfill their public missions when their governing boards are given flexibility and autonomy sufficient to meet state goals established in this article and in section one-a, article one of this chapter.

(d) Therefore, the purposes of this article include, but are not limited to, the following:
25 (1) Enhancing the competitive position of Marshall University and West Virginia University in the current environment for research and development;

26 (2) Providing the governing boards of these institutions with operational flexibility and autonomy, including tools to promote economic development in West Virginia;

27 (3) Encouraging the development of research expertise in areas directly beneficial to the state; and

28 (4) Focusing the attention and resources of the governing boards on state goals and priorities to enhance the competitive position of the state and the economic, social and cultural well-being of its citizens.

29 (e) The following terms wherever used or referred to in this chapter have the following meaning, unless a different meaning plainly appears from the context:

30 (1) “State institution of higher education known as Marshall University” means the doctoral-granting research institution and does not include Marshall Community and Technical College; and

31 (2) “State institution of higher education known as West Virginia University” means the doctoral-granting research institution and does not include any of the following:

32 (A) The regional campus known as West Virginia University Institute of Technology;

33 (B) The administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology; and

34 (C) The regional campus known as West Virginia University at Parkersburg.
The governing boards of Marshall University and West Virginia University each have the power and the obligation to perform functions, tasks and duties as prescribed by law and to exercise their authority and carry out their responsibilities in a manner that is consistent with and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the Higher Education Policy Commission.

While the governing boards of Marshall University and West Virginia University, respectively, may choose to delegate powers and duties to the presidents of the state institutions of higher education known as Marshall University and West Virginia University pursuant to subsection (s), section four, article two-a of this chapter, ultimately, it is they who are accountable to the Legislature, the Governor and the citizens of West Virginia for meeting the established state goals set forth in this article and section one-a, article one of this chapter. Therefore, it is the intent of the Legislature that grants of operational flexibility and autonomy be made directly to the governing boards and are not grants of operational flexibility and autonomy to the presidents of these institutions.

§18B-3-2. Computer and computer equipment donation program.

Notwithstanding any other provision of this code to the contrary, the governing boards are authorized to create a program to donate surplus computers and computer-related equipment to education facilities, nonprofit organizations, juvenile detention centers, municipal and county public safety offices and other public, charitable or educational enterprises or organizations in this state.

(a) Only equipment which otherwise would be transferred to the Surplus Property Unit of the Purchasing Division may be donated;
(b) The governing boards shall keep records and accounts that clearly identify the equipment donated, the age of the equipment, the reasons for declaring it obsolete and the name of the education facility, nonprofit organization, juvenile detention center, municipal or county public safety office or other public, charitable or educational enterprise or organization to which the equipment was donated;

(c) Each governing board shall promulgate a rule in accordance with the provisions of section six, article one of this chapter to implement the donation program. The rules shall specify the procedures to be used for record keeping and shall provide for fair and impartial selection of equipment recipients.

§18B-3-3. Relationship of governing boards to the Commission and the Council.

(a) Relationship between the Commission and the governing boards. –

(1) The Commission functions as a state-level coordinating board exercising its powers and duties in relation to the governing boards of Marshall University and West Virginia University only as specifically prescribed by law;

(2) The primary responsibility of the Commission is to work collaboratively with the governing boards to research, develop and propose policy that will achieve the established goals and objectives set forth in this chapter and chapter eighteen-c of this code; and

(3) The Commission has specific responsibilities which include, but are not limited to, the following:

(A) Advocating for public higher education at the state level; and
(B) Collecting and analyzing data, researching, developing recommendations, and advising the Legislature and the Governor on broad policy initiatives, use of incentive funding, national and regional trends in higher education and issues of resource allocation involving multiple governing boards.

(b) Relationship between the Council and the governing boards. –

(1) The Council maintains all powers and duties assigned to it by law or policy relating to the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology and the regional campus known as West Virginia University at Parkersburg;

(2) In addition to recognizing the authority assigned by law to the Council, it is the responsibility of the governing boards of Marshall University and West Virginia University to exercise their authority and carry out their responsibilities in a manner that is consistent with and complementary to the powers and duties assigned by law or policy to the community and technical colleges or to the Council;

(3) It is further the responsibility of the governing boards to abide by the rules duly promulgated by the Council relating to the community and technical colleges, to strengthen the community and technical college mission of these institutions, to aid them in meeting the essential conditions set forth in section three, article three-c of this chapter and to promote them to students, parents and the community as independently accredited institutions in their own right.

(c) The governing boards shall work collaboratively with the Commission, the Council and their staff to provide any and
all information requested by the Commission or the Council in
an appropriate format and in a timely manner.

§18B-3-4. Duty of governing boards to address state priorities.

(a) The expertise of faculty and graduate students at the
state institutions of higher education known as Marshall
University and West Virginia University is important to every
citizen of this state. It is the responsibility of the governing
boards to channel this expertise into research and analysis that
will yield measurable benefits to the citizens of West Virginia.
Therefore, in addition to the goals for post-secondary education
established in section one-a, article one of this chapter, and
goals established elsewhere in this code, it is the responsibility
of the governing boards in collaboration to concentrate attention
and resources on certain specific state priorities that have a
direct, positive impact on the economic, social and cultural
well-being of the people of West Virginia. These priorities
include, but are not limited to, the following:

(1) Developing Regional Brownfield Assistance Centers
pursuant to section seven, article eleven of this chapter;

(2) Performing professional development-related research
and coordinating the delivery of professional development to
educators in the public schools of the state pursuant to the
provisions of article two, chapter eighteen of this code;

(3) Building subject matter expertise in public school
finance, including mastery of the theories and concepts used in
developing formulas to provide state-level financial support to
public education; and

(4) Researching and proposing cost-efficient methods to the
Legislature for governing boards other than Marshall University
and West Virginia University to dispose of obsolete computers
and computer-related equipment.
(b) The Legislature may, but is not required to, make additional appropriations for the benefit of the state institutions of higher education known as Marshall University and West Virginia University to assist them in fulfilling the purposes set forth in subsection (a) of this section.

(c) In addition to the priorities established in subsection (a) of this section, each governing board separately shall focus resources and attention on improving their graduation rates for full-time undergraduate students as a specific institutional priority. The graduation rate is measured as a percentage of the undergraduate students who obtain a degree within six years of the date of enrollment as full-time freshmen. The governing boards shall develop and implement plans to reach the following goals:

(1) Marshall University shall attain a graduation rate for full-time undergraduate students of forty percent by the first day of July, two thousand eight, and shall attain a graduation rate for full-time undergraduate students of forty-five percent by the first day of July, two thousand ten.

(2) West Virginia University shall attain a graduation rate for full-time undergraduate students of sixty percent by the first day of July, two thousand eight, and shall attain a graduation rate for full-time undergraduate students of sixty-three percent by the first day of July, two thousand ten.

(3) The Commission shall monitor and report by the first day of December, two thousand five, and annually thereafter, to the Legislative Oversight Commission on Education Accountability on the progress of the governing boards toward meeting the goals set forth in subdivisions (1) and (2) of this subsection.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal.
§18B-4-5a. Crimes committed on campus of institutions of higher education.
§18B-4-6. Acquisition, operation and regulation of parking areas and facilities at state institutions of higher education; regulation of parking, speed and flow of traffic on campus roads and driveways; civil and criminal penalties; disposition of revenue.
§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

§18B-4-5. Campus police officers; appointment; qualifications; authority; compensation and removal.

(a) The governing boards may appoint bona fide residents of this state to serve as campus police officers upon any premises owned or leased by the State of West Virginia and under the jurisdiction of the governing boards, subject to the conditions and restrictions established in this section.

(1) A person who previously was qualified for employment as a law-enforcement officer for a state agency or political subdivision of the state is considered certified for appointment as a campus police officer at the state institutions of higher education under the jurisdiction of the governing boards of Marshall University and West Virginia University.

(2) Before performing duties as a campus police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by article one, chapter six of this code; and

(B) Posting an official bond as required by article two, chapter six of this code.

(b) A campus police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under section five, article twenty-nine, chapter thirty of this code or meets the requirements of subsection (a) of this section.
(c) It is the duty of a campus police officer to preserve law and order:

(1) On the premises under the jurisdiction of the governing board; and

(2) On any street, road or thoroughfare, except controlled access and open country highways, immediately adjacent to or passing through premises, to which the officer is assigned by the president of the state institution of higher education.

(A) For the purpose of this subdivision, the campus police officer is a law-enforcement officer pursuant to the provisions of section one, article twenty-nine, chapter thirty of this code.

(B) The officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The officer is subject to all the requirements and responsibilities of a law-enforcement officer;

(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-enforcement officers to preserve law and order on such premises.

(E) Campus police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state when:

(i) Traffic is generated as a result of athletic or other activities conducted or sponsored by a state institution of higher education; and
(ii) The assistance has been requested by the local law-enforcement agency.

(F) Campus police officers may assist a local law-enforcement agency in any location under the agency's jurisdiction at the request of the agency.

(d) The salary of a campus police officer is paid by the appropriate governing board. Each state institution may furnish each campus police officer with a firearm and an official uniform to be worn while on duty. The institution shall furnish and require each officer while on duty to wear a shield with an appropriate inscription and to carry credentials certifying to the person's identity and authority as a campus police officer.

(e) A governing board may at its pleasure revoke the authority of any campus police officer and such officers serve at the will and pleasure of the governing board. The president of the state institution shall report the termination of employment of a campus police officer by filing a notice to that effect in the office of the clerk of each county in which the campus police officer's oath of office was filed.

§18B-4-5a. Crimes committed on campus of institutions of higher education.

(a) The president or a designee of each state institution of higher education shall on a regular and timely basis provide information to the public concerning alleged crimes occurring on the institution's property which have been reported to a campus police officer or any other officer of the institution.

(1) A crime is considered reported when:

(A) A campus police officer or other officer of the institution determines that the report is credible;
(B) The report is submitted in writing and attested to by the victim on forms at the institution for such purpose; or

(C) The institution is notified by a law-enforcement agency of the reporting of a crime alleged to have occurred on the institution's property.

(2) Such reports are referred within twenty-four hours to the appropriate law-enforcement agencies, as defined in section one, article twenty-nine, chapter thirty of this code, for further investigation.

(b) For the state institutions of higher education under the jurisdiction of the Governing Board of Marshall University and for the state institution of higher education known as West Virginia University only, the campus police shall investigate a crime within their respective jurisdictions for up to thirty days if the county prosecuting attorney does not reassign the case to another agency sooner.

(c) The information required to be made available to the public regarding the crime report shall be available within ten days of the report. The information shall include the nature of the criminal offense, the date of the offense, the general location of the offense (such as a designation of a specific building or area of the campus) and the time of day when the offense occurred.

(1) This subsection does not require the release of any information which may disclose the identity of the victim.

(2) The institution shall withhold the information required to be made available to the public for a longer period upon certification of investigative need that the information be withheld from the public.
(A) The certification shall be filed by an officer of one of
the investigating law-enforcement agencies with the president
of the institution or the designee to whom the duties required by
this section have been delegated.

(B) The required information may not be withheld after an
arrest has been made in connection with the crime report.

(d) For purposes of this section, "crime" is defined as those
offenses required to be reported under the federal Crime
Awareness and Campus Security Act of 1990, as amended.
"Crime" includes murder, rape, robbery, aggravated assault,
burglary, motor vehicle theft and arrests for liquor, drug or
weapons laws violations.

(e) The Council and Commission shall provide crime
reporting forms to institutions under their respective jurisdic-
tions and promulgate a rule pursuant to the provisions of article
three-a, chapter twenty-nine-a of this code as necessary to
implement this section.

§18B-4-6. Acquisition, operation and regulation of parking areas
and facilities at state institutions of higher educa-
tion; regulation of parking, speed and flow of
traffic on campus roads and driveways; civil and
criminal penalties; disposition of revenue.

(a) The governing boards are hereby authorized to con-
struct, maintain and operate automobile parking facilities or
areas upon any premises owned or leased at any state institution
of higher education under their jurisdiction for use by students,
faculty, staff and visitors. The governing boards may charge
fees for use of the parking facilities or areas under their control.
All moneys collected for the use of the parking facilities or
areas shall be paid to the credit of the state institution of higher
education at which the fees were charged into a special fund in
the State Treasury. The moneys in the fund are used first to pay
the cost of maintaining and operating the parking facilities or areas.

Any excess not needed for this purpose may be used for the acquisition of property by lease or purchase and the construction thereon of additional parking facilities or areas. Any money in the fund not needed immediately for the acquisition, construction, maintenance or operation of the parking facilities or areas may be temporarily invested by the governing boards with the West Virginia Investment Management Board to the credit of the institution by which the fees were charged.

(b) Notwithstanding any other motor vehicle or traffic law or regulation to the contrary, a governing board may regulate and control at any state institution under its jurisdiction the speed, flow and parking of vehicles on campus roads, driveways and parking facilities or areas.

(1) Rules for this purpose shall be promulgated by the governing boards in the manner prescribed in section six, article one of this chapter; and

(2) When so promulgated, the rules have the force and effect of law.

(3) The governing board shall post in a conspicuous location in each parking facility or area, a summary of the rules governing the use of the facility or area including, but not limited to, the availability of temporary parking permits and where these permits may be obtained and the penalties which may be imposed for violations of the rules.

(4) The governing board shall post in a conspicuous location along each campus road and driveway notice signs pertaining to the speed of vehicles, spaces available for parking, directional flow of traffic and penalties which may be imposed for violations of the rules.
(c) Any person parking or operating a vehicle in violation of the rules shall be issued a citation:

(1) Describing the offense charged;

(2) Ordering an appearance:

(A) Within ten days, excluding Saturdays, Sundays and holidays observed by the state institution, before a designated official of the institution;

(B) Before a magistrate located in the county if the person cited fails to appear within the ten days; or

(C) Before the judge of the municipal court, if the state institution is located within a municipality having such an official, and the person cited fails to appear within the ten days.

(d) The designated official of the state institution has exclusive jurisdiction of the offense during the ten-day period until the citations are forwarded to a magistrate. For the state institutions of higher education under the jurisdiction of the Governing Board of Marshall University and for the state institution of higher education known as West Virginia University only, the designated official of the institution has exclusive jurisdiction of the offense for thirty days following the violation. After thirty days the official forwards the citation to a magistrate. Any person so cited may plead no contest to the offense and, by so pleading, is subject to a civil penalty to be determined uniformly by the designated official and commensurate with the severity of the offense. For the state institutions under the jurisdiction of the Governing Board of Marshall University and for the state institution of higher education known as West Virginia University only, the amount imposed may not exceed twenty dollars. For all other institutions the amount may not exceed ten dollars, for each offense as partial reimbursement to the state institution of higher education for
the cost of regulating traffic and parking. In the case of the
state institutions under the jurisdiction of the Governing Board
of Marshall University and in the case of the state institution of
higher education known as West Virginia University only, the
designated official shall determine the penalty uniformly,
commensurate with the severity of the offense, and may apply
academic restrictions in lieu of requiring a student to appear in
court and receive penalties otherwise provided in this section.
Moneys derived from civil penalties imposed herein shall be
deposited in the special fund in the state treasury created by this
section and credited to the state institution to which the penalty
was paid.

(e) Upon expiration of the ten-day or thirty-day period, as
applicable, or upon a pleading of not guilty before the desig-
nated official of the state institution within the applicable
period, the magistrate or judge of the municipal court has
jurisdiction of the offense. Any person cited under the provi-
sions of this section, upon a finding of guilty by the magistrate
or municipal judge, is subject to a fine for each offense by the
state institutions under the jurisdiction of the Governing Board
of Marshall University and for the state institution of higher
education known as West Virginia University only, of up to
forty dollars, and at all other state institutions not less than ten
dollars nor more than twenty dollars, the amount to be com-
mensurate with the severity of the offense.

(f) Each designated official of a state institution presiding
over a case under the provisions of this section shall keep a
record of every citation which alleges a violation of such
provisions, or the rules promulgated in accordance therewith,
and shall keep a record of every official action in reference
thereto including, but not limited to, a record of every plea of
no contest, conviction or acquittal, of the offense charged, and
the amount of the fine or civil penalty resulting from each
citation.
(g) Whenever a vehicle is parked on any state institution campus road, driveway or parking facility or area in a manner which violates posted rules and substantially impedes the flow of traffic or endangers the health and safety, the institution may, in addition to the issuing of a citation and subsequent procedures set forth herein, remove the vehicle, by towing or otherwise, to an area owned by the institution or areas designated for this purpose. The vehicle, having been towed to the designated area or areas, may be rendered immovable by use of locking wheel blocks or other device not damaging to the vehicle. The state institution of higher education shall maintain any vehicle so towed in the same condition as it was immediately prior to being towed, but shall not be liable for any damage to a vehicle towed to, or kept in, a designated area pursuant to the provisions of this section. The state institution of higher education shall pay for the cost of removing the vehicle and shall have a right to reimbursement from the owner for this cost and for the reasonable cost of keeping the vehicle in the designated area. Until payment of these costs, the state institution of higher education may retain possession of the vehicle and the institution shall have a lien on the vehicle for the amount due. The state institution of higher education may enforce this lien in the manner provided in section fourteen, article eleven, chapter thirty-eight of this code for the enforcement of other liens. For the state institutions of higher education under the jurisdiction of the Governing Board of Marshall University and for the state institution of higher education known as West Virginia University only, the provisions of this subsection also apply when a vehicle is subject to three or more unpaid citations.

(h) If, at any time, Marshall Community and Technical College ceases to share a physical campus location with Marshall University, it may not be included as an institution under the jurisdiction of the governing board of Marshall
University for the purposes of subsections (a),(d),(e) and (g) of this section.

§18B-4-7. Accreditation of institutions of higher education; standards for degrees.

The Council shall make rules for the accreditation of community and technical colleges in this state and shall determine the minimum standards for conferring degrees. The Commission shall make rules for the accreditation of colleges and universities in this state, except the governing boards of Marshall University and West Virginia University shall make rules for the state institutions of higher education known as Marshall University and West Virginia University, and shall determine the minimum standards for conferring degrees. The governing boards of Marshall University and West Virginia University shall promulgate rules pursuant to the provisions of section six, article one of this chapter for the accreditation of the state institutions of higher education known as Marshall University and West Virginia University. An institution of higher education may not confer any degree on any basis of work or merit below the minimum standards prescribed by the Council, Commission or the governing boards. Nothing in this section infringes upon the rights, including rights to award degrees, granted to any institution by charter given according to law, or by actions of the Council or Commission or their predecessors, prior to the effective date of this section. With the approval of the Commission, governing boards of institutions which currently offer substantial undergraduate course offerings and a master's degree in a discipline are authorized to grant baccalaureate degrees in that discipline.

Except as otherwise provided in this section, a charter or other instrument containing the right to confer degrees of higher education status may not be granted by the State of West Virginia to any institution, association or organization within
the state, nor may any such degree be awarded, until the
condition of conferring the degree has first been approved in
writing by the Council, Commission or appropriate governing
board.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDITURES.

§18B-5-3. Authority to contract for programs, services and facilities.

§18B-5-4. Purchase or acquisition of materials, supplies, equipment, services and printing.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.


§18B-5-10. Medical professional liability insurance and risk management functions.

§18B-5-3. Authority to contract for programs, services and facilities.

The governing boards, the Commission and the Council are
authorized and empowered to enter into contracts and expend
funds for programs, services and facilities provided by public
and private education institutions, associations, boards, agen-
cies, consortia, corporations, partnerships, individuals and local,
state and federal governmental bodies within and outside of
West Virginia in order that maximum higher education opportu-
nities of high quality may be provided to the citizens of the
state in the most economical manner. In no event may a
contract for such services and facilities be entered into unless
the Commission, the Council or the governing boards have
determined that such services and facilities are necessary and
would be at a savings to the state.

§18B-5-4. Purchase or acquisition of materials, supplies, equip-
ment, 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
(b) 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 pur-
chases 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.

(c) When a state institution of higher education submits a contract, agreement or other document to the Attorney General for approval as to form as required by this chapter the following conditions apply:

(1) “Form” means compliance with the Constitution and statutes of the State of West Virginia.

(2) The Attorney General does not have the authority to reject a contract, agreement or other document based on the substantive provisions therein or any extrinsic matter so long as there is compliance with the Constitution and statutes of this State.

(3) Within fifteen days of receipt, the Attorney General must notify the appropriate state institution of higher education
in writing that the contract, agreement or other document is approved or disapproved as to form. If the contract, agreement or other document is disapproved as to form, the notice of disapproval must identify each defect that supports the disapproval.

(4) If the state institution elects to challenge the disapproval by filing a Writ of Mandamus or other action and prevails, then the Attorney General shall pay reasonable attorney fees and costs incurred.

(d) Pursuant to this subsection, the governing boards of Marshall University and West Virginia University, respectively, may:

(1) Purchase or acquire all materials, supplies, equipment, services and printing required for the governing board without approval from the Commission or the Vice Chancellor for Administration and may issue checks in advance to cover postage as provided in subsection (f) of this section;

(2) 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 these groups and if this would be the most financially advantageous manner of making the purchase;

(3) Select and acquire by contract or lease all grounds, buildings, office space or other space, the rental of which is necessarily required by the governing board; and

(4) Use purchase cards under terms approved for the Commission, the Council and governing boards of state institutions of higher education and participate in any expanded program of use as provided in subsection (w) of this section.
(e) The governing boards shall adopt sufficient accounting and auditing procedures and promulgate and adopt appropriate rules subject to the provisions of section six, article one of this chapter to govern and control acquisitions, purchases, leases and other instruments for grounds, buildings, office or other space or lease-purchase agreements.

(f) 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.

(g) 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.

(h) 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.

(i) 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 indus-
trial enterprise.

(j) 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 perfor-
mance 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.

(k) 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 requirements of article two, chapter five-a of this code and specifically sections twenty-six, twenty-seven and twenty-eight of said article 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 said article.

(1) 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.

(m) 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 as to form by
the Attorney General. The Attorney General shall make a list
of those changes which he or she considers 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.

(n) If the governing board, Council or Commission pur-
chases 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.

(o) Any governing board or the Council or Commission, as
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.

(p) 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.

(q) 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
government contract would be the most financially advanta-
geous manner of making the purchase.

(r) An independent performance audit of all purchasing
functions and duties which are performed at any state institution
of higher education, except Marshall University and West
Virginia University, 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.

(1) The governing boards of Marshall University and West
Virginia University, respectively, shall provide for independent
performance audits of all purchasing functions and duties on
their campuses at least once in each three-year period.
Each audit shall be inclusive of the entire time period that has elapsed since the date of the preceding audit.

Copies of all appropriate documents relating to any audit performed by the governing boards of Marshall University and West Virginia University shall be furnished to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability within thirty days of the date the audit report is completed.

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.

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.

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, except the governing boards of Marshall University and West Virginia University may enter into lease-purchase arrangements for the state institutions of higher education known as Marshall University and West Virginia University without seeking the approval of the Commission or the Council. 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 agreement as to form by 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 as to form 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.

(v) 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. For state institutions of higher education other than Marshall University and West Virginia University, 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 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 obligation 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, improvement, remodeling, repair or other change involving the expenditure 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
Executive 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. The governing boards of Marshall University and West Virginia University shall promulgate rules pursuant to section six, article one of this chapter to implement the provisions of this section.

(w) 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 for any such institution it determines has the capacity to comply.

§18B-5-7. Disposition of obsolete and unusable equipment, surplus supplies and other unneeded materials.

(a) The Commission, the Council and the governing boards shall dispose of obsolete and unusable equipment, surplus supplies and other unneeded materials, either by transfer to other governmental agencies or institutions, by exchange or trade, or by sale as junk or otherwise. The Commission, the Council and each governing board shall adopt rules governing and controlling the disposition of all such equipment, supplies and materials.
(1) At least ten days prior to the disposition, the Commission, the Council or the governing boards, as applicable, shall advertise, by newspaper publication as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the county in which the equipment, supplies and materials are located, the availability or sales of such disposable equipment, supplies and materials.

(2) The Commission, the Council or governing boards, as applicable, may sell the disposable equipment, supplies and materials, in whole or in part, at public auction or by sealed bid, or may transfer, exchange or trade the same to other governmental agencies or institutions (if by transfer, exchange or trade, then without advertising), in whole or in part, as sound business practices may warrant under existing circumstances and conditions.

(3) The requirements set forth in subsection (a) of this section apply to Marshall University and West Virginia University relating only to those items of obsolete and unusable equipment, surplus supplies and other unneeded materials that exceed five thousand dollars in recorded net book value. Marshall University and West Virginia University may dispose of obsolete and unusable computers and computer-related equipment pursuant to the provisions of section two, article three of this chapter.

(b) The Commission, Council or governing board, as appropriate, except for Marshall University and West Virginia University, shall report annually to the Legislative Auditor, all sales of commodities made during the preceding six months.

(1) The report shall include a description of the commodities sold, the name of the buyer to whom each commodity was sold, and the price paid by the buyer.
(2) Marshall University and West Virginia University shall report biennially to the Legislative Auditor the total sales of commodities made during the preceding biennium along with the total recorded net book value of such commodities.

(c) The proceeds of sales or transfers shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or funds from which the purchase of the particular commodities or expendable commodities was made. The Commission, Council or governing board, as appropriate, may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale and distribution of state property that is disposed of or sold pursuant to the provisions of this section.


(a) The governing boards of Marshall University and West Virginia University each shall ensure the fiscal integrity of its operations using best business and management practices.

(1) The practices include at least the following:

(A) Complying with Generally Accepted Accounting Principles of the Governmental Accounting Standards Board (GAAP); and the Generally Accepted Government Auditing Standards of the Government Accountability Office (GAGAS);

(B) Operating without material weakness in internal controls as defined by GAAP, GAGAS and, where applicable, the Office of Management and Budget (OMB) Circular A-133;

(C) Maintaining annual audited financial statements with an unqualified opinion;

(D) Presenting annual audited financial statements to the respective governing board;
(E) Maintaining quarterly financial statements certified by the chief financial officer of the institution; and

(F) Implementing best practices from Sarbanes-Oxley, or adopting the applicable tenets of Sarbanes-Oxley as best practices.

(2) Marshall University, West Virginia University and the research corporation of each:

(A) Shall comply with the OMB Circular A-133 annual grant award audit requirements; and

(B) Is exempt from the provisions of section fourteen, article four, chapter twelve of this code.

(3) Within thirty days of the completion of the financial audit report, the governing boards of Marshall University and West Virginia University each shall furnish to the Commission, the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance copies of the annual audited financial statements.

(b) The Commission or Council, as appropriate, shall ensure the fiscal integrity of any electronic process conducted at its offices and at all other institutions using best business and management practices.

(c) Marshall University, West Virginia University, the Council and the Commission each shall implement a process whereby, to the maximum extent practicable, employees of Marshall University, West Virginia University, the Council, Commission and all other state institutions of higher education receive their wages via electronic transfer or direct deposit.

(d) Notwithstanding the provisions of section ten-a, article three, chapter twelve of this code, and except as otherwise
provided in this subsection, the amount of any purchase made
with a purchasing card used by the Council, the Commission or
any other state institution of higher education may not exceed
five thousand dollars.

(1) Subject to approval of the Auditor, any emergency
payment and any routine, regularly scheduled payment,
including, but not limited to, utility payments, contracts and
real property rental fees, may exceed this limit by an amount to
be determined by the Auditor.

(2) The Council, Commission and any state institution of
higher education may use a purchasing card for travel expenses
directly related to the job duties of the traveling employee.
Where approved by the auditor, such expenses may exceed five
thousand dollars by an amount to be determined by the auditor.
Traveling expenses may include registration fees and airline
and other transportation reservations, if approved by the
president of the institution. Traveling expenses may not include
fuel or food purchases except, the state institutions of higher
education known as Marshall University and West Virginia
University may include in traveling expenses the purchase of
fuel and food.

(3) The state institutions known as Marshall University and
West Virginia University each shall maintain one purchasing
card for use only in a situation declared an emergency by the
institution’s president. The Council, Commission and all other
institutions shall maintain one purchase card for use only in a
situation declared an emergency by the president of the
institution and approved by the appropriate chancellor.
Emergencies may include, but are not limited to, partial or total
destruction of a campus facility; loss of a critical component of
utility infrastructure; heating, ventilation or air condition failure
in an essential academic building; loss of campus road, parking
lot or campus entrance; or a local, regional, or national emer-
gency situation that has a direct impact on the campus.
(e) Notwithstanding the provisions of section ten-f, article three, chapter twelve of this code, or any other provision of this code or law to the contrary, the Auditor shall accept any receiving report submitted in a format utilizing electronic media. The Auditor shall conduct any audit or investigation of the Council, Commission or any institution at its own expense and at no cost to the Council, Commission or institution.

(f) The Council and the Commission each shall maintain a rule in accordance with the provisions of article three-a, chapter twenty-nine-a of this code. The rule shall provide for institutions individually or cooperatively to maximize their use of any of the following purchasing practices that are determined to provide a financial advantage:

1. Bulk purchasing;
2. Reverse bidding;
3. Electronic marketplaces; and
4. Electronic remitting.

(g) Each institution shall establish a consortium with at least one other institution, in the most cost-efficient manner feasible, to consolidate the following operations and student services:

1. Payroll operations;
2. Human resources operations;
3. Warehousing operations;
4. Financial transactions;
5. Student financial aid application, processing and disbursement;
(6) Standard and bulk purchasing; and

(7) Any other operation or service appropriate for consolidation as determined by the Council or Commission.

(h) An institution may charge a fee to each institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the providing institution, as approved by the Council and Commission.

(i) Any community and technical college, college and university may provide the services authorized by this section for the benefit of any governmental body or public or private institution.

(j) Each institution shall strive to minimize its number of low-enrollment sections of introductory courses. To the maximum extent practicable, institutions shall use distance learning to consolidate the course sections. Marshall University, West Virginia University, the Council and Commission shall report the progress of reductions as requested by the Legislative Oversight Commission on Education Accountability.

(k) An institution shall use its natural resources and alternative fuel resources to the maximum extent feasible. The institution:

(1) May supply the resources for its own use and for use by any other institution;

(2) May supply the resources to the general public at fair market value;

(3) Shall maximize all federal or grant funds available for research regarding alternative energy sources; and
(4) May develop research parks to further the purpose of this section and to expand the economic development opportunities in the state.

(l) Any cost-savings realized or fee procured or retained by an institution pursuant to implementation of the provisions of this section is retained by the institution.

(m) The provisions of subsection (b) of this section do not apply to the state institutions known as Marshall University and West Virginia University. Each is authorized, but not required, to comply with the provisions of subsections (f), (g) and (h) of this section.

(1) The governing boards of Marshall University and West Virginia University, respectively, each shall promulgate a rule on purchasing procedures pursuant to the provisions of section six, article one of this chapter. Neither institution is subject to the rules required by subsection (f) of this section.

(2) If either governing board elects to implement the provisions of said subsection (g) of this section, the following conditions apply:

(A) The governing board makes the determination regarding any additional operation or service which is appropriate for consolidation without input from the Council or Commission;

(B) The governing board sets the fee charged to any institution for which it provides a service or performs an operation. The fee rate shall be in the best interest of both the institution being served and the providing institution, but it is not subject to approval by the Council or Commission; and

(C) The governing board may not implement the provisions of this subdivision in a manner which supercedes the require-
§18B-5-10. Medical professional liability insurance and risk management functions.

(a) The Legislature finds that, while recent reforms have helped to address the rising costs and limited availability of medical malpractice and risk management insurance in West Virginia, the state’s doctoral-granting research universities and their medical schools continue to face significant challenges related to the cost and operation of insurance and risk management programs.

(b) The Legislature further finds that the availability of cost-efficient insurance and risk management programs is essential to the long-term financial integrity and viability of these universities and their medical and other health professional schools.

(c) It is the responsibility of the Legislature to make the best use of available resources and to assure the availability of high quality medical education to meet the needs of the citizens of the state.

(d) Therefore, to aid the medical and other health professional schools in meeting these goals and objectives, the following program is authorized:

(1) Upon the agreement of the West Virginia State Board of Risk and Insurance Management, the health professionals schools under the jurisdiction of the governing boards of Marshall University, West Virginia University and the West Virginia School of Osteopathic Medicine, respectively, may participate, separately, in a self-insurance retention program in conjunction with the state insurance program administered by the West Virginia State Board of Risk and Insurance Manage-
ment to provide medical professional liability coverage to its health care professionals and students.

(2) In administering the self-insurance retention program, each governing board has the authority to administer, manage and/or settle its own medical professional liability insurance claims.

(e) Notwithstanding the provisions of article twelve, chapter twenty-nine of this code, the West Virginia State Board of Risk and Insurance Management is hereby authorized and empowered to enter into separate agreements with the health professionals schools under the jurisdiction of the governing boards of Marshall University, West Virginia University, and the West Virginia School of Osteopathic Medicine, respectively, to develop and implement a self-insurance retention program for medical professional liability insurance.

(f) Prior to the implementation of any self-insurance retention program, the governing boards of Marshall University, West Virginia University, and the West Virginia School of Osteopathic Medicine, respectively, shall submit the proposed program plan to the state Insurance Commissioner for review:

(1) The review shall include, but is not limited to, claims handling procedures, investment policies, and reserving practices.

(2) A governing board may not implement a plan until it has been reviewed by the state Insurance Commissioner.

(g) The Insurance Commissioner and Board of Risk and Insurance Management each may promulgate an emergency rule as necessary pursuant to the provisions of article three, chapter twenty-nine-a of this code, to specify further the requirements of self-insurance retention programs under this section.
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-10-5. Fee waivers — Undergraduate schools.

§18B-10-6. Fee waivers — Professional and graduate schools.

§18B-10-6a. Undergraduate, graduate and professional fee waivers — Marshall University and West Virginia University.

§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 systemwide and institutional debt service and future systemwide and institutional debt service, capital projects and campus renewal for educational and general facilities.
(4) Subject to any covenants or restrictions imposed with respect to revenue bonds payable from 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 impeding 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.
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(1) Tuition and fee increases of the governing boards, except for the governing boards of the state institutions of higher education known as Marshall University and West Virginia University, 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) Subject to the provisions of subdivision (4) of this subsection, a governing board of an institution under the jurisdiction 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, specialized fee which may be proposed by a governing board.

(2) 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 for undergraduate resident students for any fiscal year. 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, specialized fee which may be proposed by a governing board.

(3) The Commission or Council, as appropriate, shall examine individually each request from a governing board for an increase.

(4) The governing boards of Marshall University and West Virginia University, as these provisions relate to the state institutions of higher education known as Marshall University and West Virginia University, each may annually:
(A) Increase tuition and fees for undergraduate resident students to the maximum allowed by this section without seeking approval from the Commission; and

(B) Set tuition and fee rates for post-baccalaureate resident students and for all nonresident students, including establishing regional tuition and fee rates, reciprocity agreements or both.

(C) The provisions of this subdivision do not apply to tuition and fee rates of the administratively linked institution known as Marshall Community and Technical College, the administratively linked institution known as the Community and Technical College at West Virginia University Institute of Technology and the regional campuses known as West Virginia University Institute of Technology and West Virginia University at Parkersburg.

(5) Any proposed tuition and fee increase for state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University requires the approval of the Commission or Council, as appropriate. In determining whether to approve or deny 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) Has demonstrated to the satisfaction of the Commission or Council that an increase will be used to maintain high-quality programs at the institution;

(E) 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

(F) 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.

(6) This section does not require equal increases among institutions or require any level of increase at an institution.

(7) 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 (5) of this subsection.

§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) Undergraduate fee waivers established by the governing boards of Marshall University and West Virginia University,
respectively, for the state institutions of higher education
known as Marshall University and West Virginia University,
are subject to the provisions of section six-a of this article;

(b) For the governing boards of state institutions of higher
education other than the state institutions of higher education
known as Marshall University and West Virginia University,
the following conditions apply:

(1) An institution 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.

(2) Each undergraduate fee waiver entitles the recipient
thereof to attend a designated state institution of higher educa-
tion 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.

(3) The governing board shall make rules pursuant to the
provisions of section six, article one of this chapter, 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 provi-
sions of this section.

(4) The awarding of undergraduate fee waivers shall be
entered in the minutes of the meetings of the governing board.

(5) Students enrolled in an administratively-linked commu-
nity 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
§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) Graduate and professional fee waivers established by the governing boards of Marshall University and West Virginia University, respectively, are subject to the provisions of section six-a of this article;

(b) For the governing boards of state institutions of higher education other than the state institutions of higher education known as Marshall University and West Virginia University, the following conditions apply:

(1) An institution 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.

(2) 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.
(3) The governing boards shall make rules pursuant to the provisions of section six, article one of this chapter, 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.

(4) The awarding of graduate and professional school fee waivers shall be entered in the minutes of the meeting of each governing board.

§18B-10-6a. Undergraduate, graduate and professional fee waivers – Marshall University and West Virginia University.

(a) Undergraduate fee waivers. –

(1) The governing boards of Marshall University and West Virginia University, respectively, may establish fee waivers for students in undergraduate studies at institutions under their jurisdiction which entitle recipients to waiver of tuition, capital and other fees, in whole or in part.

(2) Each undergraduate fee waiver is for a period of time not to exceed eight semesters of undergraduate study.

(3) Each governing board shall promulgate rules pursuant to the provisions of section six, article one of this chapter to govern 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.
(4) The awarding of undergraduate fee waivers shall be entered in the minutes of the meetings of the governing board.

(5) 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.

(b) *Graduate and professional school fee waivers.*

(1) In addition to the fee waivers authorized for undergraduate study by subsection (a) of this section, the governing boards of Marshall University and West Virginia University, respectively, each may establish fee waivers for study in the graduate and professional schools under its jurisdiction, including medicine and dentistry, which entitle the recipients to waiver of tuition, capital and other fees, in whole or in part.

(2) Each graduate or professional school fee waiver entitles the recipient to waiver of the tuition, capital and other fees, in whole or in part, as may be prescribed by the governing board and is for a period of time not to exceed the number of semesters normally required in the recipient’s academic discipline.

(3) The governing boards each shall promulgate a rule pursuant to the provisions of section six, article one of this chapter, 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.
(4) The awarding of graduate and professional school fee waivers shall be entered in the minutes of the meeting of each governing board.

ARTICLE 11. MISCELLANEOUS INSTITUTES AND CENTERS.

§18B-11-7. Regional Brownfield Assistance Centers.

(a) For the purposes of this section, "eligible entities" means government entities as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, at 42 U. S. C. §9604 or nonprofit organizations as defined by the federal Financial Assistance Management Improvement Act at 31 U. S. C. §6101.

(b) Marshall University and West Virginia University each shall establish a nonprofit Regional Brownfield Assistance Center through the corporations set out in article twelve of this chapter for the purposes of expediting the redevelopment of Brownfield sites. The Centers shall provide assistance to eligible entities on state and federal Brownfield programs, secure state and federal funding for Brownfield redevelopment and acquire property eligible for state and federal Brownfield assistance.

(c) The Center established by Marshall University serves the following counties:

(1) McDowell, Mercer, Monroe, Raleigh, Summers and Wyoming;

(2) Cabell, Lincoln, Logan, Mason, Mingo and Wayne;

(3) Boone, Clay, Kanawha and Putnam; and

(4) Braxton, Fayette, Greenbrier, Nicholas, Pocahontas and Webster.
(d) The Center established by West Virginia University serves the following counties:

1. Calhoun, Jackson, Pleasants, Ritchie, Roane, Tyler, Wirt and Wood;

2. Brooke, Hancock, Marshall, Ohio and Wetzel;

3. Barbour, Doddridge, Gilmer, Harrison, Lewis, Marion, Monongalia, Preston, Randolph, Taylor, Tucker and Upshur;


(e) To accomplish the purposes of this section, the Regional Brownfield Assistance Centers each have powers and duties including, but not limited to, the following:

1. Acquiring property that is eligible for state and federal Brownfield assistance pursuant to the Small Business Liability Relief and Brownfields Revitalization Act (Public Law No. 107-118, 185 stat. 2356) and the West Virginia Voluntary Remediation and Redevelopment Act established in article twenty-two, chapter twenty-two of this code;

2. Serving as the developer of property or entering into partnerships, agreements or other contractual arrangements with other public or private entities for the purposes of managing and coordinating remediation and redevelopment activities;

3. Preparing an inventory of Brownfield sites within their respective geographic regions by the first day of July, two thousand six, and updating the inventory of sites annually;

4. Promoting and coordinating the development of Brownfield property by providing training and technical
assistance on Brownfield development, grant writing, site assessments, remediation, community involvement and site preparation to eligible entities;

(5) Administering federal Brownfield Job Training Grants, the Brownfields Revolving Fund, and other federal Brownfield financial assistance programs to assist eligible entities in their Brownfield development efforts;

(6) Coordinating efforts to secure federal Brownfield funding by establishing priority rankings and by other necessary measures to maximize federal financial assistance and eliminate overlapping competition for federal dollars;

(7) Coordinating the development and publication by the first day of July, two thousand six, of a website to provide education and appropriate information on Brownfields development in West Virginia; and

(8) Coordinating with the West Virginia Development Office and the Department of Environmental Protection to establish and track key Brownfield economic statistics and conduct Brownfield conferences, as appropriate.

ARTICLE 14. MISCELLANEOUS.

§18B-14-11. Legislative findings; creation of Governor’s Commission on Graduate Study in Science, Technology, Engineering, and Mathematics; membership; report.

(a) The Legislature finds that West Virginia ranks below most other states on key indicators of scientific and technical capacity, including the number of scientists and engineers who hold doctoral degrees, the number of science and engineering post-doctorates and the number of science and engineering graduate students.
(b) The Legislature further finds that this lack of scientific and technical capacity places the state at a competitive disadvantage to other states in terms of generating economic development and winning research grants, as evidenced by limited amounts of academic research and development funding, industrial research and development, small business innovation grant awards, technology-related start-up companies and the low number of high-tech jobs.

(c) To address these findings, there is created the Governor's Commission on Graduate Study in Science, Technology, Engineering and Mathematics, which may be cited as the STEM Commission, to address issues which include, but are not limited to, the following:

(1) Promoting coordination between higher education and K-12 education to create a seamless system of science and mathematics education and to improve science and mathematics education at all levels;

(2) Increasing the number of graduate students and post-doctorates in science, technology, engineering and mathematics, including the number of women and minority graduate students in these fields;

(3) Increasing the number of West Virginia undergraduate and graduate students who receive nationally competitive scholarships and fellowships in science, technology, engineering and mathematics, such as Goldwater, Howard Hughes, National Science Foundation and Udall Fellowships;

(4) Improving the quality of graduate faculty and programs in science, technology, engineering and mathematics;

(5) Aligning graduate programs in science, technology, engineering and mathematics with the goals and objectives of the State EPSCoR Program, the State Science and Technology
Advisory Council, the West Virginia Development Office and the Doctoral Scholars Program of the Southern Regional Education Board; and

(6) Increasing the quantity and enhancing the quality of academic research, as measured by federal and external expenditures for research and development.

(d) STEM Commission membership. –

(1) The Commission is comprised of fourteen members selected as follows:

(A) The Governor or designee, who serves as Chair;

(B) The Chancellor for the Higher Education Policy Commission;

(C) The Director of Academic Affairs of the Higher Education Policy Commission;

(D) The Executive Director of the State EPSCoR Program;

(E) The Executive Director of the West Virginia Development Office or designee;

(F) The provosts of Marshall University and West Virginia University or their designees;

(G) Five members appointed by the Governor who represent academic, business and research interests; and

(H) The Chair of the House of Delegates Committee on Education and the Chair of the West Virginia Senate Committee on Education as ex officio, nonvoting members who serve in an advisory capacity.
(2) At least two of the Governor's appointees are state residents.

(3) The Governor shall make appointments to the Commission so that members may begin their deliberations no later than the first day of July, two thousand five.

(e) The Commission shall complete its work and report its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate the recommendations, to the Legislative Oversight Commission on Education Accountability, the Higher Education Policy Commission and the State EPSCoR Advisory Council by the first day of December, two thousand five.

CHAPTER 87

(Com. Sub. for H. B. 2570 — By Delegates Ron Thompson, Perry and H. White)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-13-22a of said code; to amend and reenact §18-9-6 of said code, all relating generally to depositories for county, municipal or county board of education funds; excepting banking institutions from the requirement to post bond or other security for the deposit of county, municipal or county board of education funds when the deposits are placed in certificates of deposits through a designated state depository; and conditions.

Be it enacted by the Legislature of West Virginia:
That §7-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-13-22a of said code be amended and reenacted; and that §18-9-6 of said code be amended and reenacted, all to read as follows:

Chapter 7. County Commissions and Officers.
18. Education.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2. Bond of depositories.

1. No designation is binding on any county, nor shall any public money be deposited thereunder, until the banking institution designated executes a bond with good and sufficient sureties, to be accepted and approved by the county commission, payable to the State of West Virginia, in a sum as the county commission shall direct, and which may not be less than the maximum sum that is deposited in the depository at any one time. The bond shall be executed by at least four resident freeholders as sureties owning in the aggregate unencumbered real estate having an assessed valuation thereon equal to the penalty of the bond, or by a fidelity or indemnity company authorized to do business within the State, satisfactory to, and acceptable by the county commission, and having not less than six hundred thousand dollars capital; and the bond shall be conditioned for the receipt, safekeeping and payment over of all money which may be deposited in or come under the custody of the banking institution designated a county depository under the provisions hereof, together with the interest thereon at the rate specified by this article; and the bond shall be further conditioned for the faithful performance, by the banking institution so designated, of all the duties imposed by this article upon a depository of public moneys: Provided, That the
clerk of the county commission shall keep a record of each surety on all personal bonds given as hereinbefore provided and the clerk shall notify the county commission of every recorded conveyance of real estate made by any surety on said personal bond.

An action shall lie on the bond at the instance of the county commission, or the sheriff, for the recovery of any money deposited in the depository, upon failure or default of the depository to fully and faithfully account for and pay over any and all public moneys deposited by the sheriff and of all interests earned and accrued thereon as required by this article. A bond may not be accepted by the county commission until it has been submitted to the prosecuting attorney, and certified by him or her to be in due and legal form, and conformable to the provisions of this article, which certificate shall be endorsed thereon: Provided, That the county commission may, in lieu of the bond provided hereinbefore, accept as security for money deposited as aforesaid, interest-bearing securities of the United States, or of a state, county, district or municipal corporation, or of the federal land banks, or endorsed county and district warrants of the county in which the depository is located, or letters of credit of the federal land banks, or federal home loan banks, or any other letters of credit approved by the treasurer; the face value of which securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted; or the county commission may accept the securities as partial security to the extent of their face value for the money so deposited, and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and in the bond so required, the acceptance of securities as partial security, and the extent thereof, shall be set forth: Provided, however, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are
invested through a designated state depository selected by the county; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county with respect to such certificates of deposit issued for the county’s account; and (5) at the same time that the county’s funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county through the selected depository. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All the securities shall be delivered to or deposited for the account of the county commission, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county commission by order of record, but the collateral security shall be released only by order of record of the county commission when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. In the event actual possession of the hypothecated securities are delivered to the county commission, it shall make ample provision for the safekeeping thereof and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county commission may permit the deposit under proper receipt of the securities with one or more banking institutions within or without the State of West Virginia and may contract with any institution for safekeeping and exchange of any hypothecated securities, and may prescribe the rules for handling and protecting the same.
§8-13-22a. Investment of municipal funds.

1 All municipal funds, the investment of which is not
governed by other provisions of this code and not required for
the payment of current obligations and not otherwise prohib-
ited, may be invested and reinvested in:

5 (1) Any direct obligation of, or obligation guaranteed as to
the payment of both principal and interest by, the United States
of America;

8 (2) Any evidence of indebtedness issued by any United
States government agency guaranteed as to the payment of both
principal and interest, directly or indirectly, by the United
States of America including, but not limited to, the following:
Government national mortgage association, federal land banks,
federal home loan banks, federal intermediate credit banks,
banks for cooperatives, Tennessee Valley Authority, United
States postal service, farmers home administration, ex-
port-import bank, federal financing bank, federal home loan
mortgage corporation, student loan marketing association and
federal farm credit banks;

19 (3) Any evidence of indebtedness issued by the federal
National Mortgage Association to the extent such indebtedness
is guaranteed by the government National Mortgage Associa-
tion;

23 (4) Any evidence of indebtedness that is secured by a first
lien deed of trust or mortgage upon real property situate within
this State, if the payment thereof is substantially insured or
guaranteed by the United States of America or any agency
thereof;

(5) Direct and general obligations of this State;

(6) Any undivided interest in a trust, the corpus of which is
restricted to mortgages on real property and, unless all of such
property is situate within the State and insured, the trust at the
time of the acquisition of the undivided interest, is rated in one
of the three highest rating grades by an agency which is
nationally known in the field of rating pooled mortgage trusts;

(7) Any bond, note, debenture, commercial paper or other
evidence of indebtedness of any private corporation or associ-
tion: Provided, That any such security is, at the time of its
acquisition, rated in one of the three highest rating grades by an
agency which is nationally known in the field of rating corpo-
rate securities: Provided, however, That if any commercial
paper or any such security will mature within one year from the
date of its issuance, it shall, at the time of its acquisition, be
rated in one of the two highest rating grades by any such
nationally known agency and commercial paper or other
evidence of indebtedness of any private corporation or associa-
tion shall be purchased only upon the written recommendation
from an investment advisor that has over three hundred million
dollars in other funds under its management;

(8) Negotiable certificates of deposit issued by any bank,
trust company, national banking association or savings institu-
tion which mature in less than one year and are fully collateral-
ized;

(9) Interest earning deposits including certificates of
deposit, with any duly designated state depository, which
deposits are fully secured by a collaterally secured bond as
provided in section four, article one, chapter twelve of this
code: Provided, That a banking institution is not required to provide this collaterally secured bond, or other security in lieu of bond, if the deposits accepted are placed in certificates of deposit meeting the following requirements: (A) The funds are invested through a designated state depository selected by the municipality; (B) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the municipality; (C) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (D) the selected depository acts as custodian for the municipality with respect to such certificates of deposit issued for the municipality's account; and (E) at the same time that the municipality's funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the municipality through the selected depository; and

(10) Mutual funds registered with the Securities and Exchange Commission which have assets in excess of three hundred million dollars.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated
treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than the first day of August of that year. The transfer shall be adjudged complete and final upon the approval of the sheriff’s official settlement for the fiscal year ending on the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month.

On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. The treasurer is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: Provided, That once a board of education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on the bond shall be paid by the board of education.

The board of education may open a bank account, or accounts, as required to adequately and properly transact the
business of the district in a depository, or banks, within the county. The depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. However, the county board of education may, in lieu of such bond, accept as security for money deposited securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities: Provided, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the county board of education; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county board of education; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county board of education with respect to such certificates of deposit issued for the county’s account; and (5) at the same time that the county board of education’s funds are deposited and the certificates of deposit are issued, the selected depository receives an amount of deposits from customers of other financial institutions wherever located in the United States equal to or greater than the amount of the funds invested by the county board of education through the selected depository. One hundred ten percent of the face or par value of the securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted, or the county board of education may accept the securities as partial security to the extent of their face value for the money so deposited and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so required, the acceptance of securities as partial security and the extent thereof shall be
set forth. The hypothecation of the securities shall be by proper
legal transfer as collateral security to protect and indemnify by
trust any and all loss in case of any default on the part of the
banking institution in its capacity as depository as aforesaid. All
such securities shall be delivered to or deposited for the account
of the county board of education, and withdrawal or substitution
thereof may be permitted from time to time upon approval by
the county board of education by order of record, but the
collateral security shall be released only by order of record of
the county board of education when satisfied that full and
faithful accounting and payment of all the moneys has been
made under the provisions hereof. In the event actual posses-
sion of the hypothecated securities is delivered to the county
board of education, it shall make ample provision for the
safekeeping thereof, and the interest thereon when paid shall be
turned over to the banking institution, so long as it is not in
default as aforesaid. The county board of education may permit
the deposit under proper receipt of such securities with one or
more banking institutions within the State of West Virginia and
may contract with any such institution for safekeeping and
exchange of any such hypothecated securities, and may
prescribe the rules for handling and protecting the same.

On and after the first day of July, one thousand nine
hundred seventy-three, all levies and any other school moneys
received by the sheriff and paid to the treasurer of the county
board of education shall be deposited in these accounts, and all
proper payments from such funds shall be made by the desig-
nated depository or bank upon order or draft presented for
payment and signed by the duly authorized signatories of the
board of education: Provided, That in determining the deposi-
tory for board of education funds a board member who has a
pecuniary interest in a bank within the county shall not partici-
pate in the determination of the depository for such funds.
If it is considered that sufficient funds are on hand in any account at any one time which may be more than are normally required for the payment of incurred expenses, the funds in the amount so considered available may be invested by the treasurer of the county board with the West Virginia municipal bond commission, or in guaranteed certificates of deposit issued by the depository or bank, or other guaranteed investments such as treasury bills, treasury notes or certificates of deposit issued by either the United States government or a banking institution in which federal or state guarantees are applicable. Interest earned in such investments is to be credited to the fund from which the moneys were originally available.

CHAPTER 88

(H. B. 2837 — By Mr. Speaker, Mr. Kiss, and Delegates Campbell, Ron Thompson and Perry)

[Passed April 7, 2005 in effect ninety days from passage.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-7c, relating to directing the State Board of Education to develop a program of instruction on personal finance that may be integrated into the curriculum in the secondary schools.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-2-7c, to read as follows:
ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7c. Program in personal finance.

(a) The Legislature finds and declares that persons with an understanding of personal finance are better prepared to manage their money and that providing a personal finance program in secondary schools in West Virginia will prepare students to handle their finances.

(b) To provide students a basic understanding of personal finance, the State Board shall develop a program of instruction on personal finance which may be integrated into the curriculum of an appropriate existing course or courses for students in secondary schools.

CHAPTER 89

(Com. Sub. for H. B. 2466— By Delegates Spencer, Moore and Marshall)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2005.]

AN ACT to repeal §18-14-1 of the code of West Virginia, 1931, as amended; and to amend and reenact §18-5-32 of said code, all relating to education; eliminating provisions that created unlawful classifications based on race; deleting an obsolete provision relating to the cooperative extension service; and removing obsolete language relating to Bluefield State College.

Be it enacted by the Legislature of West Virginia:
That §18-14-1 of the Code of West Virginia, 1931, as amended, be repealed; and that §18-5-32 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-32. Assistant superintendents; directors and supervisors of instruction and other educational activities.

(a) The county board, upon the recommendation of the county superintendent, may employ an assistant whose term of employment shall be not less than one nor more than four years: Provided, That his or her term shall not extend beyond that of the incumbent county superintendent.

(b) The board shall not employ more than one assistant for each two hundred teachers or major fraction thereof.

(c) The county board, upon the recommendation of the county superintendent, is authorized to employ general and special supervisors or directors of instruction and of other educational activities as may be considered necessary.

(d) The employment of the assistant superintendent shall be on a twelve-month basis. The period of employment for all others named herein shall be at the discretion of the county board.

(e) Rules for qualifications of assistant superintendents, and directors and supervisors of instruction and of other educational activities shall be fixed by the State Board: Provided, That the qualifications required for any assistant superintendent shall in no event be higher than those required for the county superintendent: Provided, however, That the rules do not affect the status of any incumbent nor his or her right to succeed himself or herself in his or her assigned position.
(f) The county board of education is authorized to reimburse the employees for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

(g) Any person employed under the foregoing provision of this section, provided he or she holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall hold that status unless dismissed for statutory reasons.

(h) All acts or parts of acts inconsistent with this section are hereby repealed.

CHAPTER 90
(Com. Sub. for S. B. 94 — By Senator Plymale)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to the school calendar; defining terms; correcting references; providing additional flexibility for instructional support and enhancement days; and authorizing limited use of accrued instructional time for professional development and continuing education for certain purposes.

Be it enacted by the Legislature of West Virginia:

That §18-5-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45. School calendar.

(a) As used in this section, the following terms have the following meanings:

1. "Instructional day" means a day within the instructional term which meets the following criteria:
   1. Instruction is offered to students for at least the minimum amounts of time provided by State Board rule;
   2. Instructional time is used for instruction, cocurricular activities and approved extracurricular activities and, pursuant to the provisions of subdivision (12), subsection (b), section five, article five-a of this chapter, faculty senates; and
   3. Such other criteria as the State Board determines appropriate.

2. "Accrued instructional time" means instructional time accruing during the instructional term from time added to the instructional day beyond the time required by State Board rule for an instructional day. Accrued instructional time may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities as further defined by the State Board.

3. "Extracurricular activities" are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities as further defined by the State Board.

4. "Cocurricular activities" are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the State Board.
(b) Findings. --

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar traditionally has provided for one hundred eighty actual days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.

(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.

(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term for teachers of no less than two hundred days, exclusive of Saturdays and Sundays; and

(2) Within the employment term, an instructional term for students of no less than one hundred eighty separate instructional days.

(d) The instructional term for students shall include one instructional day in each of the months of October, December, February, April and June which is an instructional support and enhancement day scheduled by the board to include both
instructional activities for students and professional activities for teachers to improve student instruction. Instructional support and enhancement days are subject to the following provisions:

(I) Two hours of the instructional support and enhancement day shall be used for instructional activities for students. The instructional activities for students are subject to the following provisions:

(A) The instructional activities for students require the direct supervision or involvement by teachers;

(B) The instructional activities for students shall be limited to two hours;

(C) The instructional activities for students shall be determined and scheduled at the local school level;

(D) The instructional activities for students may include, but are not limited to, both in-school and outside of school activities such as student mentoring, tutoring, counseling, student research and other projects or activities of an instructional nature, community service, career exploration, parent and teacher conferences, visits to the homes of students, college and financial aid workshops and college visits;

(E) To ensure that the students who attend are properly supervised, the instructional activities for students shall be arranged by appointment with the individual school through the principal, a teacher or other professional personnel at the school; and

(F) Each school shall establish a policy relating to the use of the two-hour block scheduled for instructional activities for students;
(2) The instructional support and enhancement day shall include a two-hour block of time for professional activities for teachers during which the faculty senate shall have the opportunity to meet;

(3) All time remaining in the school day after meeting the requirements of subdivisions (1) and (2) of this subsection, not including the duty-free lunch period, shall be used for other professional activities for teachers to improve student instruction which may include, but are not limited to, professional staff development, curriculum team meetings, individualized education plan meetings and other meetings between teachers, principals, aides and paraprofessionals to improve student instruction as determined and scheduled at the local school level;

(4) Notwithstanding any other provision of law or policy to the contrary, the presence of any specific number of students in attendance at the school for any specific period of time shall not be required on instructional support and enhancement days and the transportation of students to the school shall not be required;

(5) Instructional support and enhancement days are also a scheduled work day for all service personnel and shall be used for training or other tasks related to their job classification if their normal duties are not required; and

(6) Nothing in this section may be construed to require that the instructional activities for students, faculty senate meetings and other professional activities for teachers be scheduled in any certain order.

(e) The instructional term shall commence no earlier than the twenty-sixth day of August and terminate no later than the eighth day of June.
Noninstructional days shall total twenty and shall be comprised of the following:

(1) Seven holidays as specified in section two, article five, chapter eighteen-a of this code;

(2) Election day as specified in section two, article five, chapter eighteen-a of this code;

(3) Six days to be designated by the county board to be used by the employees outside the school environment; and

(4) Six days to be designated by the county board for any of the following purposes:

(A) Curriculum development;

(B) Preparation for opening and closing school;

(C) Professional development;

(D) Teacher-pupil-parent conferences;

(E) Professional meetings; and

(F) Making up days when instruction was scheduled but not conducted.

(g) Three of the days described in subdivision (4), subsection (f) of this section shall be scheduled prior to the twenty-sixth day of August for the purposes of preparing for the opening of school and staff development.

(h) At least one of the days described in subdivision (4), subsection (f) of this section shall be scheduled after the eighth day of June for the purpose of preparing for the closing of school. If one hundred eighty separate instruction days occur
prior to the eighth day of June, this day may be scheduled on or before the eighth day of June.

(i) At least four of the days described in subdivision (3), subsection (f) of this section shall be scheduled after the first day of March.

(j) At least two of the days described in subdivision (4), subsection (f) of this section will be scheduled for professional development. The professional development conducted on these days will be consistent with the goals established by the state board pursuant to the provisions of section twenty-three-a, article two of this chapter.

(k) Subject to the provisions of subsection (h) of this section, all noninstructional days will be scheduled prior to the eighth day of June.

(l) The State Board may not schedule the primary statewide assessment program prior to the fifteenth day of May of the instructional year unless the State Board determines that the nature of the test mandates an earlier testing date.

(m) If, on or after the first day of March, the county board determines that it is not possible to complete one hundred eighty separate days of instruction, the county board shall schedule instruction on any available noninstructional day, regardless of the purpose for which the day originally was scheduled, and the day will be used for instruction, subject to the following:

(1) The noninstructional days scheduled for professional development shall be the last available noninstructional days to be rescheduled as instructional days;

(2) On or after the first day of March, the county board also may require additional minutes of instruction in the school day
to make up for lost instructional days in excess of the days
available through rescheduling and, if in its judgment it is
reasonable and necessary to improve student performance, to
avoid scheduling instruction on noninstructional days previ-
ously scheduled for professional development; and

(3) The provisions of this subsection do not apply to: (1)
Holidays; and (2) election day.

The following applies to accrued instructional time:

(1) Except as provided in subsection (m) of this section,
accrued instructional time may not be used to avoid one
hundred eighty separate days of instruction;

(2) Accrued instructional time may not be used to lengthen
the time provided in law for faculty senates;

(3) The use of accrued instructional time for extracurricular
activities will be limited by the State Board;

(4) Accrued instructional time may be used by schools and
counties to provide additional time for professional staff
development and continuing education as may be needed to
improve student performance and meet the requirements of the
federal mandates affecting elementary and secondary education.
The amount of accrued instructional time used for this purpose
may not exceed three instructional days; and

(5) Other requirements or restrictions the State Board may
provide in the rule required to be promulgated by this section.

The following applies to cocurricular activities:

(1) The State Board shall determine what activities may be
considered cocurricular;
(2) The State Board shall determine the amount of instructional time that may be consumed by cocurricular activities; and

(3) Other requirements or restrictions the State Board may provide in the rule required to be promulgated by this section.

(p) The following applies to extracurricular activities:

(1) Except as provided by subdivision (3) of this subsection, extracurricular activities may not be scheduled during instructional time;

(2) The use of accrued instructional time for extracurricular activities will be limited by the State Board; and

(3) The State Board shall provide for the attendance by students of certain activities sanctioned by the Secondary School Activities Commission when those activities are related to statewide tournaments or playoffs or are programs required for Secondary School Activities Commission approval.

(q) Noninstructional interruptions to the instructional day shall be minimized to allow the classroom teacher to teach.

(r) Nothing in this section prohibits establishing year-round schools in accordance with rules to be established by the State Board.

(s) Prior to implementing the school calendar, the county board shall secure approval of its proposed calendar from the State Board or, if so designated by the State Board, from the State Superintendent.

(t) The county board may contract with all or part of the personnel for a longer term.

(u) The minimum instructional term may be decreased by order of the state superintendent in any county declared a
226 federal disaster area and where the event causing the declara-
227 tion is substantially related to a reduction of instructional days.

228 (v) Where the employment term overlaps a teacher's or
229 service personnel's participation in a summer institute or
230 institution of higher education for the purpose of advancement
231 or professional growth, the teacher or service personnel may
232 substitute, with the approval of the county superintendent, the
233 participation for up to five of the noninstructional days of the
234 employment term.

235 (w) The State Board shall promulgate a rule in accordance
236 with the provisions of article three-b, chapter twenty-nine-a of
237 this code for the purpose of implementing the provisions of this
238 section.

CHAPTER 91

(Com. Sub. for H. B. 2578 — By Delegates Williams,
Crosier and Sumner)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on May 3, 2005.]

AN ACT to repeal §18-2E-3e of the Code of West Virginia, 1931, as
amended; and to amend and reenact §18-9A-5a and §18-9A-5b of
said code, all relating to repealing section creating the West
Virginia Science Education Enhancement Initiative Grant
Program; increasing the ratios of professional and service
personnel to students in net enrollment; establishing the ratios for
certain school years; and making certain findings; stating
legislative intent to examine state basic foundation program and
address staffing and other needs as indicated by examination.
Be it enacted by the Legislature of West Virginia:

That §18-2E-3e of the Code of West Virginia, 1931, as amended, be repealed; and that §18-9A-5a and §18-9A-5b of said code be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

§18-9A-5b. Foundation allowance for increasing professional and service personnel positions.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

(a) The purpose of this section is to establish maximum ratios between the numbers of professional educators and service personnel in the counties which are funded through the public school support plan and the net enrollment in the counties. These ratios are in addition to the ratios provided in sections four and five of this article. It is the intent of the Legislature to adjust these ratios pursuant to legislative act as may be appropriate when additional personnel are needed to perform additional duties.

(b) Beginning on the first day of July, two thousand five, and each school year thereafter, in computing the basic foundation allowance to a county for professional educators and the basic foundation allowance to a county for service personnel under sections four and five of this article, a county shall not receive an allowance for these personnel which number per one thousand students in net enrollment is in excess of the number of professional educators and the number of service personnel in the county computed as follows:
<table>
<thead>
<tr>
<th>Year</th>
<th>High Density County</th>
<th>Low Density County</th>
<th>High Density County</th>
<th>Low Density County</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005-2006</td>
<td>74.10</td>
<td>74.20</td>
<td>43.73</td>
<td>44.69</td>
</tr>
<tr>
<td>2006-2007</td>
<td>74.20</td>
<td>74.40</td>
<td>43.85</td>
<td>44.89</td>
</tr>
<tr>
<td>and thereafter</td>
<td>74.30</td>
<td>74.60</td>
<td>43.97</td>
<td>45.10</td>
</tr>
</tbody>
</table>

(c) Every county shall use methods other than reductions in force, such as attrition and early retirement, before implementing their reductions in force policy to comply with the limitations of this section.

§18-9A-5b. Foundation allowance for increasing professional and service personnel positions.

(a) Commencing with the school year beginning on the first day of July, two thousand five, two million five hundred thousand dollars shall be appropriated for the purpose of increasing the ratios of professional and service personnel per one thousand students in net enrollment. For each of the eleven following school years, an additional two million five hundred thousand dollars shall be added to the appropriation for this purpose.

(b) The Legislature finds that the state basic foundation program initially was enacted during the regular session of the Legislature, one thousand nine hundred seventy-one, as a seven-step formula driven largely by student enrollment. Although it has been amended many times over the intervening years to effect program improvements, respond to changing enrollment patterns and accommodate budgetary priorities, it remains a formula driven primarily by student enrollment. As such, the state basic foundation program has been credited with providing base level funding from the state which is very equitable on a per student basis among the county school
systems. However, the intervening years also have seen substantial changes in the educational environment, the most profound of which include the decline in student enrollment from about four hundred four thousand students when the state basic foundation program was created to about two hundred seventy-eight thousand students in the two thousand five school year, the growth of technology delivered instruction, the advent of performance-based accountability and the accompanying responsibility to target resources to make needed improvements. Therefore, as it pursues the objectives set forth in subsection (a) of this section, it is the intent of the Legislature to examine further the state basic foundation program in context with the changing educational environment and address the staffing and other needs of the public schools as may be indicated through that examination.

CHAPTER 92

(S. B. 604 — By Senators Unger, Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §18-9A-15 and §18-9A-22 of the Code of West Virginia, 1931, as amended, all relating to allowances of public school support; requiring appropriation for increased enrollment based on projection; requiring initial distribution to be based on projection; requiring refund in certain instances; including students who have not attained the age of five; and authorizing grant allowances for certain counties with low student net enrollment under certain circumstances.
Be it enacted by the Legislature of West Virginia:

That §18-9A-15 and §18-9A-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.


§18-9A-22. Allowance to improve economies of scale of low student enrollment counties.


(a) To provide for the support of increased net enrollments in the counties in a school year over the net enrollments used in the computation of total state aid for that year, there shall be appropriated for that purpose from the general revenue fund an amount to be determined in accordance with this section.

(b) On or before the first day of September, two thousand five, the State Board shall promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code that establishes an objective method for projecting the increase in net enrollment for each school district. The State Superintendent shall use the method prescribed by the rule to project the increase in net enrollment for each school district.

(c) The State Superintendent shall multiply the average total state aid per net pupil by the sum of the projected increases in net enrollment for all school districts and report this amount to the Governor for inclusion in his or her proposed budget to the Legislature. The Legislature shall appropriate to the West Virginia Department of Education the amount calculated by the State Superintendent and proposed by the Governor.

(d) The State Superintendent shall calculate each school district’s share of the appropriation by multiplying the projected
increase in net enrollment for the school district by the average total state aid per net pupil and shall distribute sixty percent of each school district’s share to the school district on or before the first day of September of each year. The State Superintendent shall make a second distribution of the remainder of the appropriation in accordance with subsection (e) of this section.

(e) After the first distribution pursuant to subsection (d) of this section is made and after the actual increase in net enrollment is available, the State Superintendent shall compute the total actual amount to be allocated to each school district for the year. The total actual amount to be allocated to each school district for the year is the actual increase in the school district’s net enrollment multiplied by the average total state aid per net pupil. The State Superintendent shall make the second distribution to each school district in an amount determined so that the total amount distributed to the district for the year, in both the first and second distributions, equals the actual increase in net enrollment multiplied by the average total state aid per net pupil. The State Superintendent shall make the second distribution on or before the thirty-first day of December of each year: Provided, That if the amount distributed to a school district during the first distribution is greater than the total amount to which a district is entitled to receive for the year, the district shall refund the difference to the Department of Education prior to the thirtieth day of June of the fiscal year in which the excess distribution is made.

(f) If the amount of the appropriation for increased enrollment is not sufficient to provide payment in full for the total of these several allocations, each county allocation shall be reduced to an amount which is proportionate to the appropriation compared to the total of the several allocations and the allocations as thus adjusted shall be distributed to the counties as provided in this section: Provided, That the Governor shall request a supplemental appropriation at the next legislative session for the reduced amount.
(g) No provision of this section shall be construed to in any way affect the allocation of moneys for educational purposes to a county under other provisions of law.

§18-9A-22. Allowance to improve economies of scale of low student enrollment counties.

(a) The Legislature finds that counties whose net enrollment falls below a certain level may not have the economies of scale to support the proper operation of the school system and the education of their students. The Legislature further finds that to make a determination of whether additional assistance is needed by such a county, and if it is, then in what form and amount, it is necessary to examine the local circumstances and ensure the efficient use of available resources. Therefore, the purpose of this section is to provide a process for examining the economies of scale of counties with low student net enrollment and providing additional assistance to them if necessary, including, but not limited to, the grant of funds.

(b) Upon the written request of a county with a student net enrollment of less than one thousand four hundred students, the State Superintendent shall examine whether all of the resources available to the county are being efficiently utilized and whether additional assistance is needed within the county to improve its economies of scale. The State Superintendent may take any of the following actions:

(1) If the State Superintendent finds that all of the resources of the county are not being used efficiently, the State Superintendent shall recommend areas of improvement to the county and, if requested by the county, may provide technical assistance to make the improvements;

(2) If the State Superintendent finds that additional assistance is needed to improve the economies of scale of the county, the State Superintendent shall determine whether the
28 economies of scale may be increased with additional resources
29 through the regional education service agency through cooperative agreements with adjoining counties and by technical
30 assistance and other programs available to the State Superintendent. The State Superintendent shall take the actions that are
31 within his or her authority to increase the economies of scale of
32 the county through these means; and
33
34 (3) If the State Superintendent finds that additional assistance is needed to improve the economies of scale of the county
35 after the actions provided in subdivisions (1) and (2) of this
36 subsection are exhausted, the State Superintendent may, subject
37 to appropriations made by the Legislature therefor, make a
38 grant of funds to the county to assist in improving its economies
39 of scale. The grant of funds may include any restrictions,
40 conditions and purposes that the State Superintendent deter-
41 mines necessary to improve the economies of scale of the
42 county.
43

CHAPTER 93

(H. B. 2783 — By Mr. Speaker, Mr. Kiss)

[Passed March 25, 2005; in effect from passage.]
[Approved by the Governor on April 6, 2005.]

AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-10B-10, relating to vocational rehabilitation facilities; authorizing rental of vocational rehabilitation facilities by school groups or other youth or civic organizations; and providing that rental revenue be used to defray the cost, maintenance and replacement of recreational equipment and facilities.
Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-10B-10, to read as follows:

ARTICLE 10B. VOCATIONAL REHABILITATION FACILITIES.

§18-10B-10. Authorized rental of State Vocational Rehabilitation facilities.

Notwithstanding any other provision of this code to the contrary, the Director may allow school groups and other youth or civic organizations or groups to use state vocational rehabilitation facilities and shall charge and collect a reasonable rent for the facilities: Provided, That all such rental revenue shall be used exclusively to defray the cost, maintenance and repair or replacement of the vocational rehabilitation facilities.

CHAPTER 94

(S. B. 248 — By Senators Plymale, Edgell, Dempsey, Minard and Jenkins)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7 of the Code of West Virginia, 1931, as amended, all relating to public and higher education technology strategic plan; making findings and stating intent and purpose; providing for Advisory Council for Educational Technology; providing powers and duties; providing for
goals and strategies for technology strategic plan; requiring approval of the plan by the Legislative Oversight Commission on Education Accountability; requiring allocation and expenditure of technology appropriations in accordance with the plan with certain exceptions; and report to Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

That §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2J. PUBLIC AND HIGHER EDUCATION UNIFIED EDUCATIONAL TECHNOLOGY STRATEGIC PLAN.

§18-2J-1. Findings; intent and purpose of article.


§18-2J-4. Educational technology strategic plan goals and strategies.

§18-2J-5. Unified educational technology strategic plan; submission of legislative rule to Legislative Oversight Commission on Education Accountability.

§18-2J-6. Allocation and expenditure of appropriations.

§18-2J-7. Report to the Legislative Oversight Commission on Education Accountability.

§18-2J-1. Findings; intent and purpose of article.

(a) The Legislature finds that technology may be used in the public school system for many purposes including, but not limited to, the following:

1. As an instructional tool that enables teachers to meet the individual instructional needs of students who differ in learning styles, learning rates and the motivation to learn;

2. As an effective resource for providing corrective, remedial and enrichment activities to help students achieve
proficiency at grade level or above in the basic skills of reading, composition and arithmetic that are essential for advancement to more rigorous curriculum and success in higher education, occupational and avocational pursuits;

(3) To ensure that all students have a basic level of computer literacy that will enable them to participate fully in a society in which computers are an ever more prevalent medium for social, economic and informational interaction;

(4) To provide greater access for students to advanced curricular offerings, virtual field trips, problemsolving, teambuilding exercises, reference information and source knowledge than could be provided efficiently through traditional on-site delivery formats;

(5) To help students obtain information on post-secondary educational opportunities, financial aid and the skills and credentials required in various occupations that will help them better prepare for a successful transition following high school;

(6) To help students learn to think critically, apply academic knowledge in real-life situations, make decisions and gain an understanding of the modern workplace environment through simulated workplace programs;

(7) As a resource for teachers by providing them with access to sample lesson plans, curriculum resources, on-line staff development, continuing education and college coursework; and

(8) As a tool for managing information, reporting on measures of accountability, analyzing student learning and helping to improve student, school and school system performance;
(b) The Legislature finds that technology may be used in the system of higher education for many purposes including, but not limited to, the following:

(1) For teaching, learning and research for all students across all disciplines and programs;

(2) By students, staff and faculty to discover, create, communicate and collaborate, as well as to enhance research and economic development activities;

(3) For digital age literacy, problemsolving, creativity, effective communication, collaboration and high productivity skills essential for West Virginia citizens in a rapidly changing global economy;

(4) By libraries in higher education to offer reference services in a virtual environment online;

(5) By libraries in higher education to create and share cataloging records and that it is possible to create a seamless resource for sharing these resources between public and higher education; and

(6) To offer electronic document delivery services to distance education students and to a multitude of professionals throughout the state.

(c) The Legislature further finds that all of the uses of technology in the public school and higher education systems are not necessarily exclusive and, therefore, that areas exist wherein cooperation and collaboration between the public schools, the institutions of higher education and their respective governing bodies will enable them to combine and share resources, improve efficiency and better serve their students.

(d) The intent and purpose of this article is to establish a unified approach to the planning, procurement and implementa-
tion of technology and technology services in the public schools, the institutions of higher education and their respective governing bodies that will guide the administration and allocation of educational technology funds.


(a) There is established, under the Governor's Office of Technology, the Governor's Advisory Council for Educational Technology composed of fifteen members as follows:

(1) The Governor's educational technology advisor, ex officio, who shall chair the council;

(2) The Governor's Chief Technology Officer, ex officio;

(3) One public school technology coordinator;

(4) One public elementary, middle or junior high school teacher;

(5) One public secondary school teacher;

(6) A technology representative from Marshall University;

(7) A technology representative from West Virginia University;

(8) One member of the Center for Professional Development Board;

(9) Three individuals from the private sector with expertise in education technology;

(10) One public secondary or higher education student;

(11) One representative of the Office of Business Development;
(12) One member of the Higher Education Policy Commission, or his or her designee; and

(13) One member of the State Board, or his or her designee.

(b) The Advisory Council shall meet as necessary, but shall hold no less than four meetings annually. Eight members constitute a quorum for conducting the business of the advisory council. All members of the Advisory Council are entitled to vote.

(c) The thirteen members of the Council who are not members ex officio shall be appointed by the Governor with the advice and consent of the Senate for terms of three years, except that of the original appointments, four members shall be appointed for one year; four members shall be appointed for two years; and five members shall be appointed for three years. No member may serve more than two consecutive full terms, nor may a member be appointed to a term which results in the member serving more than seven consecutive years.

(d) Members of the Advisory Council shall serve without compensation, but shall be reimbursed by the Governor for all reasonable and necessary expenses actually incurred in the performance of their official duties under this article upon presentation of an itemized sworn statement of their expenses, except that any member of the Advisory Council who is an employee of the state shall be reimbursed by the employing agency.


In addition to any other powers and duties assigned to it by this article and in this code, the Governor's Advisory Council for Educational Technology shall:
(1) Assess the broad spectrum of technology needs present within the state’s education systems as the basis for constructing a unified educational technology strategic plan that will guide the administration and allocation of educational technology funds;

(2) Assemble and integrate into the planning process the perspectives of students, teachers, faculty and administrators regarding educational technology programs;

(3) Assess, evaluate and publicize the effects of technology use by educators and students toward student learning and achievement;

(4) Explore new approaches to improve administration, accountability and student achievement within the education systems through technology application;

(5) Develop a unified educational technology strategic plan as required in section five of this article;

(6) Monitor the technology programs of the agencies and education systems affected by the educational technology strategic plan to assess its implementation and effectiveness;

(7) Advise the Governor and the Legislature on any matters the Council considers important inform the Governor and the Legislature on the state of education technology in the public schools and the institutions of higher education and on any matters requested by the Governor and the Legislature.

§18-2J-4. Educational technology strategic plan goals and strategies.

(a) The following are goals that the Governor’s Advisory Council for Educational Technology should consider when
constructing the educational technology strategic plan. Each goal shall apply to public education, higher education or both, as appropriate:

1. Maintaining a reasonable balance in the resources allocated among the customary diverse uses of technology in the public school and higher education systems, while allowing flexibility to address unanticipated priority needs and unusual local circumstances and ensuring efficient and equitable use of technology at all levels from primary school through higher education, including vocational and adult education;

2. Providing for uniformity in technological hardware and software standards and procedures to achieve interoperability between the public school and higher education systems to the extent that the uniformity is considered prudent for reducing acquisition cost, avoiding duplication, promoting expeditious repair and maintenance and facilitating user training, while allowing flexibility for local innovations and options when the objectives relating to uniformity are reasonably met;

3. Preserving the integrity of governance, administration, standards and accountability for technology within the public school and higher education systems, respectively, while encouraging collaborative service delivery and infrastructure investments with other entities that will reduce cost, avoid duplication or improve services, particularly with respect to other entities such as the educational broadcasting system, public libraries and other governmental agencies with compatible technology interests;

4. Improving the long-term ability of the state to efficiently manage and direct the resources available for technology in the public school and higher education systems to establish appropriate infrastructure that ensures, to the extent practicable, a sustainable, cost-effective and transparent migration to new technology platforms;
(5) Fostering closer communication between faculty, students and administrators and promoting the collaboration of schools, libraries, researchers, community members, state agencies, organizations, business and industry, post-secondary institutions and public virtual learning environments to meet the needs of all learners; and

(6) Creating and maintaining compatible and secure technology systems that enhance the efficient operation of the education systems.

(b) The following are strategies that the Governor's Advisory Council for Educational Technology must address in the educational technology strategic plan. Unless specifically identified otherwise, each strategy shall apply to public education, higher education or both, as appropriate:

(1) The strategy for using technology in the public school and higher education systems consistent with the findings, intent and purpose of this article and other uses considered necessary to improve student performance and progress. In addition, these uses may include:

(A) Providing for individualized instruction and accommodating a variety of learning styles of students through computer-based technology, video and other technology-based instruction;

(B) Advancing learning through alternative approaches in curriculum to integrate education, research and technology into lifelong learning strategies;

(C) Increasing student access to high quality blended distance learning curriculum using real time interactive and online distance education tools;
(D) Recognizing that information literacy is a fundamental competency for lifelong learning and information literacy is incorporated into the curricula of higher education and the workplace; and

(E) Improving teaching and learning and the ability to increase student achievement by meeting individual student needs;

(2) The strategy for allocating the resources available and developing the capacity necessary to achieve the purposes addressed in the plan. The strategy shall:

(A) Allow for reasonable flexibility for county boards and regional education service agencies to receive assistance with the development and implementation of technological solutions designed to improve performance, enrich the curriculum and increase student access to high-level courses;

(B) Allow for reasonable flexibility for county boards, regional education service agencies and institutional boards of governors to implement technological solutions that address local priorities consistent with achieving the major objectives set forth in the education technology strategic plan; and

(C) Use the most cost-effective alternative allowable pursuant to section six of this article for expending funds for technology acquisition and implementation consistent with the goals of the plan;

(D) Encourage development by the private sector of technologies and applications appropriate for education; and

(E) Encourage the pursuit of funding through grants, gifts, donations or any other source for uses related to education technology;
(3) For public education, the strategy for using technology to increase and maintain equity in the array and quality of educational offerings, expand the curriculum, deliver high-quality professional development and strengthen professional qualifications among the counties notwithstanding circumstances of geography, population density and proximity to traditional teacher preparation;

(4) For public education, the strategy for developing and using the capacity of the public school system to implement, support and maintain technology in the public schools through the allocation of funds either directly or through contractual agreements with county boards and regional education service agencies for labor, materials and other costs associated with the installation, set-up, internet hook-up, wiring, repair and maintenance of technology in the public schools and state institutions of higher education;

(5) The strategy for ensuring that the capabilities and capacities of the technology infrastructure within the state and its various regions is adequate for acceptable performance of the technology being implemented in the public schools and the state institutions of higher education, for developing the necessary capabilities and capacities or for pursuing alternative solutions;

(6) The strategy for maximizing student access to learning tools and resources at all times including before and after school or class, in the evenings, on weekends and holidays, and for public education, noninstructional days and during vacations for student use for homework, remedial work, independent learning, career planning and adult basic education;

(7) The strategy for improving the efficiency and productivity of administrators;
(8) The strategy for taking advantage of bulk purchasing abilities to the maximum extent feasible. This may include, but is not limited to:

(A) A method of recording all technology purchases across both the public education system and the higher education system;

(B) Combining the purchasing power of the public education system and the higher education system with the purchasing power of other state entities or all state entities; and

(C) A method of allowing public education and higher education to purchase from competitively bid contracts initiated through the southern regional education board educational technology cooperative and the American TelEdCommunications Alliance; and

(9) A strategy for allowing any other flexibility that is determined to be needed for the effective use of technology in public education and higher education.

Nothing in this section may be construed to conflict with a state higher education institution’s mission as set forth in its compact.

§18-2J-5. Unified educational technology strategic plan; submission of legislative rule to Legislative Oversight Commission on Education Accountability.

(a) The Governor’s Advisory Council for Educational Technology shall develop a unified educational technology strategic plan and submit the plan to the Legislative Oversight Commission on Education Accountability for approval on or before the first day of October, two thousand five. On or before the first day of October in each year thereafter, the Council shall update the plan and submit the plan to the Commission for
approval. The time line for updating and revising the rule and plan also shall be in accordance with the federal E-rate discount program. The plan is not effective until approved by the Commission.

(b) On or before the fifteenth day of June, two thousand five, and each year thereafter, each state institution of higher education shall submit a technology plan for the next fiscal year to the Higher Education Policy Commission. The plan shall be in a form and contain the information determined by the Governor's Advisory Council for Educational Technology. On or before the thirtieth day of June, two thousand five, and each year thereafter, the Higher Education Policy Commission shall submit the plans to the Governor's Advisory Council for Educational Technology for its consideration in constructing the unified educational technology strategic plan.

§18-2J-6. Allocation and expenditure of appropriations.

(a) After the thirtieth day of June, two thousand five, notwithstanding any other provision of this code to the contrary, and specifically section seven, article two-e of this chapter, the State Board, regional education service agencies, the Higher Education Policy Commission and the state institutions of higher education shall allocate and expend state appropriations for technology in the public schools or the state institutions of higher education, as appropriate, in accordance with the unified educational technology strategic plan subject to the following:

(1) Expenditures from grants which can only be used for certain purposes are not required to be made in accordance with the plan;

(2) If the plan is not approved by the Legislative Oversight Commission on Education Accountability, the plan has no effect;
(3) For public education, the expenditures shall be made directly, or through lease-purchase arrangements pursuant to the provisions of article three, chapter five-a of this code, or through contractual agreements or grants to county boards and regional education service agencies or any combination of the foregoing options as shall best implement the strategic plan in the most cost effective manner;

(4) Nothing in this section nor in the prior enactment of this section restricts the expenditure of educational technology funds appropriated for the fiscal year, two thousand five, for the purposes for which they were allocated; and

(5) Except as provided in subdivision (2) of this subsection, no more than fifty percent of the state appropriations for the fiscal year, two thousand six, to the Department of Education for educational technology in kindergarten through the twelfth grade may be expended or encumbered except in accordance with the Unified educational technology strategic plan.

(b) Nothing in this section requires any specific level of appropriation by the Legislature.

§18-2J-7. Report to the Legislative Oversight Commission on Education Accountability.

The State Board and the Higher Education Policy Commission shall report to the Legislative Oversight Commission on Education Accountability annually as soon as practical following the approval, annual update or revision of the unified educational technology strategic plan. The report shall include the proposed allocations of funds or planned expenditures for educational technology within the respective public school and higher education systems during the next fiscal year in accordance with the plan compared with the previous year’s allocations and expenditures.
AN ACT to amend and reenact §18A-3-1 of the Code of West Virginia, 1931, as amended, relating to conditions for awarding teaching certificates.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

(a) The education of professional educators in the state shall be under the general direction and control of the State Board of Education after consultation with the Secretary of Education and the Arts and the chancellor for higher education who shall represent the interests of teacher preparation programs within the institutions of higher education in this state as those institutions are defined in section two, article one, chapter eighteen-b of this code.

The education of professional educators in the state includes all programs leading to certification to teach or serve
in the public schools including: (1) Those programs in all
institutions of higher education, including student teaching in
the public schools; (2) beginning teacher internship programs;
(3) the granting of West Virginia certification to persons who
received their preparation to teach outside the boundaries of this
state, except as provided in subsection (b) of this section; (4)
any alternative preparation programs in this state leading to
certification, including programs established pursuant to the
provisions of section one-a of this article and programs which
are in effect on the effective date of this section; and (5) any
continuing professional education, professional development
and in-service training programs for professional educators
employed in the public schools in the state.

(b) The State Board of Education, after consultation with
the Secretary of Education and the Arts and the chancellor for
higher education who shall represent the interests of teacher
preparation programs within the institutions of higher education
in this state as those institutions are defined in section two,
article one, chapter eighteen-b of this code, shall adopt stan-
ards for the education of professional educators in the state
and for the awarding of certificates valid in the public schools
of this state subject to the following conditions:

(1) The standards approved by the Board for teacher
preparation shall include a provision for the study of multcul-
tural education. As used in this section, multicultural education
means the study of the pluralistic nature of American society
including its values, institutions, organizations, groups, status
positions and social roles;

(2) Effective the first day of January, one thousand nine
hundred ninety-three, the standards approved by the Board shall
also include a provision for the study of classroom management
techniques and shall include methods of effective management
of disruptive behavior which shall include societal factors and
their impact on student behavior; and
(3) Effective on the effective date of this section, any teacher who: (i) Has graduated from a teacher preparation program at a regionally accredited institution of higher education; (ii) possesses the minimum of a bachelor's degree; and (iii) holds a valid teaching certificate or certificates issued by another state, or holds a certificate of eligibility issued by another state and meets all of the requirements of the state for full certification except employment, shall be, upon application, awarded a teaching certificate or certificates for the same grade level or levels and subject area or areas valid in the public schools of this state, subject only to the provisions of section ten of this article.

(c) To give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification, the State Board of Education may enter into an agreement with county boards for the use of the public schools. Such agreement shall recognize student teaching as a joint responsibility of the teacher preparation institution and the cooperating public schools and shall include: (1) The minimum qualifications for the employment of public school teachers selected as supervising teachers; (2) the remuneration to be paid public school teachers by the State Board, in addition to their contractual salaries, for supervising student teachers; and (3) minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching. The student teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher.

(d) The State Superintendent of Schools may issue certificates to graduates of teacher education programs and alternative teacher education programs approved by the State Board of Education and in accordance with this section and rules adopted by the State Board after consultation with the Secretary of Education and the Arts and the chancellor for higher education.
A certificate to teach shall not be granted to any person who is not a citizen of the United States, is not of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher and who has not attained the age of eighteen years on or before the first day of October of the year in which his or her certificate is issued; except that an exchange teacher from a foreign country, or an alien person who meets the requirements to teach, may be granted a permit to teach within the public schools of the state.

(e) In consultation with the Secretary of Education and the Arts and the chancellor for higher education, institutions of higher education approved for teacher preparation may cooperate with each other, with the center for professional development and with one or more county boards in the organization and operation of centers to provide selected phases of the teacher preparation program such as student teaching, beginning teacher internship programs, instruction in methodology and seminar programs for college students, teachers with provisional certification, professional support team members and supervising teachers.

The institutions of higher education, the center for professional development and county boards may by mutual agreement budget and expend funds for the operation of the centers through payments to the appropriate fiscal office of the participating institutions, the center for professional development and the county boards.

(f) The provisions of this section shall not be construed to require the discontinuation of an existing student teacher training center or school which meets the standards of the State Board of Education.

(g) All institutions of higher education approved for teacher preparation in the school year of one thousand nine hundred
sixty-two—sixty-three shall continue to hold that distinction so long as they meet the minimum standards for teacher preparation. Nothing contained herein shall infringe upon the rights granted to any institution by charter given according to law previous to the adoption of this code.

CHAPTER 96
(H. B. 2528 — By Delegates Campbell, Williams, Perry and Beach)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §18A-3-1a of the Code of West Virginia, 1931, as amended, relating to alternative programs for the education of teachers; providing for alternative program certificate, eligibility, issuance, scope and renewal limitation; changing activities, components and phases of training for alternative programs; providing for program coordination, training and approval; authorizing separate programs to prepare highly qualified special education teachers; requiring position to be posted in certain instances; and establishing hiring preference.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1a. Alternative programs for the education of teachers.
(a) By the fifteenth day of August, two thousand five, the
state board, after consultation with the Secretary of Education
and the Arts, shall promulgate rules in accordance with the
provisions of article three-b, chapter twenty-nine-a of this code
for the approval and operation of teacher education programs
which are an alternative to the regular college or university
programs for the education of teachers. To participate in an
approved alternative teacher education program, the candidate
must hold an alternative program teacher certificate issued by
the Superintendent and endorsed for the instructional field in
which the candidate seeks certification. An alternative program
teacher certificate is a certificate issued for one year to a
candidate who does not meet the standard educational require-
ments for certification. The certificate may be renewed no more
than two times. No individual may hold an alternative program
teacher certificate for a period exceeding three years. The
alternative program teacher certificate shall be considered a
professional teaching certificate for the purpose of the issuance
of a continuing contract. To be eligible for an alternative
program teacher certificate, an applicant shall:

(1) Possess at least a bachelor’s degree from a regionally
accredited institution of higher education in a discipline taught
in the public schools except that the rules established by the
board may exempt candidates in selected vocational and
technical areas who have at least ten years experience in the
subject field from this requirement;

(2) Pass an appropriate state board approved basic skills
and subject matter test in the area for which licensure is being
sought;

(3) Be a citizen of the United States, be of good moral
character and physically, mentally and emotionally qualified to
perform the duties of a teacher, and have attained the age of
eighteen years on or before the first day of October of the year
in which the alternative program teacher certificate is issued;
(4) Have been offered employment by a county board in an area of critical need and shortage; and

(5) Qualify following a criminal history check pursuant to section ten of this article.

Persons who satisfy the requirements set forth in subdivisions (1) through (5) of this subsection shall be granted a formal document which will enable them to work in a public school in West Virginia.

(b) The rules adopted by the board shall include provisions for the approval of alternative teacher education programs which may be offered by schools, school districts, consortia of schools or regional educational service agency and for the setting of tuition charges to offset the program costs. An approved alternative teacher education program shall be in effect for a school, school district, consortium of schools or regional educational service agency before an alternative program teacher may be employed in that school, school district, consortium of schools or regional educational service agency. An approved alternative program shall provide essential knowledge and skills to alternative program teachers through the following phases of training:

(1) Instruction. — The alternative preparation program shall provide a minimum of eighteen semester hours of instruction in the areas of student assessment; development and learning; curriculum; classroom management; the use of educational computers and other technology; and special education and diversity. All programs shall contain a minimum of three semester hours of instruction in special education and diversity out of the minimum eighteen required semester hours.

(2) Phase I. — Phase I shall consist of a period of intensive on-the-job supervision by an assigned mentor and the school administrator for a period of not less than two weeks and no
more than four weeks. The assigned mentor shall meet the
requirements for mentor set forth in section two-b of this article
and be paid the stipend pursuant to that section. During this
time, the teacher shall be observed daily. This phase shall
include an orientation to the policies, organization and curricu-
num of the employing district. The alternative program teacher
shall begin to receive formal instruction in those areas listed in
subdivision (1) of this subsection.

(3) Phase II. — Phase II shall consist of a period of
intensive on-the-job supervision beginning the first day
following the completion of Phase I and continuing for a period
of at least ten weeks. During Phase II, the alternative program
teacher shall be visited and critiqued no less than one time per
week by members of a professional support team, defined in
subsection (c) of this section, and shall be observed and
formally evaluated at the end of five weeks and at the end of ten
weeks by the appropriately certified members of the team. At
the end of the ten-week period, the alternative program teacher
shall receive a formal written progress report from the chairper-
son of the support team. The alternative program teacher shall
continue to receive formal instruction in those areas listed
above under subdivision (1) of this subsection.

(4) Phase III. — Phase III shall consist of an additional
period of continued supervision and evaluation of no less than
twenty weeks duration. The professional support team will
determine the requirements of this phase with at least one
formal evaluation being conducted at the completion of the
phase. The alternative program teacher shall continue to receive
formal instruction in those areas listed above under subdivision
(1) of this subsection, and receive opportunities to observe the
teaching of experienced colleagues.

(c) Training and supervision of alternative program teachers
shall be provided by a professional support team comprised of
a school principal, an experienced classroom teacher who satisfies the requirements for mentor for the Beginning Educator Internship as specified in section two-b of this article, a college or university education faculty member and a curriculum supervisor. Districts or schools which do not employ curriculum supervisors or have been unable to establish a relationship with a college or university shall provide for comparable expertise on the team. The school principal shall serve as chairperson of the team. In addition to other duties assigned to it under this section and section one-b of this article, the professional support team shall submit a written evaluation of the alternative program teacher to the county superintendent. The written evaluation shall be in a form specified by the county superintendent and submitted on a date specified by the county superintendent that is prior to the first Monday of May. The evaluation shall report the progress of the alternative program teacher toward meeting the academic and performance requirements of the program.

(d) The training for professional support team members shall be coordinated and provided by the Center for Professional Development in coordination with the school district, consortium of schools, regional educational service agency, and institution of higher education, or any combination of these agencies as set forth in the plan approved by the state board pursuant to subsection (e) of this section.

(e) A school, school district, consortium of schools or regional educational service agency seeking to employ an alternative program teacher must submit a plan to the state board and receive approval. Each plan shall describe how the proposed training program will accomplish the key elements of an alternative program for the education of teachers as set forth in this section. Each school, school district, consortium of schools or regional educational service agency shall show
evidence in its plan of having sought joint sponsorship of their training program with institutions of higher education.

(f) The state board shall promulgate a rule in accordance with article three-b, chapter twenty-nine-a of this code for the approval and operation of alternative education programs to prepare highly qualified special education teachers that are separate from the programs established under the other provisions of this section and are applicable only to teachers who have at least a bachelor’s degree in a program from a regionally accredited institution of higher education. These programs are subject to the other provisions of this section only to the extent specifically provided for in the rule. These programs may be an alternative to the regular college and university programs for the education of special education teachers and also may address the content area preparation of certified special education teachers. The programs shall incorporate professional development to the maximum extent possible to help teachers who are currently certified in special education to obtain the required content area preparation. Participation in an alternative education program pursuant to this subsection shall not affect any rights, privileges or benefits to which the participant would otherwise be entitled as a regular employee, nor does it alter any rights, privileges or benefits of participants on continuing contract status. The state board shall report to the Legislative Oversight Commission on Education Accountability on the programs authorized under this subsection during the July, two thousand five, interim meetings or as soon thereafter as practical prior to implementation of the programs.

(g) The state board shall promulgate a rule in accordance with article three-b, chapter twenty-nine-a of this code for the approval and operation of alternative education programs to prepare highly qualified special education teachers that are
separate from the programs established under the other provisions of this section and are applicable only to persons who hold a bachelor's degree from a regionally accredited institution of higher education. These programs are subject to the other provisions of this section only to the extent specifically provided for in this rule. These programs may be an alternative to the regular college and university programs for the education of special education teachers and also may address the content area preparation of such persons. The state board shall report to the Legislative Oversight Commission on Education Accountability on the programs authorized under this subsection during the July, two thousand five, interim meetings or as soon thereafter as practical prior to implementation of the programs.

(h) For the purposes of this section, "area of critical need and shortage" means an opening in an established, existing or newly created position which has been posted in accordance with the provisions of section seven-a, article four of this chapter, and for which no fully qualified applicant has been employed.

(i) The recommendation to rehire an alternative education program teacher pursuant to section eight-a, article two of this chapter is subject to the position being posted and no fully qualified applicant being employed: Provided, That this provision does not apply to teachers who hold a valid West Virginia professional teaching certificate and who are employed under a program operated pursuant to subsection (f).

(j) When making decisions affecting the hiring of an alternative program teacher under the provisions of this section, a county board shall give preference to applicants who hold a valid West Virginia professional teaching certificate.
AN ACT to amend and reenact §18A-4-8e of the Code of West Virginia, 1931, as amended, relating to competency testing for service personnel; and authorizing employees of multicounty vocational school that serves county to administer tests.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel.

(a) The State Board of Education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight and listed in section eight-a of this article for service personnel. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test. The cafeteria manager class title is included in the same classification category as cooks and has the same competency test. The executive secretary class title is included in the same
classification category as secretaries and has the same competency test. The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both: Provided, That applicants have the opportunity to take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally. The performance test for all classifications and categories other than bus operator is administered by an employee of the county board of education or an employee of a multi-county vocational school that serves the county at a location designated by the Superintendent and approved by the Board. The location may be a vocational school that serves the county. A standard passing score is established by the State Department of Education for each test and is used by county boards of education. The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title. Once an employee passes the competency
test of a classification title, the applicant is fully qualified to fill
vacancies in that classification category of employment as
provided in section eight-b of this article and shall not be
required to take the competency test again.

(d) An applicant who fails to achieve a passing score is
given other opportunities to pass the competency test when
making application for another vacancy within the classification
category.

(e) Competency tests are administered to applicants in a
uniform manner under uniform testing conditions. County
boards of education are responsible for scheduling competency
tests, notifying applicants of the date and time of the one day of
training prior to taking the test and the date and time of the test.
County boards of education may not use a competency test
other than the test authorized by this section.

(f) When scheduling of the competency test conflicts with
the work schedule of a school employee who has applied for a
vacancy, the employee is excused from work to take the
competency test without loss of pay.

(g) A minimum of one day of appropriate in-service
training is provided to employees to assist them in preparing to
take the competency tests.

(h) Competency tests are used to determine the qualifica-
tion of new applicants seeking initial employment in a particu-
lar classification title as either a regular or substitute employee.

(i) Notwithstanding any provisions in this code to the
contrary, once an employee holds or has held a classification
title in a category of employment, that employee is considered
qualified for the classification title even though that employee
no longer holds that classification.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-2A-7, relating to institutional boards of governors; orders, resolutions, policies, rules and obligations of the governing boards; division of assets and liabilities by date certain; and financial audits.

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 §18B-2A-7, to read as follows:

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-7. Transfer of orders, resolutions, policies and rules, obligations, etc.; division of assets and liabilities; financial audits.

(a) When a board of governors is established for the Community and Technical College of Shepherd or New River Community and Technical College, all orders, resolutions, policies and rules adopted or promulgated by the community
and technical college’s sponsoring institution relating to the
community and technical college or community and technical
college education, or which the newly established board of
governors finds necessary for the exercise of its lawful powers
and duties pursuant to the provisions of this chapter, shall
continue in effect until rescinded, revised, altered or amended
by the newly established board of governors. Nothing in this
section requires the initial rules or policies of the community
and technical college to be promulgated again under the rule
adopted by the council for community and technical college
education pursuant to section six, article one of this chapter
unless such rules or policies are rescinded, revised, altered or
amended.

(b) Each valid agreement and obligation, undertaken or
agreed to on behalf of either of the above community and
technical colleges by its sponsoring institution before a board
of governors is established for the community and technical
college is hereby transferred to the board of governors of the
community and technical college once established.

(c) The boards of governors of each former sponsoring
institution and community and technical college shall jointly
agree on a division of all assets and liabilities between the
sponsoring institution and the community and technical college.
If the boards of governors are unable to reach agreement
concerning a division of assets and liabilities on or before the
first day of May following the date on which the board of
governors of the community and technical college is estab-
lished, the boards of governors shall submit a summary of
issues in dispute to the higher education policy commission and
the council for community and technical college education
which shall jointly resolve all outstanding issues concerning the
division of assets and liabilities.
(d) The division of all assets and liabilities between the
former sponsoring institution and community and technical
college shall be effective on the first day of July following the
date on which the board of governors of the community and
technical college is established.

(e) Any financial audit conducted for the period before the
effective date of the division of assets and liabilities shall treat
the community and technical college as an administratively
linked institution.

CHAPTER 99

(Com. Sub. for S. B. 674 — By Senator Plymale)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §18B-10-14 of the Code of West
Virginia, 1931, as amended, relating to state institution of higher
education bookstore operations and textbook sales; minimizing
costs to students; requiring Legislative Oversight Commission on
Education Accountability to obtain certain textbook study report;
prohibiting institution employees from receiving benefits for
requiring specific textbooks and providing exceptions; requiring
institutions to post listing of required textbooks at certain campus
locations; requiring institutions to promulgate a rule governing
textbook sales and bookstore operations; and application to
bookstores operated by private contractor and institutional
auxiliary services.

Be it enacted by the Legislature of West Virginia:
That §18B-10-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.


(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 shall ensure that bookstores operated at institutions under its jurisdiction minimize the costs to students of purchasing textbooks. The governing board may:

(1) Require the repurchase and resale of textbooks on an institutional or a statewide basis; and

(2) Provide for the use of certain basic textbooks for a reasonable number of years.

(d) The Legislature recognizes that in two thousand four, the Congress of the United States commissioned the United States Government Accountability Office to study the high prices of college textbooks. Upon completion of the study, the Legislative Oversight Commission on Education Accountability
shall obtain the results and any related reports produced by the Office.

(e) An employee of a governing board:

(1) May not:

(A) Receive a payment, loan, subscription, advance, deposit of money, service, benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook for coursework or instruction; or

(B) Require for any course a textbook that includes his or her own writing or work if the textbook incorporates either detachable worksheets or workbook-style pages intended to be written on or removed from the textbook. This provision does not prohibit an employee from requiring as a supplement to a textbook any workbook or similar material which is published independently from the textbook; and

(2) May receive:

(A) Sample copies, instructor’s copies and instructional material which are not to be sold; and

(B) Royalties or other compensation from sales of textbooks that include the employee’s own writing or work.

(f) A governing board shall provide to students a listing of textbooks required or assigned for any course offered at the institution.

(1) The listing shall be prominently posted:

(A) In a central location at the institution;

(B) In any campus bookstore; and
50 (C) On the institution’s website.

51 (2) The list shall include for each textbook the International
52 Standard Book Number (ISBN), the edition number and any
53 other relevant information.

54 (3) An institution shall post a book to the listing when the
55 adoption process is complete and the textbook is designated for
56 order by the bookstore.

57 (g) All moneys derived from the operation of the bookstore
58 shall be paid into a special revenue fund as provided in section
59 two, article two, chapter twelve of this code. Subject to the
60 approval of the Governor, each governing board periodically
61 shall change the amount of the revolving fund necessary for the
62 proper and efficient operation of each bookstore.

63 (h) Moneys derived from the operation of the bookstore
64 shall be used first to replenish the stock of goods and to pay
65 the costs of operating and maintaining the bookstore. Not-
66 withstanding any other provision of this section, any institu-
67 tion that has contracted with a private entity for bookstore
68 operation shall deposit into an appropriate account all revenue
69 generated by the operation and enuring to the benefit of the
70 institution. The institution shall use the funds for nonathletic
71 scholarships.

72 (i) Each governing board shall promulgate a rule in
73 accordance with the provisions of section six, article one of this
74 chapter to implement the provisions of this section.

75 (j) This section applies to textbook sales and bookstores
76 supported by an institution’s auxiliary services and those
77 operated by a private contractor.
AN ACT to amend and reenact §18B-13-1, §18B-13-2, §18B-13-3, §18B-13-4 and §18B-13-5 of the Code of West Virginia, 1931, as amended, relating to higher education and industry partnerships; amending tax incentives for certain businesses located in the geographic area of a High-Tech research zone, park or technology center; defining qualified business; defining qualified state institution of higher education; designation of the particular geographic area comprising the research zone, park or technology center; updating language to be consistent with current higher education governance structure; updating other language; and other technical amendments.

Be it enacted by the Legislature of West Virginia:

That §18B-13-1, §18B-13-2, §18B-13-3, §18B-13-4 and §18B-13-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13. HIGHER EDUCATION — INDUSTRY PARTNERSHIPS.

§18B-13-1. Legislative findings; intent; definition.
§18B-13-4. High-Tech research zones, parks and technology centers; tax incentives.
§18B-13-5. Use of state property and equipment; faculty.
§18B-13-1. Legislative findings; intent; definition.

(a) Legislative findings — The Legislature finds that a pressing need exists for collaborative research and development between institutions of higher education and industry. This need also extends to assisting companies to develop and adapt to new technology. A commitment by the state to support cooperative partnerships between higher education and industry preserves existing jobs and creates new jobs; promotes development of business enterprises and helps them become competitive; and enables West Virginia to achieve the goals of economic growth and full employment by revitalizing and diversifying the economy. Focused research and technical assistance efforts related to West Virginia industry advances such development, improves technology transfer, assists companies in becoming growth leaders and links basic research and technological developments to economic advancement.

(b) Legislative intent — It is the intent of the Legislature to adopt the following as state goals to be reached through applied science and technology and partnership programs:

(1) Moving West Virginia into the forefront of science and technology;

(2) Attracting business, federal contracts and industry; and

(3) Creating jobs for the people of this state.

(c) Definition — As used in this article, “Qualified business” means a business registered to do business in this state which is engaged in science and technology related “manufacturing” (as defined in section three, article thirteen-s, chapter eleven of this code) or science and technology related “research and development” (as defined in section three, article thirteen-q, or section three, article thirteen-r, chapter eleven of this code) within a research zone, park or technology center.

1 Each governing board of a state institution of higher education shall develop a plan to engage in collaborative projects designed to assist business to adapt or develop new technology under this article.


(a) The West Virginia Development Office, in consultation with the Commission, is hereby authorized and directed to develop a strategic comprehensive plan and grant program to attract new science and high technology industries, to retain and expand current state industries through technology and other processes and to increase research grants, contracts, matching funds and procurement arrangements from the federal government, private industry and other agencies. The initial strategic comprehensive plan and each annual plan update shall be developed and filed with the Governor and Legislature.

(b) The West Virginia Development Office, in consultation with the Commission, shall review the work and projects undertaken by the Center of Regional Progress, the Center for Economic Research, the Institute for International Trade Development and the West Virginia Foundation for Science and Technology.

§18B-13-4. High-Tech research zones, parks and technology centers; tax incentives.

(a) For the purposes of this subsection, a “qualified state institution of higher education” is a state institution of higher education meeting the qualifications to be established by the West Virginia Development Office. The West Virginia Development Office shall work with the county commissions, municipalities and local development authorities where
7 qualified state institutions of higher education are located and
8 shall develop a plan and grant program for the establishment
9 and operation of qualifying High-Tech research zones, parks
10 and technology centers on or near the campuses of qualified
11 state institutions of higher education to attract business and
12 industry engaged in science and technology related research and
13 development. The plan and grant program shall include
14 qualifications that are to be met in order to receive approval by
15 the West Virginia Development Office as a research zone, park
16 or technology center or as a qualified business. Those qualifica-
17 tions shall require a minimum partnership commitment from
18 one or more qualified businesses in the private sector in the
19 construction, operation or location of the research zone, park or
20 technology center. The West Virginia Development Office shall
21 designate the particular geographic area comprising the
22 research zone, park or technology center.
23
24 The West Virginia Economic Development Authority is
25 authorized to enter into agreements with state institutions of
26 higher education, private developers or other interested busi-
27 nesses or persons to acquire, finance, construct, operate, own,
28 lease or otherwise manage any research zone, park or technol-
29 ogy center and to collect rentals or other forms of payment for
30 the operation of research zones, parks or technology centers.
31 The West Virginia Economic Development Authority is
32 authorized either singly or in conjunction with any county
33 commission, municipality or local development authority, to
34 issue special bonds for the purpose of this section, including,
35 but not limited to, special project revenue bonds and special
36 user bonds limited to the actual cost of construction and start-up
37 of any qualifying and approved research zones, parks or
38 technology centers, and improvements necessary thereto,
39 pursuant to article twelve-b, chapter eighteen of this code.
40
41 (b) For taxable years beginning on and after the first day of
42 January, two thousand five, any qualified business approved by
the West Virginia Development Office on or after the first day
of January, two thousand four, and located in a geographic area
designated as a High-Tech research zone, park or technology
center, shall be considered to be:

(1) A business eligible for economic opportunity tax credit
entitlement pursuant to section nineteen, article thirteen-q,
chapter eleven of the code, and entitled to the twenty percent
new jobs percentage under section nine of that article, if it
creates at least three new jobs in a research zone, park or
technology center;

(2) An eligible taxpayer for purposes of the strategic
research and development credit provided under article thirteen-
r, chapter eleven of the code;

(3) An industrial taxpayer for purposes of the manufactur-
ing investment tax credit provided under article thirteen-s,
chapter eleven of the code if it is primarily engaged in manufac-
turing related to research and development; and

(4) Entitled to priority for approval of refundable credit for
the small qualified research and development company credit
under section six, article thirteen-r, chapter eleven of the code
ahead of eligible taxpayers that are not qualified businesses
under section one of this article: Provided, That the qualified
business otherwise meets the requirements for those credits.

(c) Notwithstanding any other provision herein to the
contrary, the amount of total credits and deferrals allowable
under this section, shall not exceed two and one-half million
dollars in any one fiscal year for all eligible businesses:
Provided, That, except for the credit allowed under subdivision
(4), subsection (b) of this section, the credits allowed by this
section are nonrefundable so that a taxpayer shall not claim a
total credit amount that reduces the taxpayer’s tax liability to
less than zero.
§18B-13-5. Use of state property and equipment; faculty.

(a) The governing boards are authorized to provide for the low cost and economical use and sharing of state property and equipment, including computers, research labs and other scientific and necessary equipment to assist any qualified business within an approved research park or zone or technology center. The Commission shall approve a schedule of nominal or reduced-cost reimbursements to the state for such use.

(b) The governing boards shall develop and provide for a program of release time, sabbaticals or other forms of faculty involvement or participation with any qualifying business.

(c) The Legislature finds that cooperation, communication and coordination are integral components of higher education’s involvement in economic development. In order to proceed in a manner that is cost effective and time efficient, it is the duty of the Commission to review and coordinate such aspects of the programs administered by the governing boards. The review and coordination may not operate to affect adversely sources of funding or any statutory characterization of any program as an independent entity. The Commission shall report annually to the Legislature and the Governor. The report shall contain the following information:

1. The number of seminars and workshops conducted;
2. The subject matter addressed in each seminar and workshop;
3. The number of feasibility studies conducted and the subject matter contained in each study;
4. An accounting of the cost of all travel expenses, seminars, workshops and feasibility studies; and
(5) The extent to which the authority provided for in subsection (b) of this section has been exercised, stating specifically the names of the institutions and faculty members involved in the program.

CHAPTER 101

(S. B. 669 — By Senators Hunter, Oliverio, Foster and Jenkins)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §3-1-19, §3-1-20, §3-1-21, §3-1-21a, §3-1-24 and §3-1-25 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-3-2 and §3-3-11 of said code; to amend and reenact §3-4-10, §3-4-12 and §3-4-12a of said code; to amend and reenact §3-4A-12, §3-4A-13 and §3-4A-13a of said code; to amend and reenact §3-5-7, §3-5-8, §3-5-8a, §3-5-9, §3-5-11, §3-5-12, §3-5-13a, §3-5-18, §3-5-19, §3-5-23 and §3-5-24 of said code; to amend and reenact §3-6-4 and §3-6-4a of said code; to amend and reenact §3-9-18 of said code; and to amend and reenact §3-10-6 of said code, all relating to the regulation and control of elections; transferring certain election duties from the circuit clerk to the clerk of the county commission; removing unconstitutional provisions regarding nominating petitions; providing that the county clerk shall assist the Secretary of State in determining the validity of nominating petitions; and removing the prohibition on a person signing or joining in any petition or certificate nominating any candidate for office from voting in a primary election.

Be it enacted by the Legislature of West Virginia:
That §3-1-19, §3-1-20, §3-1-21, §3-1-21a, §3-1-24 and §3-1-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-3-2 and §3-3-11 of said code be amended and reenacted; that §3-4-10, §3-4-12 and §3-4-12a of said code be amended and reenacted; that §3-4A-12, §3-4A-13 and §3-4A-13a of said code be amended and reenacted; that §3-5-7, §3-5-8, §3-5-8a, §3-5-9, §3-5-11, §3-5-12, §3-5-13a, §3-5-18, §3-5-19, §3-5-23 and §3-5-24 of said code be amended and reenacted; that §3-6-4 and §3-6-4a of said code be amended and reenacted; and §3-9-18 of said code be amended and reenacted; and that §3-10-6 of said code be amended and reenacted, all to read as follows:

Article

3. Voting by Absentees.
4. Voting Machines.
4A. Electronic Voting Systems.
5. Primary Elections and Nominating Procedures.
6. Conduct and Administration of Elections.
9. Offenses and Penalties.
10. Filling Vacancies.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.
§3-1-20. Cards of instructions to voters; sample ballots; posting.
§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.
§3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.
§3-1-24. Obtaining and delivering election supplies.
§3-1-25. Supplies by special messenger.

§3-1-19. Ballot commissioners; selection; duties generally; vacancies.

In each county in the state, the clerk of the county commission while holding office, and two persons appointed by him or her, one from each of the two political parties which cast the largest and second largest number of votes in the state at the last preceding general election, shall constitute a board of ballot
commissioners. The clerk shall be chairman. It shall be the
duty of the clerk to notify the chairman of the respective county
executive committees of the two parties, at least five days
before making appointments, the time and place of making the
appointments. If at any time after notice is given, and before or
on the day so fixed for making appointments, the chairman of
each of the committees shall designate, in writing, a member of
such party as ballot commissioner. Each designee shall be
appointed if he or she meets the qualifications of a voter. Ballot
commissioners shall be appointed between the fifteenth and
thirtieth days of January in each year in which a general
election is to be held, for a term of two years beginning on the
first day of February next ensuing. They shall perform the
duties of ballot commissioners at all general, special and
primary elections held in the county or any magisterial district
thereof during their term of office. A vacancy shall be filled in
the same manner as an original appointment, but immediate
notice of a vacancy shall, where necessary, be deemed compli-
ance with the five-day notice provision.

§3-1-20. Cards of instructions to voters; sample ballots; posting.

(a) The board of ballot commissioners of each county shall
provide cards of general information which will provide the
date of the election and the hours during which polling places
will be open, instruction for mail-in registrants and first-time
voters and voters' rights and prohibitions against fraud and
misrepresentation and cards of instruction for voters in prepar-
ing their ballots and casting a provisional ballot as prescribed
by the Secretary of State. They shall furnish a sufficient
number of cards to the commissioners of election at the same
time they deliver the ballots for the precinct.

(b) The commissioners of election shall post one instruction
card in each voting booth giving instructions to the voters on
how to prepare the ballots for deposit in the ballot boxes and
how to obtain a new ballot in place of one accidentally spoiled.
(c) The commissioners of election shall post one or more other cards of general information at places inside and outside of the voting place where voters pass or wait to vote. The commissioners shall also post the official write-in candidates in the same locations inside and outside of the voting place.

(d) The ballot commissioners shall have printed, on a different color paper than the official ballot, ten or more copies of sample ballots for each voting place for each election. Sample ballots shall be furnished and posted with the cards of general information at each voting place.

(e) During the period of early in-person voting, the clerk of the county commission shall post the cards of general information, a list of official write-in candidates and sample ballots within the area where absentee voting is conducted.

§3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.

(a) The board of ballot commissioners for each county shall provide the ballots and sample ballots necessary for conducting every election for public officers in which the voters of the county participate.

(b) The persons required to provide the ballots necessary for conducting all other elections are:

(1) The Secretary of State, for any statewide special election ordered by the Legislature;

(2) The board of ballot commissioners, for any countywide special election ordered by the county commission;

(3) The Board of Education, for any special levy or bond election ordered by the Board of Education; or
(4) The municipal board of ballot commissioners, for any election conducted for or within a municipality except an election in which the matter affecting the municipality is placed on the county ballot at a county election. Ballots other than those printed by the proper authorities as specified in this section shall not be cast, received or counted in any election.

(c) When paper ballots are used, the total number of regular official ballots printed shall equal one and one-twentieth times the number of registered voters eligible to vote that ballot. The clerk of the county commission shall determine the number of absentee official ballots.

(d) The number of regular official ballots packaged for each precinct shall equal the number of registered voters of the precinct. The remaining regular official ballots shall be packaged and delivered to the clerk of the county commission who shall retain them unopened until they are required for an emergency. Each package of ballots shall be wrapped and sealed in a manner which will immediately make apparent any attempt to open, alter or tamper with the ballots. Each package of ballots for a precinct shall be clearly labeled in a manner which cannot be altered, with the county name, the precinct number and the number of ballots contained in each package. If the packaging material conceals the face of the ballot, a sample ballot identical to the official ballots contained therein shall be securely attached to the outside of the package or, in the case of ballot cards, the type of ballot shall be included in the label.

(e) All absentee ballots necessary for conducting absentee voting in all voting systems shall be delivered to the clerk of the county commission of the appropriate county not later than the forty-second day before the election. All official ballots in paper ballot systems shall be delivered to the clerk of the county commission of the appropriate county not later than twenty-eight days before the election.
(f) Upon a finding of the board of ballot commissioners that an official ballot contains an error which, in the opinion of the board, is of sufficient magnitude as to confuse or mislead the voters, the board shall cause the error to be corrected either by the reprinting of the ballots or by the use of stickers printed with the correction and of suitable size to be placed over the error without covering any other portion of the ballot.

§3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.

(a) The printing of ballots for any election to be held pursuant to the provisions of this chapter shall be contracted for with a vendor authorized in accordance with the provisions of this section.

(b) Any vendor authorized to do business in West Virginia and in good standing may apply for a certificate of authorization to print ballots for elections in this state: Provided, That any individual, partnership, association or corporation who does not qualify as a resident vendor pursuant to the provisions of section thirty-seven-a, article three, chapter five-a of this code or who prints the ballots in a state which prohibits that state or any of its political subdivisions from contracting with West Virginia resident vendors for the printing of ballots or which prohibits the printing of ballots outside of such state, is not eligible to obtain a certificate of authorization.

(c) (1) Every vendor desiring to print ballots for elections held pursuant to the provisions of this chapter shall, prior to the execution of any contract for the printing of ballots with any state, county, or municipal government, obtain a certificate of authorization to print ballots.

(2) A certificate of authorization may be obtained by application to the Secretary of State, upon a form prescribed by
the Secretary of State. The form shall include a statement that
all printing, packaging and delivery specifications for ballots set
forth in this chapter will be substantially met, and that the
vendor applying for certification is eligible in accordance with
the provisions of this section.

(3) Upon receipt of the completed application, the Secretary
of State shall issue a certificate of authorization to print ballots,
which shall remain in effect for two years from the date of
issuance and may be renewed upon application therefor:
Provided, That the Secretary of State may deny the application
to issue or renew the certificate of authorization, or may
suspend or revoke the certificate of authorization upon a
determination that the vendor has not substantially complied
with the printing, packaging and delivery specifications in the
printing of ballots for any state, county or municipal election,
or that the vendor is not eligible or is no longer eligible to print
ballots pursuant to the provisions of this section. The Secretary
of State shall give written notice of any such determination by
certified mail, return receipt requested, to the vendor setting
forth the reason for the suspension, revocation or the denial of
the application or the denial of the renewal thereof. The
applicant may, within sixty days of the receipt of such denial,
file a written appeal with the State Election Commission. The
State Election Commission shall promulgate rules establishing
a hearing process for such appeals.

(d) On or before the second Monday of January of each
year, the Secretary of State shall provide a list of all vendors
authorized to print ballots for state, county and municipal
elections to the clerk of each county commission of this state.

§3-1-24. Obtaining and delivering election supplies.

(a) It shall be the duty of the clerk of the county commis-
sion to appoint one or more of the commissioners of election or
poll clerks at each precinct of the county to attend at the office
of the clerk of the county commission at least one day before each election to receive the ballots, ballot boxes, poll books, registration records and forms and all other supplies and materials for conducting the election at the respective precincts. The clerk shall take a receipt for the respective materials delivered to the commissioners of election or poll clerks and shall file the receipt in his or her office. It shall be the duty of the commissioners or poll clerks to receive the supplies and materials from the clerk and to deliver them with the seal of all sealed packages unbroken at the election precinct in time to open the election.

(b) The commissioners or poll clerks, if they perform the messenger services, shall receive the per diem and mileage rate prescribed by law for this service.

(c) Ballots shall be delivered in sealed packages with seals unbroken. For general and special elections the delivered ballots shall not be in excess of one and one-twentieth times the number of registered voters in the precinct. For primary elections the ballots for each party shall be in a separately sealed package containing not more than one and one-twentieth times the number of registered voters of each party in the election precinct.

(d) For primary elections one copy of the poll books, including the written or printed forms for oaths of commissioners of election and poll clerks, shall be supplied at each voting precinct for each political party appearing on the primary ballot.

(e) There shall be two ballot boxes for each election precinct for which a receiving and a counting board of election commissioners have been appointed.

§3-1-25. Supplies by special messenger.

In case any commissioner of election or poll clerk fails to appear at the offices of the clerk of the county commission by
the close of the clerk’s office on the day prior to any election, the board of ballot commissioners, the chairman or the clerk of the county commission shall forthwith dispatch a special messenger to the commissioners of election of each respective precinct with the ballots, registration records, ballot boxes, poll books and other supplies for the precinct. The messenger, if not a county employee, shall be allowed five dollars for this service. The messenger shall also receive mileage up to the rate of reimbursement authorized by the travel management rule of the Department of Administration for each mile necessarily traveled in the performance of his or her services. The messenger shall promptly report to the clerk of county commission and file with the clerk the receipts of the person to whom he or she delivered the ballots and other supplies and his or her affidavit stating when and to whom he or she delivered them.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for any election held entirely within the municipality, or in the case
of annexation elections, within the area affected. The terms
"clerk" or "clerk of the county commission" or "official
designated to supervise and conduct absentee voting" used
elsewhere in this article means municipal recorder or other
officer in the case of municipal elections.

(b) A person authorized and desiring to vote a mail-in
absentee ballot in any primary, general or special election is to
make application in writing in the proper form to the proper
official as follows:

(1) The completed application is to be on a form prescribed
by the Secretary of State and is to contain the name, date of
birth and political affiliation of the voter, residence address
within the county, the address to which the ballot is to be
mailed, the authorized reason, if any, for which the absentee
ballot is requested and, if the reason is illness or hospitalization,
the name and telephone number of the attending physician, the
signature of the voter to a declaration made under the penalties
for false swearing as provided in section three, article nine of
this chapter that the statements and declarations contained in
the application are true, any additional information which the
voter is required to supply, any affidavit which may be required
and an indication as to whether it is an application for voting in
person or by mail; or

(2) For any person authorized to vote an absentee ballot
under the provisions of 42 U. S. C. §1973, et seq., the Uni-
formed and Overseas Citizens Absentee Voting Act of 1986,
the completed application may be on the federal postcard
application for absentee ballot form issued under authority of
that act; or

(3) For any person unable to obtain the official form for
absentee balloting at a reasonable time before the deadline for
an application for an absentee ballot by mail is to be received
by the proper official, the completed application may be in a
form set out by the voter, provided all information required to
meet the provisions of this article is set forth and the application
is signed by the voter requesting the ballot.

§3-3-11. Preparation, number and handling of absent voters' ballots.

(a) Absent voters’ ballots are to be in all respects like other ballots. Not less than seventy days before the date on which any primary, general or special election is to be held, unless a lesser number of days is provided in any specific election law in which case the lesser number of days applies, the clerks of the county commissions of the several counties shall estimate and determine the number of absent voters’ ballots of all kinds which will be required in their respective counties for that election. The ballots for the election of all officers, or the ratification, acceptance or rejection of any measure, proposition or other public question to be voted on by the voters, are to be prepared and printed under the direction of the board of ballot commissioners constituted as provided in article one of this chapter. The several county boards of ballot commissioners shall prepare and have printed, in the number they may determine, absent voters’ ballots that are to be printed under their directions as provided in this chapter and those ballots are to be delivered to the clerk of the county commission of the county not less than forty-two days before the day of the election at which they are to be used.

(b) The official designated to supervise and conduct absentee voting shall be responsible for the mailing, receiving, delivering and otherwise handling of all absent voters’ ballots. He or she shall keep a record, as may be prescribed by the Secretary of State, of all ballots delivered for the purpose of absentee voting, as well as all ballots, if any, marked before him or her and shall deliver to the commissioner of election a
certificate stating the number of ballots delivered or mailed to absent voters and those marked before him or her, if any, and the names of the voters to whom those ballots have been delivered or mailed or by whom they have been marked, if marked before him or her.

ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

§3-4-12. Inspection of machines; duties of county commission, ballot commissioners and election commissioners; keys and records relating to machines.

§3-4-12a. Supplies by special messenger.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

(a) The ballot commissioners of any county in which voting machines are to be used in any election shall cause to be printed for use in the election the ballot labels for the voting machines and paper ballots for absentee voting, voting by persons unable to use the voting machine and provisional ballots or if an electronic voting system or direct recording election equipment is to be used in an election, the ballot commissioners shall comply with requirements of section eleven, article four-a of this chapter. The labels shall be clearly printed in black ink on clear white material in a size that will fit the ballot frames. The paper ballots shall be printed in compliance with the provisions of this chapter governing paper ballots.

(b) The heading, the names and arrangement of offices and the printing and arrangement of names of the candidates for each office indicated must be placed on the ballot for the primary election as nearly as possible according to the provisions of sections thirteen and thirteen-a, article five of this chapter and for the general election according to the provisions of section two, article six of this chapter: Provided, That the staggering of the names of candidates in multicandidate races
and the instructions to straight ticket voters prescribed by section two, article six of this chapter shall appear on paper ballots but shall not appear on ballot labels for voting machines which mechanically control crossover voting.

(c) Each question to be voted on must be placed at the end of the ballot and must be printed according to the provisions of the laws and rules governing the question.

(d) The ballot labels printed must total in number one and one-half times the total number of corresponding voting machines to be used in the several precincts of the county in the election. All the labels must be delivered to the clerk of the county commission at least twenty-eight days prior to the day of the election. The clerk of the county commission shall determine the number of paper ballots needed for absentee voting and to supply the precincts for provisional ballots and ballots to be cast by persons unable to use the voting machine. All required paper ballots shall be delivered to the clerk of the county commission at least forty-two days prior to the day of the election.

(e) When the ballot labels and absentee ballots are delivered, the clerk of the county commission shall examine them for accuracy, assure that the appropriate ballots and ballot labels are designated for each voting precinct and insert one set in each machine prior to the inspection of the machines as prescribed in section twelve of this article. The remainder of the ballot labels for each machine shall be retained by the clerk of the county commission for use in an emergency.

(f) In addition to all other equipment and supplies required by the provisions of this article, the ballot commissioners shall cause to be printed a supply of instruction cards, sample ballots and facsimile diagrams of the voting machine ballot adequate for the orderly conduct of the election in each precinct in their
county. In addition, they shall provide appropriate facilities for the reception and safekeeping of the ballots of absent voters and of challenged voters and of the "independent" voters who shall, in primary elections, cast their votes on nonpartisan candidates and public questions submitted to the voters.

§3-4-12. Inspection of machines; duties of county commission, ballot commissioners and election commissioners; keys and records relating to machines.

When the clerk of the county commission has completed the preparation of the voting machines, as provided in section eleven of this article, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the machines are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk, or at such other place wherein the voting machines are stored, not later than five days before the day of the election, and shall examine the machines to determine whether the requirements of this article have been met. Any candidate, and one representative of each political party having candidates to be voted on at the election, may be present during the examination. If the machines are found to be in proper order, the members of the county commission and the ballot commissioners shall endorse their approval in the book in which the clerk entered the numbers of the machines opposite the numbers of the precincts. The clerk shall then deliver the keys to the voting machines to the ballot commissioners who shall give a receipt for the keys, which shall contain identification of such keys. Not later than one day before the election the election commissioner of each precinct, who shall have been previously designated by the ballot commissioners, shall attend at the office of the clerk of the county commission to receive the key or keys to the device covering the registering counters and such other keys as may be
necessary for the operation of the machine in registering votes, and to receive the other necessary election records, books and supplies required by law. The election commissioners shall receive the per diem mileage rate prescribed by law for this service. The election commissioners shall give the ballot commissioners a receipt for the keys, records, books and supplies. The receipt shall contain identification of the keys. The master key and all other keys shall remain in the possession of the clerk of the county commission.

§3-4-12a. Supplies by special messenger.

In case any commissioner of election shall fail to appear at the offices of the clerk of the county commission by the close of the clerk’s office on the day prior to any election, the board of ballot commissioners, the chairman thereof shall cause all necessary election records, books and supplies to be delivered by special messenger in the same manner and under the same terms and conditions as is provided for the dispatch of the special messenger under the provisions of section twenty-five, article one of this chapter.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices; record of identifying numbers.

§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.

§3-4A-13a. Supplies by special messenger.

§3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices; record of identifying numbers.

In counties using electronic voting systems utilizing vote recording devices:
(1) The number of ballot labels printed, where applicable, are to equal one and one-half times the total number of corresponding vote recording devices to be used in the election. All labels are to be delivered to the clerk of the county commission at least thirty-five days prior to the election. The clerk shall immediately examine the ballot labels for accuracy and assure that the appropriate ballot labels are designated for each voting precinct.

(2) The total number of ballot cards printed and the number packaged for each precinct and the requirements for ballot colors and packaging are to conform as nearly as possible to the requirements for paper ballots. Official ballot cards printed and packaged for the various precincts are to be delivered to the clerk of the county commission at least twenty-eight days prior to the election.

(3) The necessary number of ballot cards, ballot labels, sample ballots, and other supplies necessary for absentee voting are to be delivered to the clerk of the county commission at least forty-two days prior to the election. The clerk shall immediately check the ballot labels to assure their accuracy and shall place them in vote recording devices which are clearly designated for the proper district or party, or both, for the purpose of absentee voting.

(4) The clerk of the county commission shall retain the remainder of the ballot labels for each machine for use in an emergency.

(5) The clerk of the county commission shall seal the vote recording devices so as to prevent tampering with ballot labels, and enter in an appropriate book, opposite the number of each precinct, the identifying or distinguishing number of the specific vote recording device or devices to be used in that precinct.
§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.

When the clerk of the county commission has completed the preparation of the ballots and vote recording devices as provided in sections eleven, eleven-a and twelve of this article and as provided in section twenty-one, article one of this chapter, and not later than seven days before the day of the election, he or she shall notify the members of the county commission and the ballot commissioners that the ballots and devices, where applicable, are ready for use. Thereupon the members of the county commission and the ballot commissioners shall convene at the office of the clerk or at such other place wherein the vote recording devices, where applicable, and ballots are stored, not later than five days before the day of the election, and shall inspect the devices and the ballots to determine whether the requirements of this article have been met. Notice of the place and time of such inspection shall be published, no less than three days prior thereto, as a Class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county involved. Any candidate and one representative of each political party on the ballot may be present during such examination. If the devices, where applicable, and ballots are found to be in proper order, the members of the county commission and the ballot commissioners shall, where applicable, endorse their approval in the book in which the clerk entered the numbers of the devices opposite the numbers of the precincts. The vote recording devices and the ballots shall then be secured in double lock rooms. The clerk and the president or president pro tempore of the county commission shall each have a key. The rooms shall be unlocked only in their presence and only for the removal of the
devices, where applicable, and the ballots for transportation to
the polls. Upon such removal of the devices and ballots, the
clerk and president or president pro tempore of the county
commission shall certify in writing signed by them that the
devices, where applicable, and packages of ballots were found
to be sealed when removed for transportation to the polls.

Not later than one day before the election the election
commissioner of each precinct who shall have been previously
designated by the ballot commissioners, shall attend at the
office of the clerk of the county commission to receive the
necessary election records, books and supplies required by law.
The election commissioners shall receive the per diem mileage
rate prescribed by law for this service. The election commis-
sioners shall give the ballot commissioners a sequentially
numbered written receipt, on a printed form, provided by the
clerk of the county commission, for such records, books and
supplies. The receipt shall be prepared in duplicate. One copy
of the receipt shall remain with the clerk of the county commis-
sion and one copy shall be delivered to the president or presi-
dent pro tempore of the county commission.

§3-4A-13a. Supplies by special messenger.

In case any commissioner of election shall fail to appear at
the offices of the clerk of the county commission by the close
of the clerk’s office on the day prior to any election, the board
of ballot commissioners, the chairman thereof or the clerk of
the county commission shall cause all necessary election
records, books and supplies to be delivered by special messen-
ger in the same manner and under the same terms and condi-
tions as is provided the dispatch of the special messenger under
the provisions of section twenty-five, article one of this chapter.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of
candidates when section applicable.
§3-5-8. Filing fees and their disposition.
§3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.
§3-5-9. Certification and posting of candidacies.
§3-5-11. Withdrawals; filling vacancies in candidacy; publication.
§3-5-12. Official and sample ballots; color.
§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.
§3-5-18. Disposition of certificates of results.
§3-5-19. Vacancies in nominations; how filled; fees.
§3-5-23. Certificate nominations; requirements and control; penalties.
§3-5-24. Filing of nomination certificates; time.

§3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.

Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring as a candidate for the nomination or election to the office.

(a) The certificate of announcement shall be filed as follows:

(1) With the Secretary of State, if it be an office or political position to be filled by the voters of more than one county;

(2) With the clerk of the county commission, if it be for an office to be filled by the voters of a single county or of a subdivision less than a county;

(3) With the recorder or city clerk if it be for an office to be filled by the voters of a municipality.

The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January next preceding the primary election day, and not later than the last Saturday in January next preceding the primary election day, and must be received before midnight, eastern standard
time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour.

(b) The certificate of announcement shall be in a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to give oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate, and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in section thirteen, article five of this chapter;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number, and city, state and zip code;

(6) For partisan elections, the name of the candidate’s political party, and a statement that the candidate is a member of and affiliated with that political party as is evidenced by the candidate’s current registration as a voter affiliated with that party, and that the candidate has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;
(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or, a statement that the candidate prefers to remain "uncommitted";

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words "subscribed and sworn to before me this _____ day of ______________, 20____," and a space for the signature of the officer giving the oath.

The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate evidencing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: Provided, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate be filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate shall not be refused certification for this reason.

(c) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished as set forth in section three, article nine of this chapter.

(d) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the
Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate’s committee on his or her behalf may file a list of approved or rejected candidates for delegate, and the Secretary of State shall list as “uncommitted” any candidate for delegate who is disapproved by the presidential candidate.

(e) No person shall be a candidate for more than one office or office division at any election: Provided, That a candidate for an office may also be a candidate for president of the United States, for membership on a political party executive committee or for delegate to a political party national convention. Notwithstanding the provisions of this section, nothing shall prohibit a candidate from jointly running for or holding the offices of county clerk and circuit clerk in those counties which operate a joint clerkship system.

(f) Any candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by section eleven, article five of this chapter, from all but one office prior to the close of the filing period shall not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

The provisions of this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-one shall apply to the primary election held in the year one thousand nine hundred ninety-two and every primary election held thereafter. The provisions of this section enacted during the regular session of the Legislature in the year one thousand nine hundred ninety-eight shall apply to the primary election held in the year two thousand and every primary election held thereafter.
§3-5-8. Filing fees and their disposition.

Every person who becomes a candidate for nomination for or election to office in any primary election shall, at the time of filing the certificate of announcement as required in this article, pay a filing fee as follows:

(a) A candidate for president of the United States, for vice president of the United States, for United States Senator, for member of the United States House of Representatives, for Governor and for all other state elective offices shall pay a fee equivalent to one percent of the annual salary of the office for which the candidate announces: Provided, That the filing fee for any candidate for president or vice president of the United States shall not exceed two thousand five hundred dollars commencing with the two thousand four filing period;

(b) A candidate for the office of judge of a circuit court and judge of a family court shall pay a fee equivalent to one percent of the total annual salary of the office for which the candidate announces;

(c) A candidate for member of the House of Delegates shall pay a fee of one-half percent of the total annual salary of the office and a candidate for state Senator shall pay a fee of one percent of the total annual salary of the office;

(d) A candidate for sheriff, prosecuting attorney, circuit clerk, county clerk, assessor, member of the county commission and magistrate shall pay a fee equivalent to one percent of the annual salary, excluding any additional compensation or commission of the office for which the candidate announces. A candidate for county board of education shall pay a fee of twenty-five dollars. A candidate for any other county office shall pay a fee of ten dollars;

(e) Delegates to the national convention of any political party shall pay the following filing fees:
A candidate for delegate-at-large shall pay a fee of twenty dollars; and a candidate for delegate from a congressional district shall pay a fee of ten dollars;

(f) Candidates for members of political executive committees and other political committees shall pay the following filing fees:

A candidate for member of a state executive committee of any political party shall pay a fee of twenty dollars; a candidate for member of a county executive committee of any political party shall pay a fee of ten dollars; and a candidate for member of a congressional, senatorial or delegate district committee of any political party shall pay a fee of five dollars.

Candidates filing for an office to be filled by the voters of one county shall pay the filing fee to the clerk of the county commission and candidates filing for an office to be filled by the voters of more than one county shall pay the filing fee to the Secretary of State at the time of filing their certificates of announcement and no certificate of announcement shall be received until the filing fee is paid.

All moneys received by the clerk from the fees shall be credited to the general county fund. Moneys received by the Secretary of State from fees paid by candidates for offices to be filled by all the voters of the state shall be deposited in a special fund for that purpose and shall be apportioned and paid by him or her to the several counties on the basis of population and that received from candidates from a district or judicial circuit of more than one county shall be apportioned to the counties comprising the district or judicial circuit in like manner. When such moneys are received by sheriffs, it shall be credited to the general county fund.
§3-5-8a. Nominating petitions as alternatives to filing fees; oath of impecuniosity required; petition in lieu of payment of filing fee.

A candidate seeking nomination to any office who is unable to pay the filing fee may qualify through the following petition process in lieu of payment of the filing fee.

The candidate shall file an oath with the appropriate office required under section eight of this article stating that he or she is unable to pay the filing fee due to a lack of financial resources. Such oath shall be filed not earlier than the second Monday in January next preceding the primary election day.

Upon receipt of the written oath the receiving officer shall provide the candidate with in-lieu-of-filing-fee petition forms and instructions on gathering the required signatures. The number of required signatures shall be four qualified voters for each whole dollar of the filing fee: Provided, That the filing fee shall be waived, in whole and not in part. Only signatures of voters registered in the county, district or other political division represented by the office sought may be solicited. Solicitors of signatures shall also be residents of the county, district or other geographical entity represented by the office sought: Provided, however, That for offices to be filled by the voters of more than one county, separate petition forms shall be used for the signatures of qualified voters from each county.

No qualified voter forfeits his or her opportunity to vote in the primary election by signing an in-lieu-of-filing-fee petition.

The candidate may submit a greater number of signatures to allow for subsequent losses due to invalidity of some signatures. The clerk of the county commission may not be required to determine the validity of a greater number of signatures than that required by this section.
Signatures obtained on an in-lieu-of-filing-fee petition shall not be counted toward the number of voters required to sign a nomination certificate in accordance with section twenty-three of this article.

The candidate shall file all in-lieu-of-filing-fee petitions with the required number of valid signatures with the clerk of the county commission or Secretary of State, as the case may be, not later than the last date required by law for filing declarations of candidacies and payment of the filing fee.

The oath and forms required by this section shall be prescribed by the Secretary of State.

§3-5-9. Certification and posting of candidacies.

By the eighty-fourth day next preceding the day fixed for the primary election, the Secretary of State shall arrange the names of all candidates, who have filed announcements with him or her, as provided in this article, and who are entitled to have their names printed on any political party ballot, in accordance with the provisions of this chapter, and shall forthwith certify the same under his or her name and the lesser seal of the state, and file the same in his or her office.

The certificate of candidates shall show: (1) The name and residence of each candidate; (2) the office for which he or she is a candidate; (3) the name of the political party of which he or she is a candidate; (4) upon what ballot his or her name is to be printed; and (5) in the case of a candidate for delegate to the national convention of any political party, the name of the person the candidate prefers as the presidential nominee of his or her party, or if he or she has no preference, the word “uncommitted”.

The Secretary of State shall post a duplicate of the certificate in a conspicuous place in his or her office and keep same posted until after the primary election.

Immediately upon completion of such certification, the Secretary of State shall ascertain therefrom the candidates whose names are to appear on the primary election ballots in the several counties of the state and shall certify to the clerk of the county commission in each county the certificate information relating to each of the candidates whose names are to appear on the ballot in that county. He or she shall transmit the certificate to the several clerks by registered or certified mail, but, in emergency cases, he may resort to other reliable and speedy means of transmission which may be available so that such certificates shall reach the several clerks by the seventieth day next preceding such primary election day.

The provisions of this section shall apply to the primary election held in the year one thousand nine hundred eighty-six and every primary election held thereafter.

§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

(a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the office shall file a signed and notarized statement of withdrawal with the same officer with whom the certificate of announcement was filed. If the statement of withdrawal is received not later than the third Tuesday following the close of candidate filing, the name of a candidate who files that statement of withdrawal may not be printed on the ballot. No candidate who files a statement of withdrawal after that time may have his or her name removed from the ballot.

(b) Upon request of the candidate's family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the
14 ballots are printed but before the election, the clerk of the
15 county commission shall give a written notice which shall be
16 posted with the sample ballot at each precinct with the county
to the following effect: “To the voter: (name) of (residence), a
18 candidate for (office) is deceased.”

19 (c) If after the time is closed for announcing as a candidate
20 there is a vacancy on the ballot caused by failure of any person
21 of a party to file for each available seat of each available office,
22 the executive committee of the party for the political division
23 within which such candidate was to be voted for, or its chair if
24 the committee fails to act, may fill the vacancy and certify the
25 candidate named to the appropriate filing officer. Certification
26 of the appointment by the executive committee or its chair, the
27 candidate’s certificate of announcement and the filing fee must
28 be received by the appropriate filing officer as follows: For an
29 appointment by an executive committee, no later than the
30 second Friday following the close of filing, for an appointment
31 by its chair, no later than the third Tuesday following the close
32 of filing. A candidate appointed to fill a vacancy on the ballot
33 under this subsection shall have his or her name printed on the
34 primary ballot for that party.

§3-5-12. Official and sample ballots; color.

1 There shall be a separate ballot printed on different colored
2 paper for each political party participating in the primary
3 election and the ballot of no two parties may be of the same
4 color or tint. The Secretary of State shall select and determine
5 the color of the paper of the ballot of each of the parties, and
6 shall notify the clerk of the county commission of each county
7 thereof, at the time he or she certifies the names of the candi-
8 dates of the various parties to the clerk, as herein provided.

9 A different color of paper shall be selected and designated
10 by the Secretary of State for each party. The sample ballots of
each party shall be of a different color than the official ballot and of a different color from one another. There shall be printed across the face of such sample ballot in large letters the words “sample ballot”. No sample ballot shall be voted or counted in any election.

§3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.

(a) The order of offices for state and county elections on all ballots within the state shall be as prescribed herein. When the office does not appear on the ballot in an election, then it shall be omitted from the sequence. When an unexpired term for an office appears on the ballot along with a full term, the unexpired term shall appear immediately below the full term.

NATIONAL TICKET: President (and Vice President in the general election), United States Senator, member of the United States House of Representatives

STATE TICKET: Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, Attorney General, Justice of the Supreme Court of Appeals, State Senator, member of the House of Delegates, circuit judge in multicounty districts, family court judge in multicounty districts, any other multicounty office, state executive committee

COUNTY TICKET: Circuit judge in single-county districts, family court judge in single-county districts, clerk of the circuit court, county commissioner, clerk of the county commission, prosecuting attorney, sheriff, assessor, magistrate, surveyor, congressional district executive committee, senatorial district executive committee in multicounty districts, delegate district executive committee in multicounty districts
NATIONAL CONVENTION: Delegate to the national convention — at-large, delegate to the national convention — congressional district

DISTRICT TICKET: County executive committee.

(b) Except for office divisions in which no more than one person has filed a certificate of announcement, the arrangement of names for all offices shall be determined by lot according to the following provisions:

(1) On the fourth Tuesday following the close of the candidate filing, beginning at nine o'clock a.m., a drawing by lot shall be conducted in the office of the clerk of the county commission in each county. Notice of the drawing shall be given on the form for the certificate of announcement and no further notice shall be required. The clerk of the county commission shall superintend and conduct the drawing and the method of conducting the drawing shall be prescribed by the Secretary of State.

(2) Except as provided herein, the position of each candidate within each office division shall be determined by the position drawn for that candidate individually: Provided, That if fewer candidates file for an office division than the total number to be nominated or elected, the vacant positions shall appear following the names of all candidates for the office.

(3) Candidates for delegate to national convention who have filed a commitment to a candidate for president shall be listed alphabetically within the group of candidates committed to the same candidate for president and uncommitted candidates shall be listed alphabetically in an uncommitted category. The position of each group of committed candidates and uncommitted candidates shall be determined by lot by drawing the names of the presidential candidates and for an uncommitted category.
(4) A candidate or the candidate's representative may attend the drawings.

§3-5-18. Disposition of certificates of results.

The certificates of the board of canvassers made pursuant to the preceding section shall be by them disposed of as follows: One of the certificates showing the votes received by each candidate of each party for each office to be filled by the voters of a political division greater than a county, including members of the State Executive Committee, shall be filed with the Secretary of State, and preserved in his or her office, and a copy thereof filed in the office of the clerk of the county commission of the county of such board, to be preserved by the clerk, and which shall be open to public inspection; one certificate showing the votes received by each candidate of each party for each office to be filled by the voters of the county or magisterial district within such county, including members of the county executive committee, shall be filed with the clerk of the county commission, and preserved in his or her office. If requested, the board of canvassers shall furnish to the county chairman of each political party a certificate showing the number of votes received by each of the candidates of such party in the county or any magisterial district therein.

The Secretary of State shall certify, under the seal of the state, to the clerk of the county commission of each county in which a candidate is to be voted for, the name of the candidate of each political party receiving the highest number of votes in the political division in which he or she is a candidate, and who is entitled to have his or her name placed on the official ballot in the general election as the nominee of the party for such office. The Secretary of State shall also certify in the same manner the names of all candidates nominated by political parties or by groups of citizens, not constituting a political party, in any manner provided for making such nominations in this chapter.
§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy shall occur in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section eleven of this article, the vacancies may be filled, subject to the following requirements and limitations:

1. Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs. Provided, That if the executive committee holds a duly called meeting in accordance with section nine, article one of this chapter but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee.

2. Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of nomination is regularly filed for that office.

3. If a vacancy in nomination is caused by the failure of a candidate to file for an office, or by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than the Thursday preceding the primary election.
(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than seventy-eight days before the general election. A candidate may be determined ineligible if a written request is made by an individual with information to show a candidate’s ineligibility to the State Election Commission no later than ninety-five days before the general election explaining grounds why a candidate is not eligible to be placed on the general election ballot or not eligible to hold the office, if elected. The State Election Commission shall review the reasons for the request. If the Commission finds the circumstances warrant the disqualification of the candidate, the Commission may authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than eighty-four days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(6) If a vacancy in nomination is caused by the withdrawal of the candidate no later than ninety-eight days before the general election due to extenuating personal circumstances which will prevent the candidate from serving in the office if elected and if the candidate or the chairperson of the executive committee for the political division applies in writing to the State Election Commission no later than ninety-five days before the general election for permission to remove the candidate’s name from the general election ballot, the State Election
Commission shall review the reasons for the request. If the Commission finds the circumstances warrant the withdrawal of the candidate, the Commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election.

(7) If a vacancy in nomination is caused by the death of the candidate occurring no later than twenty-five days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than twenty-one days following the date of death or no later than twenty-two days before the general election, whichever date occurs first.

(b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk
§3-5-23. Certificate nominations; requirements and control; penalties.

(a) Groups of citizens having no party organization may nominate candidates for public office otherwise than by conventions or primary elections. In the case, the candidate or candidates, jointly or severally, shall file a declaration with the Secretary of State if the office is to be filled by the voters of more than one county, or with the clerk of the county commission of the county if the office is to be filled by the voters of one county or political subdivision thereof; the declaration to be filed at least thirty days prior to the time of filing the certificate provided by section twenty-four of this article: Provided, That the deadline for filing the certificate for persons seeking ballot access as a candidate for the office of president or vice president shall be filed not later than the first day of August preceding the general election. At the time of filing of the declaration each candidate shall pay the filing fee required by law, and if the declaration is not so filed or the filing fee so paid, the certificate shall not be received by the Secretary of State, or clerk of the county commission, as the case may be.

(b) The person or persons soliciting or canvassing signatures of duly qualified voters on the certificate or certificates, may solicit or canvass duly registered voters residing within the county, district or other political division represented by the office sought, but must first obtain from the clerk of the county commission credentials which must be exhibited to each voter canvassed or solicited, which credentials may be in the following form or effect:

State of West Virginia, County of, ................. ss:
This certifies that the holder of this credential is hereby authorized to solicit and canvass duly registered voters residing in .................. (here place the county, district or other political division represented by the office sought) to sign a certificate purporting to nominate ..................... (here place name of candidate heading list on certificate) for the office of ..................... and others, at the general election to be held on ...................., 20......

Given under my hand and the seal of my office this ................ day of ......................, 20......

..............................

Clerk, County Commission of ........... County.

The clerk of each county commission, upon proper application made as herein provided, shall issue such credentials and shall keep a record thereof.

(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein the canvass or solicitation is made by the person or persons duly authorized. The signatures need not all be on one certificate. The number of signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. The number of signatures shall be equal to not less than two percent of the entire vote cast at the last preceding general election for any statewide, congressional or presidential candidate, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the
candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. No signature on a certificate shall be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein the certificate was presented.

(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to vote for the candidates; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.

The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures. The content shall include the language to be used in giving written and oral notice to each voter that signing of the nominating certificate forfeits that voter’s right to vote in the corresponding primary election.

Offices to be filled by the voters of more than one county shall use separate petition forms for the signatures of qualified voters for each county.

(e) The Secretary of State, or the clerk of the county commission, as the case may be, may investigate the validity of the certificates and the signatures thereon. If upon investigation there may be doubt as to the legitimacy and the validity of the certificate, he or she may request the Attorney General of the state, or the prosecuting attorney of the county, to institute a quo warranto proceeding against the nominee or nominees by
certificate to determine his or their right to the nomination to public office, and upon request being made, the Attorney General or prosecuting attorney shall institute the quo warranto proceeding. The clerk of the county commission shall, at the request of the Secretary of State or the clerk of the circuit court, compare the information from any certificate to the county voter registration records in order to assist in determining the validity of any certificates.

(f) Any person violating the provisions of this section, in addition to penalties prescribed elsewhere for violation of this chapter, is guilty of a misdemeanor and, upon conviction, shall be fined not more than one thousand dollars, or confined in jail for not more than one year, or both, in the discretion of the court: Provided, That no criminal penalty may be imposed upon anyone who signs a nomination certificate and votes in the primary election held after the date the certificate was signed.

§3-5-24. Filing of nomination certificates; time.

All certificates nominating candidates for office under the preceding section, including a candidate for the office of presidential elector, shall be filed, in the case of a candidate to be voted for by the voters of the entire state or by any subdivision thereof other than a single county, with the Secretary of State, and in the case of all candidates for county and magisterial district offices, including all offices to be filled by the voters of a single county, with the clerk of the county commission, not later than the day preceding the date on which the primary election is held. After that date no certificate shall be received by such officers.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-4. Late nominations; stickers.
§3-6-4a. Filing requirements for write-in candidates.
§3-6-4. Late nominations; stickers.

If a nomination to fill a vacancy is made by a political party executive committee or, on its failure to so act within the time prescribed by law, is made by the chairman of the committee, and certified to the clerk of the county commission after the ballots to be used at the ensuing election shall have been printed, the clerk shall forthwith lay such certificates before the ballot commissioners who, without delay, shall prepare, or cause to be prepared, and deliver, or cause to be delivered, to the election commissioners of each precinct in which the candidate is to be voted for, a number of stickers, containing only the name of the candidate, at least equal to the total number of ballots provided for the precinct; but no such stickers shall be furnished to or received by any person except a commissioner of election. It is the duty of the commissioners holding the election to deliver such stickers to the poll clerks, who shall, in the presence of the election commissioners, affix one of the stickers in a careful manner at the proper place for the name of the candidate, upon each ballot to be voted at the election, before the poll clerks sign their names on the ballots. The stickers may be delivered to the election officers, by the clerk of the county commission, with the ballots, poll books and other supplies.

§3-6-4a. Filing requirements for write-in candidates.

Any eligible person who seeks to be elected by write-in votes to an office, except delegate to national convention, which is to be filled in a primary, general or special election held under the provisions of this chapter, shall file a write-in candidate’s certificate of announcement as provided in this section. No certificate of announcement may be accepted and no person may be certified as a write-in candidate for a political party nomination for any office or for election as delegate to national convention.
(a) The write-in candidate’s certificate of announcement shall be in a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to give oaths containing the following information:

1. The name of the office sought and the district and division, if any;
2. The legal name of the candidate and the first and last name by which the candidate may be identified in seeking the office;
3. The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state and zip code;
4. A statement that the person filing the certificate of announcement is a candidate for the office in good faith; and
5. The words “subscribed and sworn to before me this _____ day of ____________, ____” and a space for the signature of the officer giving the oath.

(b) The certificate of announcement shall be filed with the filing officer for the political division of the office as prescribed in section seven, article five of this chapter.

(c) The certificate of announcement shall be filed with and received by the proper filing officer as follows:

1. Except as provided in subdivisions (2) and (3) of this subsection, the certificate of announcement for any office shall be received no later than the close of business on the twenty-first day before the election at which the office is to be filled;
(2) When a vacancy occurs in the nomination of candidates for an office on the ballot resulting from the death of the nominee or from the disqualification or removal of a nominee from the ballot by a court of competent jurisdiction not earlier than the twenty-first day nor later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later;

(3) When a vacancy occurs in an elective office which would not otherwise appear on the ballot in the election, but which creates an unexpired term of one or more years which, according to the provisions of this chapter, is to be filled by election in the next ensuing election and the vacancy occurs no earlier than the twenty-first day and no later than the fifth day before the general election, the certificate shall be received no later than the close of business on the fifth day before the election or the close of business on the day following the occurrence of the vacancy, whichever is later.

(d) Any eligible person who files a completed write-in candidate's certificate of announcement with the proper filing officer within the required time shall be certified by that filing officer as an official write-in candidate:

(1) The Secretary of State shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in more than one county and certify the name of each official write-in candidate to the clerks of the county commissions of the appropriate counties.

(2) The clerk of the county commission shall, immediately following the filing deadline, post the names of all official write-in candidates for offices on the ballot in one county and certify and deliver to the election officials of the appropriate
precincts, the names of all official write-in candidates and the
office sought by each for statewide, district and county offices
on the ballot in the precinct for which valid write-in votes will
be counted and the names shall be posted at the office where
absentee voting is conducted and at the precincts in accordance
with section twenty, article one of this chapter.

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-18. Unlawful voting in primary elections; penalties.

Any person voting, in any primary election, any ticket of a
party other than that of which he is registered as a member, and
any election officer receiving the vote of any such person,
knowing, or having reason to believe, that such voter is not a
member of the party the ticket of which he is voting, shall, at
the primary election to be held to nominate candidates for the
same office, vote at such primary election; shall in each
instance be guilty of a misdemeanor, and, on conviction thereof,
shall be fined not more than one thousand dollars, or be
confined in the county jail for not more than one year, or both,
in the discretion of the court.

ARTICLE 10. FILLING VACANCIES.

§3-10-6. Vacancy in office of circuit court clerk.

When a vacancy occurs in the office of clerk of the circuit
court, the circuit court by a majority vote of the judges, or the
chief judge thereof in vacation, shall fill the same by appoint-
ment of a person of the same political party as the officeholder
vacating the office until the next general election, or until the
completion of the term if the term ends on the thirty-first day of
December following the next general election. The person so
appointed shall hold office until his or her successor is elected
and qualified. At the general election, a clerk shall be elected
for the unexpired term if the unexpired term is greater than one
year. The circuit court, or the chief judge thereof in vacation, shall cause a notice of the election to be published prior to the election as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area for the publication shall be the county. If the vacancy occurs no later than the eighty-fourth day before the primary election held to nominate candidates to be voted for at the general election, at which any vacancy is to be filled, candidates to fill the vacancy shall be nominated at the primary election in accordance with the time requirements and the provisions and procedures prescribed in section eleven, article five of this chapter. If the vacancy occurs after the eighty-fourth day before the primary but not later than the eighty-fourth day before the general election, they shall be nominated by the county executive committee in the manner provided in section nineteen, article five of this chapter, as in the case of filling vacancies in nominations, and the names of the persons, so nominated and certified to the clerk of the county commission of the county, shall be placed upon the ballot to be voted at the next general election.

CHAPTER 102

(H. B. 3002 — By Delegates Amores and Trump)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §3-2-6 and §3-2-31 of the Code of West Virginia, 1931, as amended, all relating to registration of voters generally; providing that a voter may register up to the twenty-first day before an election; and conforming the require-
ment that a voter designate a political party before the primary no later than the close of voter registration before the primary.

Be it enacted by the Legislature of West Virginia:

That §3-2-6 and §3-2-31 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-6. Time of registration application before an election.
§3-2-31. Rules pertaining to voting after registration or change of address within the county.

§3-2-6. Time of registration application before an election.

(a) Voter registration before an election shall close on the twenty-first day before the election, or on the first day thereafter which is not a Saturday, Sunday or legal holiday.

(b) An application for voter registration, transfer of registration, change of name or change of political party affiliation submitted by an eligible voter by the close of voter registration shall be effective for any subsequent primary, general or special election if the following conditions are met:

(1) The application contains the required information as set forth in subsection (c), section five of this article: Provided, that incomplete applications for registration containing information which are submitted within the required time may be corrected within four days after the close of registration if the applicant provides the required information; and

(2) The application is received by the appropriate clerk of the county commission no later than the hour of the close of registration or is otherwise submitted by the following deadlines:
(A) If mailed, the application shall be addressed to the appropriate clerk of the county commission and postmarked by the postal service no later than the date of the close of registration: Provided, That if the postmark is missing or illegible, the application shall be presumed to have been mailed no later than the close of registration if it is received by the appropriate clerk of the county commission no later than the third day following the close of registration;

(B) If accepted by a designated agency or motor vehicle licensing office, the application shall be received by that agency or office no later than the close of registration;

(C) If accepted through a registration outreach program, the application shall be received by the clerk, deputy clerk or registrar no later than the close of registration; and

(3) The verification notice required by the provisions of section sixteen of this article mailed to the voter at the residence indicated on the application is not returned as undeliverable.

§3-2-31. Rules pertaining to voting after registration or change of address within the county.

(a) A voter who designates a political affiliation with a major party on a registration application filed no later than the close of voter registration before the primary may vote the ballot of that political party in the primary election. Political parties, through the official action of their state executive committees, shall be permitted to determine whether unaffiliated voters or voters of other parties shall be allowed to vote that party's primary election ballot upon request.

(b) A voter whose registration record lists one residence address but the voter has since moved to another residence address within the precinct shall be permitted to update the registration at the polling place and vote without challenge for that reason.
(c) A voter whose registration record lists one residence address but the voter has since moved to another residence address in a different precinct in the same county shall be permitted to update the registration at the polling place serving the new precinct and shall be permitted to vote a challenged or provisional ballot at the new polling place. If the voter’s registration is found on the registration records within the county during the canvass and no other challenge of eligibility was entered on election day, the challenge shall be removed and the ballot shall be counted.

(d) A voter whose registration record has been placed on an inactive status or transferred to an inactive file and who has not responded to a confirmation notice sent pursuant to the provisions of section twenty-four, twenty-five or twenty-six of this article and who offers to vote at the polling place where he or she is registered to vote shall be required to affirm his or her present residence address under penalty of perjury, as provided in section thirty-six of this article.

CHAPTER 103

(Com. Sub. for H. B. 2950 — By Mr. Speaker, Mr. Kiss, and Delegates Longstreth, Manchin, Caputo, Perdue, Martin, Amores and Beane)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §3-4A-9 and §3-4A-28 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §3-4A-9a and §3-4A-9b, all relating to electronic voting systems; requiring a paper
copy of a voter's votes when using an electronic voting system to vote; providing that the paper copy can only be used for a random count of precincts or if an election is contested, challenged or disputed; providing that the Secretary of State may promulgate rules; authorizing use of ballot-marking accessible voting systems; setting forth minimum requirements for ballot-marking accessible voting systems; providing for use of ballot-scanning device; establishing standards for ballot-scanning devices; and making certain technical changes that clarify access to maintenance and examination of sealed post-election materials and equipment during the canvass and requiring the immediate resealing.

Be it enacted by the Legislature of West Virginia:

That §3-4A-9 and §3-4A-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §3-4A-9a and §3-4A-9b, all to read as follows:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.
§3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements.
§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.
§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

§3-4A-9. Minimum requirements of electronic voting systems.

1 An electronic voting system of particular make and design
2 may not be approved by the State Election Commission or be
3 purchased, leased or used by any county commission unless it
4 meets the following requirements:

5 (1) It secures or ensures the voter absolute secrecy in the act
6 of voting or, at the voter's election, provides for open voting;
(2) It is constructed to ensure that no person, except in instances of open voting as provided in this section, can see or know for whom any voter has voted or is voting;

(3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot or ballot label as a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to deposit, write in, affix upon a ballot, card, envelope or other medium to be provided for that purpose, ballots containing the names of persons for whom he or she desires to vote whose names do not appear upon the ballots or ballot labels;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains a program deck consisting of cards that are sequentially numbered or consisting of a computer program disk, diskette, tape or other programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;
(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots or ballot labels;

(9) It permits each voter at any election other than primary elections by one mark or punch to vote a straight party ticket, as provided in section five, article six of this chapter;

(10) It permits each voter in primary elections to vote only for the candidates of the party for which he or she is legally permitted to vote and precludes him or her from voting for any candidate seeking nomination by any other political party, permits him or her to vote for the candidates, if any, for nonpartisan nomination or election and permits him or her to vote on public questions;

(11) It, where applicable, is provided with means for sealing or electronically securing the vote recording device to prevent its use and to prevent tampering with ballot labels, both before the polls are open or before the operation of the vote recording device for an election is begun and immediately after the polls are closed or after the operation of the vote recording device for an election is completed;

(12) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least fifteen questions;

(13) (A) Direct recording electronic voting machines must generate a paper copy of each voter’s votes that will be automatically kept within a storage container, that is locked, closely attached to the direct recording electronic voting machine, and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article.
(B) The paper copy of the voter’s vote shall be generated at the time the voter is at the voting station using the direct recording electronic voting machine.

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy.

(D) The voter may not touch, handle or manipulate the printed copy manually in any way.

(E) Once the printed copy of the voter’s votes is accepted by the voter as correctly reflecting the voter’s intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct recording electronic voting machine.

(F) Direct recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code.

(14) Where vote recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Be constructed with frames for the placing of ballot labels that the labels upon which are printed the names of candidates and their respective parties, titles of offices and wording of questions are reasonably protected from mutilation, disfigurement or disarrangement or are constructed to ensure that the screens upon which appear the names of the candidates
and their respective parties, titles of offices and wording of questions are reasonably protected from any modification;

(C) Bear a number that will identify it or distinguish it from any other machine;

(D) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question;

(E) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of ballot labels, party columns or rows, and questions;

(F) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(G) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(H) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or
129 her vote and to allow the voter to review and change all ballot
choices prior to completing and casting his or her ballot;

131 (I) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, be constructed to allow election commissioners to
spoil a ballot where a voter fails to properly cast his or her
ballot, has departed the polling place and cannot be recalled by
a poll clerk to complete his or her ballot;

137 (J) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, be constructed to allow election commissioners, poll
clerks, or both, to designate, mark or otherwise record provi-
sional ballots;

142 (K) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, consist of devices which are independent,
nonnetworked voting systems in which each vote is recorded
and retained within each device's internal nonvolatile electronic
memory and contain an internal security, the absence of which
prevents substitution of any other device;

149 (L) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, store each vote in no fewer than three separate,
independent, nonvolatile electronic memory components and
that each device contains comprehensive diagnostics to ensure
that failures do not go undetected;

155 (M) For electronic voting systems that utilize a screen upon
which votes may be recorded by means of a stylus or by means
of touch, contain a unique, embedded internal serial number for
auditing purposes for each device used to activate, retain and
record votes;
(N) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to record all pre-election, election and post-election activities, including all ballot images and system anomalies, in each device's internal electronic memory and are to be accessible in electronic or printed form:

(O) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in the device's internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(P) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, be constructed to prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in each device's internal electronic memory even in case of an electrical and battery power failure.

§3-4A-9a. Authorization for ballot-marking voting systems; minimum requirements.

(a) For purposes of this section, "ballot-marking accessible voting system" means a device which allows voters, including voters with disabilities, to mark an optical scanning or mark-sensing voting system ballot, privately and independently. The ballot-marking device is capable of marking voter selections on an optically readable or mark-sensing ballot which shall be subsequently read and tallied on state certified optically readable or mark-sensing ballot tabulating and reporting
systems. Counties are hereby permitted to obtain and employ ballot-marking accessible voting systems that are approved by the State Election Commission.

(b) The ballot-marking accessible voting device shall be a completely integrated ballot-marking device that is designed to allow voters to either view ballot choices through a high resolution visual display or listen to ballot choices with headphones and then enter ballot selections directly through specially designed, integrated accessibility keys.

(c) Ballot-marking accessible voting systems may be used for the purpose of marking or scanning optically readable or mark-sensing ballots cast in all general, special and primary elections and shall meet the following specific requirements:

(1) The ballot-marking accessible voting system, system firmware and programming software must be certified by an independent testing authority, according to current federal voting system standards and be approved by the State Elections Commission prior to entering into any contract.

(2) The ballot-marking accessible voting system shall, additionally:

(A) Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

(B) Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue;

(C) Allow the voter to independently review all ballot choices and make any corrections, before the ballot is marked;

(D) Provide the voter with the opportunity to make a write-in ballot choice, where allowed by state law;
(E) Allow voters with disabilities to mark their ballots, in complete independence, and in conformity with both federal and state law concerning mandatory accessibility for disabled persons;

(F) Allow blind or visually impaired voters to vote in complete privacy;

(G) Provide voters with an opportunity to change ballot selections, or correct errors, before the ballot is marked for voting, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error;

(H) Provide voters with the ability to view all ballot selections through a high resolution visual display or to have all ballot selections read to the voter through headphones;

(I) Ensure complete ballot privacy, while employing the ballot-marking audio system and providing the voter with the option to turn off the visual ballot display;

(J) Include a completely integrated voter input keypad, using commonly accepted voter accessibility keys with Braille markings;

(K) Include the ability for a voter to employ a sip/puff device to enter ballot choices;

(L) Allow the voter to magnify all ballot choices and to adjust both the volume of the audio feature and the speed of ballot presentation;

(M) Allow the voter to employ his or her own headset as well as the headset provided with the ballot-marking device while being equipped with multiple output connections to accommodate different headsets;
(N) Have multiple-language capability; and

(O) Allow the voter to verify that:

(i) An optical scan ballot inserted into the device at the start of voting is blank; and

(ii) The voted optical scan ballot that is produced by the device is voted as the voter intended.

(d) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code designed to ensure that any system employed by a county under the provisions of this section is publicly tested prior to use in election.

§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.

(a) For purposes of this section, "precinct ballot-scanning device" means a device used by the voter at the precinct on election day or during early voting for the purpose of scanning the voter’s ballot after the ballot has been voted but prior to depositing the ballot into the ballot box.

(b) The precinct ballot-scanning device may be used for the purpose of scanning optically readable ballots cast in all primary, general and special elections.

(c) The precinct ballot-scanning device, firmware and programming software must be certified by an independent testing authority, according to current federal standards and be approved by the State Election Commission. No election official may enter into any contract to purchase, rent, lease or otherwise acquire any precinct ballot-scanning device, firmware or software not approved by the State Election Commission.
(d) The precinct ballot-scanning device shall additionally:

1. Alert the voter if the voter has made more ballot selections than the law allows for an individual office or ballot issue;

2. Alert the voter if the voter has made fewer ballot selections than the law allows for an individual office or ballot issue; and

3. Allow voters an opportunity to change ballot selections, or correct errors, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct the error.

(e) The precinct ballot-scanning device shall not be used for tabulating election results.

(f) The Secretary of State is hereby directed to propose rules and emergency rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code in accordance with the provisions of this section.

§3-4A-28. Post-election custody and inspection of vote recording devices; canvass and recounts.

(a) The vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks are to remain sealed during the canvass of the returns of the election except that the equipment may be opened for the canvass and must be resealed immediately thereafter. During a seven day period after the completion of the canvass, any candidate or the local chair of a political party may be permitted to examine any of the materials sealed: Provided, That a notice of the time and place of the examination is to be posted at the central counting center before and on the hour of nine o’clock in the morning on the day the examination is to occur, and all persons entitled to
be present at the central counting center may, at their option, be present. Upon completion of the canvass and after a seven-day period has expired, the vote recording devices, the ballot labels, ballot cards, program decks and standard validation test decks are to be sealed for one year: Provided, however, That the vote recording devices and all tabulating equipment may be released for use in any other lawful election to be held more than ten days after the canvass is completed, and any of the electronic voting equipment herein discussed may be released for inspection or review by a request of a circuit court or the Supreme Court of Appeals.

(b) In canvassing the returns of the election, the board of canvassers shall examine all of the vote recording devices, the ballot labels, ballot cards, the automatic tabulating equipment used in the election and those voter verified paper ballots generated by direct recording electronic vote machines as required by subsection (d) of this section, and shall determine the number of votes cast for each candidate and for and against each question and by this examination shall procure the correct returns and ascertain the true results of the election. Any candidate or his or her party representative may be present at the examination.

(c) If any candidate demands a recount of the votes cast at an election, the voter verified paper ballot shall be used for requested recounts, according to the same rules as are utilized in the original vote count pursuant to section twenty-seven of this article.

(d) During the canvass and any requested recount, at least five percent of the precincts are to be chosen at random and the voter verified paper ballots are to be counted manually. Whenever the vote total obtained from the manual count of the voter verified paper ballots for all votes cast in a randomly selected precinct:
45 (1) Differs by more than one percent from the automated
46 vote tabulation equipment; or
47 (2) Results in a different prevailing candidate or outcome,
48 either passage or defeat, of one or more ballot issues such
49 precincts for any contest or ballot issue; then the discrepancies
50 shall immediately be disclosed to the public and all of the
51 voter-verified paper ballots shall be manually counted. In every
52 case that there is a difference between the vote totals obtained
53 from the automated vote tabulation equipment and the corre-
54 sponding vote totals obtained from the manual count of the
55 voter-verified paper ballots, the manual count of the
56 voter-verified paper ballots shall be the vote of record.

CHAPTER 104

(H. B. 3281 — By Delegates Amores and Craig)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §3-9-1 of the Code of West Virginia,
1931, as amended, relating to the crime of altering, destroying, or
tampering with computer equipment containing voter registration
information; accessing or attempting to access confidential voter
registration information; and penalties.

Be it enacted by the Legislature of West Virginia:

That §3-9-1 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:
ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-1. False or fraudulent returns; tampering with, destroying or misdelivering ballots, records, etc.; forgeries; aiding, etc., in offense; penalties.

Every person named and identified in this section, who shall violate any of the provisions of the election laws as herein specified, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in a state correctional facility for not less than one nor more than ten years:

(a) Any commissioner of election or poll clerk who shall knowingly make or cause to be made, or conspire with others to make, a false return of the result of the votes cast for any candidate at any precinct in an election held pursuant to law; or

(b) Any commissioner of election receiving the ballot of a voter to be deposited in the ballot box at any election precinct, who shall put another ballot in the box instead of the one received by him; or

(c) Any commissioner of election or poll clerk, who knowingly shall count and string a ballot not taken from the ballot box, in lieu of one taken, or which should have been taken from such ballot box; or

(d) Any commissioner of a county court, whether acting as such or ex officio as a member of a board of canvassers or otherwise, clerk of a county court, or other person, who shall, except as authorized by law, abstract any ballot from any package of ballots voted, sealed or returned from any election precinct, either before or after they are filed with the clerk of the county court, or who shall in any manner change any such ballot from what it was when voted by the voter, or who shall put another ballot in such package in the place of the one so abstracted therefrom; or
(e) Any commissioner of a county court, whether acting as such commissioner or ex officio as a member of a board of canvassers, or otherwise, who shall knowingly make and enter of record, or in any way aid, counsel, or advise the same to be done, or permit the same to be done without objection on his part, any false or fraudulent statement of the result of any election held within the county; or

(f) Any person who shall falsely make, or fraudulently deface, or fraudulently destroy, any certificate of nomination, or any part thereof, or file any certificate of nomination, knowing the same, or any part thereof, to be falsely made, or suppress any certificate of nomination which has been duly filed, or any part thereof; or erase, deface, or change in any manner, any election record, or any ballot, poll book, tally sheet or certificate of election, deposited with either of the clerks of the county or circuit courts; or conspire with another to do any of said acts; or induce or attempt to induce any other persons to do any of said acts; or

(g) Any person who shall aid, assist, counsel or advise in the commission of any of the offenses above specified, whether or not said acts, or any of them be committed or attempted to be committed; or

(h) Any person, who, without the assent of another, shall sign the name of such other person to any certificate, affidavit, ballot, report, statement or writing, required under any provision of this chapter, with intent to mislead and deceive; or who shall use or employ any certificate, affidavit, ballot, report, statement or writing to which the name of a person has been signed without the authority of such person, knowing that such name has been so signed with intent to mislead or deceive; or

(i) Any clerk of a court, poll clerk, member of the board of ballot commissioners, commissioner of election, or messenger intrusted with the custody of the ballots, who shall open
unlawfully any of the packages in which the ballots are contained, or permit any of them to be opened, or destroy any of such ballots, or permit them to be destroyed, or give, or deliver any such packages or ballots to any person not lawfully entitled to receive them, as in this chapter provided, or conspire to procure, or in any way aid, abet, or connive at any robbery, loss or unlawful destruction of any such ballots or packages; or

(j) Any person not duly authorized by law who shall, during the progress of any election in this state, or after the closing of the polls and before the ballots are counted and the results ascertained, or within twelve months thereafter, open without breaking, or break open or violate, the seals or locks of any ballot box, paper, envelope or bag, in which ballots have been deposited at or after such election, or who shall obtain possession of such ballot box, paper, envelope or bag containing such ballots, and cancel, withhold, or destroy such ballots, or who shall fraudulently or forcibly add to or diminish the number of ballots legally deposited therein, or who shall fraudulently make any erasure or alteration of any kind, upon any tally sheet, poll book, list of voters, or election returns, deposited therein; or

(k) Any person who knowingly, willfully and without authorization from the Secretary of State, a county clerk or municipal clerk directly or indirectly, tampers with, deletes, alters, damages or destroys or attempts to tamper with, delete, alter, damage or destroy any computer or computer network that contains voter registration files, records or data or who knowingly introduces, directly or indirectly, a computer contaminant into any computer, computer program or computer network that contains voter registration files, records or data; or

(l) Any person who knowingly, directly or indirectly, accesses, attempts to access, or causes to be accessed any voter registration files, records or data stored on or in a computer
owned by the Secretary of State, a county commission or
municipality, without authorization; or

(m) Any person employed by the Secretary of State, a
county commission or a municipality who knowingly, directly
or indirectly accesses, attempts to access or causes to be
accessed any voter registration files, records or data stored on
or in a computer in an unauthorized manner, in excess of his or
her authorization or for unauthorized use or purpose.

CHAPTER 105

(Com. Sub. for H. B. 3068 — By Mr. Speaker, Mr. Kiss, and Delegates
Amores, DeLong, Varner, Pethtel, Cann and Pino)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §21-3C-5 and §21-3C-11 of the Code
of West Virginia, 1931, as amended, all relating to elevator
inspections; authorizing private inspectors to conduct annual
inspections of elevators; authorizing the Division of Labor to
perform compliance inspections; and increasing fees for elevator
permits.

Be it enacted by the Legislature of West Virginia:

That §21-3C-5 and §21-3C-11 of the Code of West Virginia,
1931, as amended, be amended and reenacted all to read as follows:

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections
required; acceptance inspection.

§21-3C-11. Disposition of fees; legislative rules.
§21-3C-5. Powers and duties of counties and municipalities; annual inspections required; acceptance inspection.

(a) A county or municipality may hire a private inspector or contract with any person who possesses a West Virginia elevator inspector’s certificate of competency issued by the Division.

(b) The county or municipality shall ensure that every elevator which has been in use for five years or more is inspected annually. A private inspector may inspect any elevator in the state. A division inspector may inspect any elevator in the state for the purpose of monitoring whether private inspectors are in compliance with the provisions of this article.

(c)(1) The county or municipality shall ensure that each newly installed elevator within its jurisdiction is inspected and issued a certificate of acceptance by the Division prior to being placed in service.


(3) The acceptance inspection shall be subject to the same procedures and requirements as any other elevator inspection.

§21-3C-11. Disposition of fees; legislative rules.

(a) The Division shall propose for promulgation legislative rules pursuant to article three, chapter twenty-nine-a of this code in order to implement the provisions of this article.
(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: Provided, That in no event may the fees established for the issuance of permits exceed fifty dollars.

(c) All fees collected pursuant to the provisions of this article shall be deposited in an appropriated special revenue account hereby created in the State Treasury known as the “Elevator Safety Fund” and expended for the implementation and enforcement of this article: Provided, That amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(d) The Division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

CHAPTER 106

(Com. Sub. for S. B. 455 — By Senators Helmick, Hunter, Bowman, Facemyer, Sharpe, Sprouse, Kessler, McCabe, Edgell, Plymale, Love, Prezioso, Dempsey, Barnes and Jenkins)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 4, 2005.]
financing of environmental control activities by certain qualified electric utilities through the issuance of environmental control bonds.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-4e; and that §46-9-109 of said code be amended and reenacted, all to read as follows:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-4e. Environmental control bonds.

(a) Legislative findings. — The Legislature hereby finds and declares: (i) That electric utilities in the state face the need to install and construct emission control equipment at existing generating facilities in the state in order to meet the requirements of existing and anticipated environmental laws and regulations and otherwise to reduce emissions from those electric generating facilities; (ii) that the capital costs associated with the installation and construction of emission control equipment are considerable; (iii) that the financial condition of some electric utilities may make the use of traditional utility financing mechanisms to finance the construction and installation of emission control equipment difficult or impossible and that this situation may cause such utilities to defer the installation of emission control equipment, to incur higher financing costs, to minimize or eliminate their use of high-sulfur coal mined in the State or to use other financing alternatives that are less favorable to the state and its citizens; (iv) that the construc-
tion and installation of emission control equipment by utilities will create public health and economic benefits to the state and its citizens, including, without limitation, emissions reductions, economic development, job growth and retention and the increased use of high-sulfur coal mined in the State; (v) that customers of electric utilities in the state have an interest in the construction and installation of emission control equipment at electric-generating facilities in the state at a lower cost than would be afforded by traditional utility financing mechanisms; (vi) that alternative financing mechanisms exist which can result in lower costs to customers and the use of these mechanisms can ensure that only those costs associated with the construction and installation of emission control equipment at electric-generating facilities located in the state that generate electric energy for their ultimate use will be included in customer rates; and (vii) that in order to use such alternative financing mechanisms, the Commission must be empowered to adopt a financing order that advances these goals. The Legislature, therefore, finds that it is in the interest of the state and its citizens to encourage and facilitate the use of alternative financing mechanisms that will enable certain utilities to finance the construction and installation of emission control equipment at electric-generating facilities in the state under certain conditions and to empower the Commission to review and approve alternative financing mechanisms as being consistent with the public interest, as set forth in this section.

(b) Definitions. —

As used in this section:

(1) “Adjustment mechanism” means a formula-based mechanism for making any adjustments to the amount of the environmental control charges that are necessary to correct for any over-collection or under-collection of the environmental control charges or otherwise to ensure the timely and complete
payment and recovery of environmental control costs and financing costs. The adjustment mechanism is not to be used as a means to authorize the issuance of environmental control bonds in a principal amount greater, or the payment or recovery of environmental control costs in an amount greater, than that which was authorized in the financing order which established the adjustment mechanism.

(2) "Ancillary agreement" means any bond insurance policy, letter of credit, reserve account, surety bond, swap arrangement, hedging arrangement, liquidity or credit support arrangement or other similar agreement or arrangement entered into in connection with the issuance of environmental control bonds that is designed to promote the credit quality and marketability of the bonds or to mitigate the risk of an increase in interest rates.

(3) "Assignee" means any person or legal entity to which an interest in environmental control property is sold, assigned, transferred or conveyed (other than as security) and any successor to or subsequent assignee of such a person or legal entity.

(4) "Bondholder" means any holder or owner of an environmental control bond.

(5) "Environmental control activity" means any of the following:

(A) The construction, installation and placing in operation of environmental control equipment at a qualifying generating facility.

(B) The shutdown or retirement of any existing plant, facility, unit or other property at a qualifying generating facility to reduce, control or eliminate environmental emissions.
(6) "Environmental control bonds" means bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership or other evidences of indebtedness or ownership that are issued by a qualifying utility or an assignee, the proceeds of which are used directly or indirectly to recover, finance, or refinance environmental control costs and financing costs, and that are secured by or payable from environmental control revenues.

(7) "Environmental control charge" means a nonbypassable charge paid by a customer of a qualifying utility for the recovery of environmental control costs and financing costs.

(8) "Environmental control cost" means any cost, including capitalized cost relating to regulatory assets and capitalized cost associated with design and engineering work, incurred or expected to be incurred by a qualifying utility in undertaking an environmental control activity and, with respect to an environmental control activity, includes the unrecovered value of property that is retired, together with any demolition or similar cost that exceeds the salvage value of the property. "Environmental control cost" includes preliminary expenses and investments associated with environmental control activity that are incurred prior to the issuance of a financing order and that are to be reimbursed from the proceeds of environmental control bonds. "Environmental control cost" does not include any monetary penalty, fine or forfeiture assessed against a qualifying utility by a government agency or court under a federal or state environmental statute, rule or regulation.

(9) "Environmental control equipment" means any device, equipment, structure, process, facility or technology that is designed for the primary purpose of preventing, reducing orremediating environmental emissions and that has been or is to be constructed or installed at a qualifying generating facility.
“Environmental control property” means all of the following:

(A) The rights and interests of a qualifying utility or an assignee under a financing order, including the right to impose, charge, collect and receive environmental control charges in the amount necessary to provide for the full payment and recovery of all environmental control costs and financing costs determined to be recoverable in the financing order and to obtain adjustments to the charges as provided in this section and any interest in the rights and interests.

(B) All revenues, receipts, collections, rights to payment, payments, moneys, claims or other proceeds arising from the rights and interests specified in paragraph (A) of this subdivision.

“Environmental control revenues” means all revenues, receipts, collections, payments, moneys, claims or other proceeds arising from environmental control property.

“Environmental emissions” means the discharge or release of emissions from electric generating facilities into the air, land or waters of the state.

“Equity ratio” means, as of any given time of determination, the common equity of a qualifying utility as calculated pursuant to the uniform system of accounts required to be used in the filings of the qualifying utility with the federal Energy Regulatory Commission. “Equity ratio” shall be calculated excluding the effect of the issuance of environmental control bonds or the write down of discontinued operations.

“Financing cost” means the costs to issue, service, repay, or refinance environmental control bonds, whether incurred or paid upon issuance of the bonds or over the life of
the bonds, and approved for recovery by the Commission in a financing order. "Financing cost" may include any of the following:

(A) Principal, interest and redemption premiums that are payable on environmental control bonds.

(B) Any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other account established under any indenture, ancillary agreement or other financing document relating to the environmental control bonds.

(C) The cost of retiring or refunding any existing debt and equity securities of a qualifying utility in connection with the issuance of environmental control bonds, but only to the extent the securities were issued for the purpose of financing environmental control costs.

(D) Any costs incurred by or on behalf of or allocated to a qualifying utility to obtain modifications of or amendments to any indenture, financing agreement, security agreement or similar agreement or instrument relating to any existing secured or unsecured obligation of a qualifying utility or an affiliate of a qualifying utility, or any costs incurred by or allocated to a qualifying utility to obtain any consent, release, waiver or approval from any holder of such an obligation, that are necessary to be incurred to permit a qualifying utility to issue or cause the issuance of environmental control bonds.

(E) Any taxes, franchise fees or license fees imposed on environmental control revenues.

(F) Any cost related to issuing and servicing environmental control bonds or the application for a financing order, including, without limitation, servicing fees and expenses, trustee
fees and expenses, legal fees and expenses, administrative fees, placement fees, capitalized interest, rating agency fees and any other related cost that is approved for recovery in the financing order.

(15) “Financing order” means an order of the Commission pursuant to subsection (d) of this section that grants, in whole or in part, an application filed pursuant to subsection (c) of this section and that authorizes the construction and installation of environmental control equipment, the issuance of environmental control bonds in one or more series, the imposition, charging and collection of environmental control charges, and the creation of environmental control property. A financing order may set forth conditions or contingencies on the effectiveness of the relief authorized therein and may grant relief that is different from that which was requested in the application.

(16) “Financing parties” means:

(A) Any trustee, collateral agent or other person acting for the benefit of any bondholder.

(B) Any party to an ancillary agreement the rights and obligations of which relate to or depend upon the existence of environmental control property, the enforcement and priority of a security interest in environmental control property, the timely collection and payment of environmental control revenues or a combination of these factors.

(17) “Financing statement” means a financing statement as defined in subdivision (39), subsection (a), section one hundred two, article nine, chapter forty-six of this code.

(18) “Investment grade” means, with respect to the unsecured debt obligations of a qualifying utility at any given time of determination, a rating that is within the top four
investment rating categories as published by at least one nationally recognized statistical rating organization as recognized by the United States Securities and Exchange Commission.

(19) "Nonbypassable" means that the payment of an environmental control charge may not be avoided by any electric service customer located within a utility service area, and must be paid by any such customer that receives electric delivery service from the qualifying utility for as long as the environmental control bonds are outstanding.

(20) "Nonutility affiliate" means, with respect to any qualifying utility, a person that: (i) Is an affiliate of the qualifying utility as defined in 15 U.S. C. §79b(a)(11); and (ii) is not a public utility that provides retail utility service to customers in the state within the meaning of section two, article one of this chapter.

(21) "Parent" means, with respect to any qualifying utility, any registered holding company or other person that holds a majority ownership or membership interest in the qualifying utility.

(22) "Qualifying generating facility" means any electric generating facility that: (i) Has generated electric energy for ultimate sale to customers in the state before the effective date of this section; and (ii) is owned by a qualifying utility or, on the expected date of issuance of the environmental control bonds authorized in a financing order, will be owned by a qualifying utility.

(23) "Qualifying utility" means:

(A) Any public utility that is: (i) Engaged in the delivery of electric energy to customers in this state; and (ii) at any time
between the date which is two years immediately preceding the effective date of this section and the date on which an application for a financing order is made, has or had a credit rating on its unsecured debt obligations that is below investment grade.

(B) For so long as environmental control bonds issued pursuant to a financing order are outstanding and the related environmental control costs and financing costs have not been paid in full, the public utility to which the financing order was issued and its successors.

(24) "Registered holding company" means, with respect to a qualifying utility, a person that is: (i) A registered holding company as defined in 15 U. S. C. §79b(a)(12); and (ii) an affiliate of the qualifying utility as defined in 15 U. S. C. §79b(a)(11).

(25) "Regulatory sanctions" means, under the circumstances presented, any regulatory or ratemaking sanction or penalty that the Commission is authorized to impose pursuant to this chapter or any proceeding for the enforcement of any provision of this chapter or any order of the Commission that the Commission is authorized to pursue or conduct pursuant to this chapter, including without limitation: (i) The initiation of any proceeding in which the qualifying utility is required to show cause why it should not be required to comply with the terms and conditions of a financing order or the requirements of this section; (ii) the imposition of civil penalties pursuant to section three, article four of this chapter and the imposition of criminal penalties pursuant to section four of said article, in either case with reference to the provisions of section eight of said article; and (iii) a proceeding by mandamus or injunction as provided in section two of this article.

(26) "Successor" means, with respect to any legal entity, another legal entity that succeeds by operation of law to the
rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restructuring or other insolvency proceeding, any merger, acquisition, or consolidation, or any sale or transfer of assets, whether any of these occur as a result of a restructuring of the electric power industry or otherwise.

(27) "Utility service area" means: (i) The geographic area of the state in which a qualifying utility provides electric delivery service to customers at the time of issuance of a financing order; and (ii) for as long as environmental control bonds issued pursuant to a financing order are outstanding, any additions to or enlargements of said geographic area, whether or not approved by the Commission in a formal proceeding.

(c) Application for financing order. —

(1) A qualifying utility, or two or more affiliated qualifying utilities, may apply to the Commission for a financing order under this section.

(2) An application for a financing order under this section shall be filed only as provided in this subdivision.

(A) An application for a financing order under this section shall be filed as part of the application of the qualifying utility or qualifying utilities under section eleven of this article for a certificate of public convenience and necessity to engage in environmental control activities.

(B) If a qualifying utility or qualifying utilities have an application for a certificate of public convenience and necessity to engage in environmental control activities pending before the Commission on the effective date of this section, the qualifying utility or qualifying utilities may file a separate application for a financing order and the Commission shall join or consolidate the application for a financing order with the
pending application for a certificate of public convenience and
necessity. Notwithstanding any provision of section eleven of
this article to the contrary or the total project cost of the
proposed environmental control activities, the Commission
shall render its final decision on any joined or consolidated
proceeding for a certificate of public convenience and necessity
and a financing order as described in this paragraph within two
hundred seventy days of the filing of the application for the
financing order and within ninety days after final submission
of the joined or consolidated application for decision following
a hearing.

(3) In addition to any other information required by the
Commission, an application for a financing order shall include
the following information:

(A) Evidence that the applicant is a qualifying utility;

(B) A description of the environmental control activities
that the qualifying utility proposes to undertake, including a
detailed description of the environmental control equipment to
be constructed or installed at one or more qualifying generation
facilities;

(C) An explanation why the environmental control
activities described in the application are necessary in the
context of the qualifying utility's operations, current and
anticipated environmental regulations, the prospect of enforce-
ment proceedings or litigation against the qualifying utility if
the environmental control activities are not undertaken and the
utility's long-range environmental compliance plans;

(D) A description of any alternatives to the environmental
control activities described in the application that the qualify-
ing utility considered and an explanation of why each alterna-
tive either is not feasible or was not selected;
(E) An estimate of the environmental control costs associated with the environmental control activities described in the application, including the estimated cost of the environmental control equipment proposed to be installed;

(F) An estimated schedule for the construction or installation of the environmental control equipment;

(G) An estimate of the date on which the environmental control bonds are expected to be issued and the expected term over which the financing costs associated with the issuance are expected to be recovered, or if the bonds are expected to be issued in more than one series, the estimated issuance date and expected term for each bond issuance;

(H) The portion of the environmental control costs the qualifying utility proposes to finance through the issuance of one or more series of environmental control bonds;

(I) An estimate of the financing costs associated with each series of environmental control bonds proposed to be issued;

(J) An estimate of the amount of the environmental control charges necessary to recover the environmental control costs and financing costs estimated in the application and the proposed calculation thereof, which estimate and calculation should take into account the estimated date of issuance and estimated principal amount of each series of environmental control bonds proposed to be issued;

(K) A proposed methodology for allocating financing costs among customer classes;

(L) A description of the proposed adjustment mechanism; and
(M) A description of the benefits to the customers of the qualifying utility and the state that are expected to result from the financing of the environmental control costs with environmental control bonds as opposed to the use of traditional utility financing mechanisms.

(4) An application for a financing order may restate or incorporate by reference any information required pursuant to subdivision (3) of this subsection that the qualifying utility previously filed with the Commission in connection with an application for a certificate of public convenience and necessity under section eleven of this article as described in paragraph (B), subdivision (2) of this subsection.

(d) Issuance of financing order. —

(1) Notice of an application for a financing order shall be given as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, with the publication area being each county in which the environmental control activities are to be undertaken and each county in the state in which the qualifying utility provides service to customers. If no substantial protest is received within thirty days after the publication of notice, the Commission may waive formal hearing on the application.

(2) The Commission shall issue a financing order, or an order rejecting the application for a financing order, as part of its final order on the application of the qualifying utility or qualifying utilities for a certificate of public convenience and necessity to engage in environmental control activities as described in subdivision (2), subsection (c) of this section.

(3) The Commission shall issue a financing order if the Commission finds all of the following:
(A) That the applicant is a qualifying utility;

(B) That the environmental control activities, including the environmental control equipment to be constructed or installed at one or more qualifying generation facilities, are necessary and prudent under the circumstances and are preferable to any alternatives available to the qualifying utility;

(C) That the cost of the environmental control activities, including the environmental control equipment to be constructed or installed at one or more qualifying generation facilities, is reasonable;

(D) That the proposed issuance of environmental control bonds will result in overall costs to customers of the qualifying utility that: (1) Are lower than would result from the use of traditional utility financing mechanisms; and (2) are just and reasonable;

(E) That the financing of the environmental control costs with environmental control bonds will result in benefits to the customers of the qualifying utility and the state; and

(F) That the proposed issuance of environmental control bonds, together with the imposition and collection of the environmental control charges on customers of the qualifying utility, are just and reasonable and are otherwise consistent with the public interest and constitute a prudent, reasonable and appropriate mechanism for the financing of the environmental control activities described in the application.

(4) The Commission shall include the following findings and requirements in a financing order:

(A) A determination of the maximum amount of environmental control costs that may be financed from proceeds of
environmental control bonds authorized to be issued in the financing order;

(B) A description of the financing costs that may be recovered through environmental control charges and the period over which the costs may be recovered, subject to the application of the adjustment mechanism as provided in subsection (e) of this section. As part of this description, the Commission may include qualitative or quantitative limitations on the financing costs authorized in the financing order;

(C) A description of the adjustment mechanism and a finding that it is just and reasonable; and

(D) A description of the environmental control property that is created and that may be used to pay, and secure the payment of, the environmental control bonds and financing costs authorized to be issued in the financing order.

(5) A financing order may provide that the creation of environmental control property shall be simultaneous with the sale of the environmental control property to an assignee as provided in the application and the pledge of the environmental control property to secure environmental control bonds.

(6) A financing order may authorize the qualifying utility to conduct environmental control activities, including the construction or installation of environmental control equipment, on an estimated schedule approved in the financing order and through the issuance of more than one series of environmental control bonds. In this case, the qualifying utility will not subsequently be required to secure a separate financing order for each issuance of environmental control bonds or for each scheduled phase of the construction or installation of environmental control equipment approved in the financing order.
(7) The Commission may require, as a condition to the effectiveness of the financing order but in every circumstance subject to the limitations set forth in subdivision (1), subsection (f) of this section, that the qualifying utility give appropriate assurances to the Commission that the qualifying utility and its parent will abide by the following conditions during any period in which any environmental control bonds issued pursuant to the financing order are outstanding, in addition to any other obligation either may have under this code or federal law:

(A) Without first obtaining the prior consent and approval of the Commission, the qualifying utility will not:

(1) Lend money, directly or indirectly, to a registered holding company or a nonutility affiliate; or

(2) Guarantee the obligations of a registered holding company or a nonutility affiliate.

(B) If: (i) For a period of twelve consecutive months immediately preceding the date of determination, the qualifying utility has had an equity ratio of below thirty percent and neither the qualifying utility nor its parent has had a credit rating on its unsecured debt obligations that is investment grade; and (ii) the Commission determines that the present ability of the qualifying utility to meet its public service obligations would be impaired by the payment of dividends, the Commission may order the qualifying utility to limit or cease the payment of dividends for a period not exceeding one hundred eighty days from the date of determination, which order may be extended for one or more additional periods not to exceed one hundred eighty days each if the Commission determines that the conditions set forth in this paragraph continue to exist as of the date of each such determination.

(C) Neither the parent nor a nonutility affiliate will direct or require the qualifying utility to file a voluntary petition in
bankruptcy: Provided, That nothing in this paragraph shall preclude the qualifying utility from filing a voluntary petition in bankruptcy if in the determination of the board of directors of the qualifying utility in the exercise of its fiduciary duty, the filing of its own voluntary petition in bankruptcy would be proper under applicable federal statutory and common law.

(8) A financing order may require the qualifying utility to file with the Commission a periodic report showing the receipt and disbursement of proceeds of environmental control bonds. A financing order may authorize the staff of the Commission to review and audit the books and records of the qualifying utility relating to the receipt and disbursement of proceeds of environmental control bonds. The provisions of this subdivision shall not be construed to limit the authority of the Commission under this chapter to investigate the practices of the qualifying utility or to audit the books and records of the qualifying utility.

(9) In the case of two or more affiliated qualifying utilities that have jointly applied for a financing order as provided in subdivision (1), subsection (c) of this section, a financing order may authorize each affiliated qualifying utility:

(A) To impose environmental control charges on its customers, notwithstanding the fact that the qualifying generating facility at which the environmental control activities are to be conducted is owned, or on the expected date of issuance of the environmental control bonds authorized in the financing order will be owned, by fewer than all of the affiliated qualifying utilities; and

(B) To issue environmental control bonds and to receive and use the proceeds thereof as provided in subdivision (1), subsection (j) of this section, notwithstanding the fact that all or a portion of the proceeds are expected to be used for
environmental control activities to be conducted at a qualifying
generating facility the ownership of which is as specified in
paragraph (A) of this subdivision.

(e) Application of adjustment mechanism. —

(1) If the Commission issues a financing order, the Com-
mision shall periodically approve the application of the
adjustment mechanism specified in the financing order to
correct for any over-collection or under-collection of the
environmental control charges and to provide for timely
payment of scheduled principal of and interest on the environ-
mental control bonds and the payment and recovery of other
financing costs in accordance with the financing order.
Application of the adjustment mechanism shall occur at least
annually or more frequently as provided in the financing order.

(2) On the same day the qualifying utility files with the
Commission its calculation of the adjustment, it shall cause
notice of the filing to be given, in the form specified in the
financing order, as a Class I legal advertisement in compliance
with the provisions of article three, chapter fifty-nine of this
code in a newspaper of statewide circulation published each
weekday in Kanawha County: Provided, That this publication
shall be made only if the calculation of the adjustment filed by
the qualifying utility with the Commission would result in an
increase in the amount of the environmental control charge.

(3) The Commission shall allow interested parties thirty
days from the date the qualifying utility filed the calculation of
the adjustment within which to make comments, which shall be
limited to the mathematical accuracy of the calculation and of
the amount of the adjustment. If the Commission determines
that a hearing is necessary, the Commission shall hold a
hearing on the comments within forty days of the date the
qualifying utility filed the calculation of the adjustment.
(4) Each adjustment to the environmental control charge, in an amount as calculated by the qualifying utility but incorporating any correction for mathematical inaccuracy as determined by the Commission at or after the hearing, shall automatically become effective: (i) Sixty days following the date on which the qualifying utility files with the Commission its calculation of the adjustment; or (ii) on any earlier date specified in an order of the Commission approving the application of the adjustment.

(5) No adjustment pursuant to this subsection, and no proceeding held pursuant to this subsection, shall in any way affect the irrevocability of the financing order as specified in subsection (f) of this section.

(f) Irrevocability of financing order. —

(1) A financing order is irrevocable and the Commission may not reduce, impair, postpone or terminate the environmental control charges approved in the financing order or impair the environmental control property or the collection or recovery of environmental control revenues.

(2) A financing order may be subsequently amended on or after the date of issuance of environmental control bonds authorized thereunder only: (A) At the request of the qualifying utility; (B) in accordance with any restrictions and limitations on amendment set forth in the financing order; and (C) subject to the limitations set forth in subdivision (1) of this subsection.

(3) No change in the credit rating on the unsecured obligations of a qualifying utility from the credit rating that supported the determination by the Commission required in paragraph (A), subdivision (3), subsection (d) of this section shall impair the irrevocability of the financing order specified in subdivision (1) of this subsection.
(g) Judicial review. — An order of the Commission issued pursuant to subdivision (2), subsection (d) of this section is a final order of the Commission. Any party aggrieved by the issuance of any such order may petition for suspension and review thereof by the Supreme Court of Appeals pursuant to section one, article five of this chapter. In the case of any petition for suspension and review, the Supreme Court of Appeals shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

(h) Effect of financing order. —

(1) A financing order shall remain in effect until the environmental control bonds issued pursuant to the financing order have been paid in full and all financing costs relating to the environmental control bonds have been paid in full.

(2) A financing order shall remain in effect and unabated notwithstanding the bankruptcy, reorganization or insolvency of the qualifying utility or any affiliate thereof or the commencement of any judicial or nonjudicial proceeding therefor.

(3) For so long as environmental control bonds issued pursuant to a financing order are outstanding and the related environmental control costs and financing costs have not been paid in full, the environmental control charges authorized to be imposed in the financing order shall be nonbypassable and shall apply to:

(A) All customers of the qualifying utility located within the utility service area, whether or not the customers may become entitled by law to purchase electric generation services from a provider of electric generation services other than a qualifying utility; and
(B) Any person or legal entity located within the utility service area that may subsequently receive electric delivery service from another public utility operating in the same service area.

(i) Limitations on jurisdiction of Commission. —

(1) If the Commission issues a financing order, the Commission may not, in exercising its powers and carrying out its duties regarding regulation and ratemaking, consider environmental control bonds issued pursuant to the financing order to be the debt of the qualifying utility, the environmental control charges paid under the financing order to be revenue of the qualifying utility, or the environmental control costs or financing costs specified in the financing order to be the costs of the qualifying utility, nor may the Commission determine that any action taken by a qualifying utility that is consistent with the financing order is unjust or unreasonable from a regulatory or ratemaking perspective: Provided, That subject to the limitations set forth in subsection (f) of this section, nothing in this subdivision shall: (i) Affect the authority of the Commission to apply the adjustment mechanism as provided in subsection (e) of this section; (ii) prevent or preclude the Commission from investigating the compliance of a qualifying utility with the terms and conditions of a financing order and requiring compliance therewith; or (iii) prevent or preclude the Commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of this section.

(2) The Commission may not order or otherwise require, directly or indirectly, any public utility to use environmental control bonds to finance any project, addition, plant, facility, extension, capital improvement, environmental control equipment or any other expenditure.
(3) The Commission may not refuse to allow the recovery of any costs associated with the performance of environmental control activities by a public utility solely because the public utility has elected or may elect to finance the performance of those activities through a financing mechanism other than the issuance of environmental control bonds.

(j) Duties of qualifying utility. —

(1) A qualifying utility for which a financing order has been issued shall cause the proceeds of any environmental control bonds issued pursuant to a financing order to be placed in a separate account. A qualifying utility may use the proceeds of the issuance of environmental control bonds for paying environmental control costs and financing costs and for no other purpose.

(2) A qualifying utility for which a financing order has been issued shall annually provide to its customers a concise explanation of the environmental control charges approved in a financing order, as modified by subsequent issuances of environmental control bonds authorized under a financing order, if any, and by application of the adjustment mechanism as provided in subsection (e) of this section. These explanations may be made by bill inserts, website information or other appropriate means.

(3) Environmental control revenues shall be applied solely to the repayment of environmental control bonds and other financing costs.

(4) The failure of a qualifying utility to apply the proceeds of an issuance of environmental control bonds in a reasonable, prudent and appropriate manner or otherwise comply with any provision of this section shall not invalidate, impair or affect any financing order, environmental control property, environ-
mental control charge or environmental control bonds:

Provided, That subject to the limitations set forth in subsection (f) of this section, nothing in this subdivision shall prevent or preclude the Commission from imposing regulatory sanctions against a qualifying utility for failure to comply with the terms and conditions of a financing order or the requirements of this section.

(k) Environmental control property. —

(1) Environmental control property that is specified in a financing order shall constitute an existing, present property right, notwithstanding the fact that the imposition and collection of environmental control charges depend on the qualifying utility continuing to provide electric energy or continuing to perform its servicing functions relating to the collection of environmental control charges or on the level of future energy consumption. Environmental control property shall exist whether or not the environmental control revenues have been billed, have accrued or have been collected and notwithstanding the fact that the value or amount of the environmental control property is dependent on the future provision of service to customers by the qualifying utility.

(2) All environmental control property specified in a financing order shall continue to exist until the environmental control bonds issued pursuant to a financing order are paid in full and all financing costs relating to the bonds have been paid in full.

(3) All or any portion of environmental control property may be transferred, sold, conveyed or assigned to any person or entity not affiliated with the qualifying utility or to any affiliate of the qualifying utility created for the limited purposes of acquiring, owning or administering environmental control property or issuing environmental control bonds under
the financing order or a combination of these purposes. All or any portion of environmental control property may be pledged to secure the payment of environmental control bonds, amounts payable to financing parties and bondholders, amounts payable under any ancillary agreement and other financing costs. Any transfer, sale, conveyance, assignment, grant of a security interest in or pledge of environmental control property by a qualifying utility or affiliate of a qualifying utility to an affiliate of the qualifying utility, to the extent previously authorized in a financing order, does not require the prior consent and approval of the Commission under section twelve of this article.

(4) If a qualifying utility defaults on any required payment of environmental control revenues, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the environmental control revenues for the benefit of bondholders, any assignee and any financing parties. The order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the qualifying utility or any affiliate thereof.

(5) Environmental control property and environmental control revenues, and the interests of an assignee, bondholder or financing party in environmental control property and environmental control revenues, are not subject to setoff, counterclaim, surcharge or defense by the qualifying utility or any other person or in connection with the bankruptcy, reorganization or other insolvency proceeding of the qualifying utility, any affiliate thereof or any other entity.

(6) Any successor to a qualifying utility shall be bound by the requirements of this section and shall perform and satisfy
all obligations of, and have the same rights under a financing order as, the qualifying utility under the financing order in the same manner and to the same extent as the qualifying utility, including, without limitation, the obligation to collect and pay to the person entitled to receive them environmental control revenues.

(1) Security interests. — Except as otherwise provided in this subsection, the creation, perfection and enforcement of any security interest in environmental control property to secure the repayment of the principal of and interest on environmental control bonds, amounts payable under any ancillary agreement and other financing costs are governed by this subsection and not the provisions of chapter forty-six of this code. All of the following shall apply:

(1) The description or indication of environmental control property in a transfer or security agreement and a financing statement is sufficient only if the description or indication refers to this section and the financing order creating the environmental control property. This subdivision applies to all purported transfers of, and all purported grants of liens on or security interests in, environmental control property, regardless of whether the related transfer or security agreement was entered into, or the related financing statement was filed, before or after the effective date of this section.

(2) A security interest in environmental control property is created, valid, and binding at the later of the time: (i) The financing order is issued; (ii) a security agreement is executed and delivered; and (iii) value is received for the environmental control bonds. The security interest attaches without any physical delivery of collateral or other act and the lien of the security interest shall be valid, binding and perfected against all parties having claims of any kind in tort, contract or otherwise against the person granting the security interest, regardless of
whether such parties have notice of the lien, upon the filing of
a financing statement with the office of the Secretary of State.
The office of the Secretary of State shall maintain any such
financing statement in the same manner and in the same record-
keeping system it maintains for financing statements filed
pursuant to article nine, chapter forty-six of this code. The
filing of any financing statement under this subdivision shall
be governed by the provisions regarding the filing of financing
statements in said article.

(3) A security interest in environmental control property is
a continuously perfected security interest and has priority over
any other lien, created by operation of law or otherwise, which
may subsequently attach to the environmental control property
unless the holder of any such lien has agreed in writing
otherwise.

(4) The priority of a security interest in environmental
control property is not affected by the commingling of environ-
mental control revenues with other amounts. Any pledgee or
secured party shall have a perfected security interest in the
amount of all environmental control revenues that are depos-
ited in any cash or deposit account of the qualifying utility in
which environmental control revenues have been commingled
with other funds and any other security interest that may apply
to those funds shall be terminated when they are transferred to
a segregated account for the assignee or a financing party.

(5) No subsequent order of the Commission amending a
financing order pursuant to subdivision (2), subsection (f) of
this section, and no application of the adjustment mechanism
as provided in subsection (e) of this section, will affect the
validity, perfection or priority of a security interest in or
transfer of environmental control property.

(m) Sales of environmental control property.
(1) Any sale, assignment or transfer of environmental control property shall be an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller’s right, title and interest in, to and under the environmental control property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in environmental control property may be created only when all of the following have occurred: (i) The financing order creating the environmental control property has become effective; (ii) the documents evidencing the transfer of environmental control property have been executed and delivered to the assignee; and (iii) value is received. Upon the filing of a financing statement with the office of the Secretary of State, a transfer of an interest in environmental control property shall be perfected against all third persons, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security interest, ownership interest or assignment in the environmental control property previously perfected in accordance with this subdivision or subdivision (2), subsection (1) of this section. The office of the Secretary of State shall maintain any such financing statement in the same manner and in the same record-keeping system it maintains for financing statements filed pursuant to article nine, chapter forty-six of this code.

(2) The characterization of the sale, assignment or transfer as an absolute transfer and true sale and the corresponding characterization of the property interest of the purchaser, shall not be affected or impaired by, among other things, the occurrence of any of the following factors:

(A) Commingling of environmental control revenues with other amounts;
§ 827. (B) The retention by the seller of: (i) A partial or residual interest, including an equity interest, in the environmental control property, whether direct or indirect, or whether subordinate or otherwise; or (ii) the right to recover costs associated with taxes, franchise fees or license fees imposed on the collection of environmental control revenues;

(C) Any recourse that the purchaser may have against the seller;

(D) Any indemnification rights, obligations or repurchase rights made or provided by the seller;

(E) The obligation of the seller to collect environmental control revenues on behalf of an assignee;

(F) The treatment of the sale, assignment or transfer for tax, financial reporting or other purposes;

(G) Any subsequent order of the Commission amending a financing order pursuant to subdivision (2), subsection (f) of this section; or

(H) Any application of the adjustment mechanism as provided in subsection (e) of this section.

(n) Exemption from municipal taxation. — The imposition, collection and receipt of environmental control revenues are not subject to taxation by any municipality of the state under the authority granted to municipalities in sections five and five-a, article thirteen, chapter eight of this code.

(o) Environmental control bonds not public debt. — Environmental control bonds issued pursuant to a financing order and the provisions of this section shall not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality or any other political
subdivision of this state. Bondholders shall have no right to have taxes levied by the Legislature or the taxing authority of any county, municipality or any other political subdivision of this state for the payment of the principal thereof or interest thereon. The issuance of environmental control bonds does not, directly or indirectly or contingently, obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of the principal of or interest on the bonds.

(p) Environmental control bonds as legal investments. — Any of the following may legally invest any sinking funds, moneys or other funds belonging to them or under their control in environmental control bonds:

(1) The state, the West Virginia Investment Management Board, the West Virginia Housing Development Fund, municipal corporations, political subdivisions, public bodies and public officers except for members of the Public Service Commission.

(2) Banks and bankers, savings and loan associations, credit unions, trust companies, building and loan associations, savings banks and institutions, deposit guarantee associations, investment companies, insurance companies and associations and other persons carrying on a banking or insurance business, including domestic for life and domestic not for life insurance companies; and

(3) Personal representatives, guardians, trustees and other fiduciaries.

(q) State pledge. —

(1) The state pledges to and agrees with the bondholders, any assignee and any financing parties that the state will not
take or permit any action that impairs the value of environmental control property or, except as allowed under subsection (e) of this section, reduce, alter or impair environmental control charges that are imposed, collected and remitted for the benefit of the bondholders, any assignee, and any financing parties, until any principal, interest and redemption premium in respect of environmental control bonds, all financing costs and all amounts to be paid to an assignee or financing party under an ancillary agreement are paid or performed in full.

(2) Any person who issues environmental control bonds is permitted to include the pledge specified in subdivision (1) of this subsection in the environmental control bonds, ancillary agreements and documentation related to the issuance and marketing of the environmental control bonds.

(r) *Choice of law.* — The law governing the validity, enforceability, attachment, perfection, priority and exercise of remedies with respect to the transfer of an interest or right or creation of a security interest in any environmental control property, environmental control charge or financing order shall be the laws of the State of West Virginia as set forth in this section and article nine, chapter forty-six of this code.

(s) *Conflicts.* — In the event of conflict between this section and any other law regarding the attachment, assignment or perfection, or the effect of perfection, or priority of any security interest in or transfer of environmental control property, this section shall govern to the extent of the conflict.

(t) *Effect of invalidity on actions.* — Effective on the date that environmental control bonds are first issued under this section, if any provision of this section is held to be invalid or is invalidated, superseded, replaced, repealed or expires for any reason, that occurrence shall not affect any action allowed under this section that is taken by the Commission, a qualifying
utility, an assignee, a collection agent, a financing party, a bondholder, or a party to an ancillary agreement and any such action shall remain in full force and effect.

(u) **Effectiveness of section.** — No qualifying utility may make initial application for a financing order after the date which is five years after the effective date of this section. This subsection shall not be construed to preclude any qualifying utility for which the Commission has initially issued a financing order from applying to the Commission: (i) For a subsequent order amending the financing order pursuant to subdivision (2), subsection (f) of this section; or (ii) for approval of the issuance of environmental control bonds to refund all or a portion of an outstanding series of environmental control bonds.

(v) **Severability.** — If any subsection, subdivision, paragraph or subparagraph of this section or the application thereof to any person, circumstance or transaction is held by a court of competent jurisdiction to be unconstitutional or invalid, the unconstitutionality or invalidity shall not affect the constitutionality or validity of any other subsection, subdivision, paragraph or subparagraph of this section or its application or validity to any person, circumstance or transaction, including, without limitation, the irrevocability of a financing order issued pursuant to this section, the validity of the issuance of environmental control bonds, the imposition of environmental control charges, the transfer or assignment of environmental control property or the collection and recovery of environmental control revenues. To these ends, the Legislature hereby declares that the provisions of this section are intended to be severable and that the Legislature would have enacted this section even if any subsection, subdivision, paragraph or subparagraph of this section held to be unconstitutional or invalid had not been included in this section.
CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

SUBPART 2. APPLICABILITY OF ARTICLE.


1 (a) General scope of article. — Except as otherwise provided in subsections (c) and (d) of this section, this article applies to:

1 (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

1 (2) An agricultural lien;

1 (3) A sale of accounts, chattel paper, payment intangibles or promissory notes;

1 (4) A consignment;

1 (5) A security interest arising under section 2-401, 2-505, 2-711(3) or 2A-508(5) as provided in section 9-110; and

1 (6) A security interest arising under section 4-210 or 5-118.

1 (b) Security interest in secured obligation. — The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

1 (c) Extent to which article does not apply. — This article does not apply to the extent that:

1 (1) A statute, regulation or treaty of the United States preempts this article; or
(2) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 5-114.

(d) *Inapplicability of article.* — This article does not apply to:

(1) A landlord’s lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 9-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care-insurance receivable and any subsequent assignment of the right to payment, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;
(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:

(A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in sections 9-203 and 9-308;

(B) Fixtures in section 9-334;

(C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516, and 9-519; and

(D) Security agreements covering personal and real property in section 9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(13) An assignment of a deposit account in a consumer transaction, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(14) A transfer by a government or a governmental unit; or

(15) A transfer of security interest in any interest or right, or any portion or any interest or right in any environmental
control property, environmental control charge or financing order as each term is defined in section four-e, article two, chapter twenty-four of this code.

CHAPTER 107

(Com. Sub. for H. B. 3033 — By Mr. Speaker, Mr. Kiss, and Delegates Staton, Michael and Mahan)

[Passed March 31, 2005; in effect from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to the special reclamation tax; extending the imposition of a temporary tax on clean coal mined for deposit into the special reclamation fund for an additional period; and providing duties for the Secretary of the Department of Environmental Protection in managing the special reclamation program.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article but before a permit has been issued, each operator shall furnish a penal bond, on a form to be
prescribed and furnished by the Secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than one thousand dollars nor more than five thousand dollars for each acre or fraction thereof: Provided, That the minimum amount of bond furnished for any type of reclamation bonding shall be ten thousand dollars. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the Secretary an additional bond or bonds to cover the increments in accordance with this section: Provided, however, That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c) (1) The form of the bond shall be approved by the Secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self-bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions, of the federal land bank or of the homeowners' loan corporation; full faith and credit general obligation bonds of the State of West
Virginia or other states, and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of such securities or certificates shall be equal to or greater than the penal sum of the bond. The Secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold the same in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the Secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes herein specified having value equal to or greater than the sum of the bond.

(2) The Secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The Secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the Secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the State for the reclamation of lands disturbed by the operator.
(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) The Special Reclamation Fund previously created is continued. The moneys accrued in the fund, including interest, are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The fund shall be administered by the Secretary who is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The Secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in the fund of such magnitude that the solvency of the fund is jeopardized. The Secretary may use the Special Reclamation Fund for the purpose of designing, constructing and maintaining water treatment systems when they are required for a complete reclamation of the affected lands described in this subsection. The Secretary may also expend an amount not to exceed ten percent of the total annual assets in the fund to implement and administer the provisions of this article and, as they apply to the Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

(h) (1) Prior to the first day of January, two thousand two, every person conducting coal surface mining operations shall contribute into the fund a sum equal to three cents per ton of clean coal mined. For tax periods commencing on and after the first day of January, two thousand two, every person conducting coal surface mining shall contribute into the fund as follows:
(A) For a period not to exceed fifty-seven months, seven cents per ton of clean coal mined; and (B) an additional seven cents per ton of clean coal mined. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply on or after the first day of January, two thousand two. The additional seven-cent tax shall be reviewed and, if necessary, adjusted annually by the Legislature upon recommendation of the Council pursuant to the provisions of section seventeen, article one of this chapter: Provided, That the tax may not be reduced until the Special Reclamation Fund has sufficient moneys to meet the reclamation responsibilities of the State established in this section.

(2) In managing the Special Reclamation Program, the Secretary shall:

(A) Pursue cost effective alternative water treatment strategies; and

(B) Conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund.

(3) Prior to the thirty-first day of December, two thousand five, the Secretary shall:

(A) Determine the feasibility of allowing full cost bonding in lieu of a portion of the per ton coal tax. In making this determination, the Secretary shall consider the availability and affordability of full cost bonding to operators and the overall fiscal stability of the Special Reclamation Program;

(B) Determine the feasibility of creating a water quality trust fund to provide long-term funding for water treatment from forfeited sites and to reduce a portion of the per ton coal
tax. In making this determination, the Secretary shall consider
the availability and fiscal stability of any funding for a water
quality trust fund and any impact it may have on the overall
fiscal stability of the Special Reclamation Program; and

(C) Determine the feasibility of establishing a bonding
requirement for water treatment activities in lieu of a portion of
the per ton coal tax. In making this determination, the Secretary
shall consider the availability and affordability of bonding to
operators and the overall fiscal stability of the Special Reclamation
Program.

(4) If the Secretary determines that full cost bonding, water
treatment bonding, the establishment of a water quality trust
fund, or the use of other funding mechanisms, or a combination
of any or all of these financial assurance mechanisms, reason-
ably assure that sufficient funds will be available to complete
the reclamation of a forfeited site and that the Special Reclama-
tion Fund will remain fiscally stable, the Secretary is authorized
to propose legislative rules in accordance with article three,
chapter twenty-nine-a of this code to implement a full cost
bonding program, a water reclamation bonding program, a
water quality trust fund program, or other funding mechanisms,
or a combination thereof, in lieu of the per ton coal tax or a
portion thereof.

(i) This special reclamation tax shall be collected by the
State Tax Commissioner in the same manner, at the same time
and upon the same tonnage as the minimum severance tax
imposed by article twelve-b, chapter eleven of this code is
collected: Provided, That under no circumstance shall the
special reclamation tax be construed to be an increase in either
the minimum severance tax imposed by said article or the
severance tax imposed by article thirteen of said chapter.

(j) Every person liable for payment of the special reclama-
tion tax shall pay the amount due without notice or demand for
payment.
(k) The Tax Commissioner shall provide to the Secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The Secretary may take the delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(l) The Tax Commissioner shall deposit the fees collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund. The moneys in the fund shall be placed by the Treasurer in an interest-bearing account with the interest being returned to the fund on an annual basis.

(m) At the beginning of each quarter, the Secretary shall advise the State Tax Commissioner and the Governor of the assets, excluding payments, expenditures and liabilities, in the fund.

(n) To the extent that this section modifies any powers, duties, functions and responsibilities of the Department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the State, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

CHAPTER 108

(H. B. 3236 — By Delegates Michael and Kominar)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 2, 2005.]
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §22-3-11a and §22-3-32a, all relating generally to the special reclamation tax and special tax on coal production; clarifying that both of these taxes apply to production of thin seam coal and providing for payment thereof; and providing that the special reclamation is subject to the West Virginia Tax Crimes and Penalties Act and the West Virginia Tax Procedure and Administration Act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §22-3-11a and §22-3-32a, all to read as follows:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11a. Special reclamation tax; clarification of imposition of tax; procedures for collection and administration of tax; application of Tax Procedure and Administration Act and Tax Crimes and Penalties Act.

§22-3-32a. Special tax on coal; clarification of imposition of tax; procedures for collection and administration of tax.

§22-3-11a. Special reclamation tax; clarification of imposition of tax; procedures for collection and administration of tax; application of Tax Procedure and Administration Act and Tax Crimes and Penalties Act.

(a) It is the intent of the Legislature to clarify that from the date of its enactment, the special reclamation tax imposed pursuant to the provisions of section eleven of this article is intended to be in addition to any other taxes imposed on persons conducting coal surface mining operations including, but not limited to the tax imposed by section thirty-two of this article, the tax imposed by article twelve-b, chapter eleven of this code, the taxes imposed by article thirteen-a of said chapter eleven, and the tax imposed by article thirteen-v of said chapter.
(b) Notwithstanding any other provisions of section eleven of this article to the contrary, under no circumstance shall an exemption from the taxes imposed by article twelve-b, thirteen-a or thirteen-v, chapter eleven of this code be construed to be an exemption from the tax imposed by section eleven of this article.

(c) When coal included in the measure of the tax imposed by section eleven of this article is exempt from the tax imposed by article twelve-b, chapter eleven of this code, the tax imposed by section eleven of this article shall be paid to the tax commissioner in accordance with the provisions of sections four through fourteen, inclusive, article twelve-b, chapter eleven of this code, which provisions are hereby incorporated by reference in this article.

(d) General procedure and administration. — Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of the code applies to the special tax imposed by section eleven of this article with like effect as if such act were applicable only to the special tax imposed by said section eleven and set forth in extenso in this article, notwithstanding the provisions of section three of said article ten.

(e) Tax crimes and penalties. — Each and every provision of the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of said chapter eleven applies to the special tax imposed by section eleven of this article with like effect as if such act were applicable only to the special tax imposed by said section eleven and set forth in extenso in this article, notwithstanding the provisions of section two of said article nine.

§22-3-32a. Special tax on coal; clarification of imposition of tax; procedures for collection and administration of tax.

(a) It is the intent of the Legislature to clarify that from the date of its enactment, the special tax on coal imposed pursuant
to the provisions of section thirty-two of this article is intended
to be in addition to any other taxes imposed on every person in
this state engaging in the privilege of severing, extracting,
reducing to possession or producing coal for sale profit or
commercial use including, but not limited to the tax imposed by
section eleven of this article, the tax imposed by article twelve-
b, chapter eleven of this code, the taxes imposed by article
thirteen-a of said chapter eleven and the tax imposed by article
thirteen-v of said chapter.

(b) Notwithstanding any other provisions of section thirty-
two of this article to the contrary, under no circumstance shall
an exemption from the taxes imposed by article twelve-b,
thirteen-a or thirteen-v, chapter eleven of this code be construed
to be an exemption from the tax imposed by section thirty-two
of this article.

(c) When coal included in the measure of the tax imposed
by section thirty-two of this article is exempt from the tax
imposed by article twelve-b, chapter eleven of this code, the tax
imposed by section thirty-two of this article shall be paid to the
tax commissioner in accordance with the provisions of sections
four through fourteen, inclusive, article twelve-b, chapter
eleven of this code, which provisions are hereby incorporated
by reference in this article.

CHAPTER 109

(H. B. 3354 — By Delegates Michael and Cann)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]
AN ACT to amend and reenact §22-6-2, §22-6-12 and §22-6-29 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-21-2, §22-21-3, §22-21-6, §22-21-7 and §22-21-20 of said code, all relating to the secretary’s authority to assess a permit fee for well work permits, deep wells, coalbed methane wells, and reclamation fund fees; plat information; definitions; damage compensation; consent and agreement of coal owner and operator; and spacing of coalbed methane wells.

Be it enacted by the Legislature of West Virginia:

That §22-6-2, §22-6-12 and §22-6-29 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-21-2, §22-21-3, §22-21-6, §22-21-7 and §22-21-20 of said code be amended and reenacted, all to read as follows:

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-2. Secretary — Powers and duties generally; department records open to public; inspectors.

§22-6-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

§22-6-2. Secretary — Powers and duties generally; department records open to public; inspectors.

(a) The Secretary shall have as his or her duty the supervision of the execution and enforcement of matters related to oil and gas set out in this article and in articles eight and nine of this chapter.
(b) The Secretary is authorized to propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to effectuate the above stated purposes.

(c) The Secretary shall have full charge of the oil and gas matters set out in this article and in articles eight and nine of this chapter. In addition to all other powers and duties conferred upon him or her, the secretary shall have the power and duty to:

1. Supervise and direct the activities of the office of oil and gas and see that the purposes set forth in subsections (a) and (b) of this section are carried out;

2. Employ a supervising oil and gas inspector and oil and gas inspectors;

3. Supervise and direct such oil and gas inspectors and supervising inspector in the performance of their duties;

4. Suspend for good cause any oil and gas inspector or supervising inspector without compensation for a period not exceeding thirty days in any calendar year;

5. Prepare report forms to be used by oil and gas inspectors or the supervising inspector in making their findings, orders and notices, upon inspections made in accordance with this article and articles seven, eight, nine and ten of this chapter;

6. Employ a hearing officer and such clerks, stenographers and other employees, as may be necessary to carry out his or her duties and the purposes of the office of oil and gas and fix their compensation;

7. Hear and determine applications made by owners, well operators and coal operators for the annulment or revision of orders made by oil and gas inspectors or the supervising
inspector, and to make inspections, in accordance with the provisions of this article and articles eight and nine of this chapter;

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by the secretary or by oil and gas inspectors or the supervising inspector;

(9) Conduct such research and studies as the secretary shall deem necessary to aid in protecting the health and safety of persons employed within or at potential or existing oil or gas production fields within this state, to improve drilling and production methods and to provide for the more efficient protection and preservation of oil and gas-bearing rock strata and property used in connection therewith;

(10) Collect a permit fee of four hundred dollars for each permit application filed other than an application for a deep well or a coalbed methane well; and collect a permit fee of six hundred fifty dollars for each permit application filed for a deep well: Provided, That no permit application fee shall be required when an application is submitted solely for the plugging or replugging of a well, or to modify an existing application for which the operator previously has submitted a permit fee under this section. All application fees required hereunder shall be in lieu of and not in addition to any fees imposed under article eleven of this chapter relating to discharges of stormwater but shall be in addition to any other fees required by the provisions of this article: Provided, however, That upon a final determination by the United States Environmental Protection Agency regarding the scope of the exemption under section 402(1)(2) of the federal Clean Water Act (33 U.S.C. 1342(1)(2)), which determination requires a "national pollutant discharge elimination system" permit for stormwater discharges from the oil and gas operations described therein, any permit fees for stormwater permits required under article eleven of this chapter for such operations shall not exceed one hundred dollars.
(11) Perform all other duties which are expressly imposed
upon the secretary by the provisions of this chapter;

(12) Perform all duties as the permit issuing authority for
the state in all matters pertaining to the exploration, develop-
ment, production, storage and recovery of this state’s oil and
gas;

(13) Adopt rules with respect to the issuance, denial,
retention, suspension or revocation of permits, authorizations
and requirements of this chapter, which rules shall assure that
the rules, permits and authorizations issued by the secretary are
adequate to satisfy the purposes of this article and articles
seven, eight, nine and ten of this chapter particularly with
respect to the consolidation of the various state and federal
programs which place permitting requirements on the explora-
tion, development, production, storage and recovery of this
state’s oil and gas: Provided, That notwithstanding any provi-
sions of this article and articles seven, eight, nine and ten of this
chapter to the contrary, the environmental quality board shall
have the sole authority pursuant to section three, article three,
chapter twenty-two-b to promulgate rules setting standards of
water quality applicable to waters of the state; and

(14) Perform such acts as may be necessary or appropriate
to secure to this state the benefits of federal legislation estab-
lishing programs relating to the exploration, development,
production, storage and recovery of this state’s oil and gas,
which programs are assumable by the state.

(d) The Secretary shall have authority to visit and inspect
any well or well site and any other oil or gas facility in this state
and may call for the assistance of any oil and gas inspector or
inspectors or supervising inspector whenever such assistance is
necessary in the inspection of any such well or well site or any
other oil or gas facility. Similarly, all oil and gas inspectors and
the supervising inspector shall have authority to visit and
inspect any well or well site and any other oil or gas facility in this state. Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said tract of land may request the secretary to have an immediate inspection made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate with the secretary, all oil and gas inspectors and the supervising inspector in making inspections or obtaining information.

(e) Oil and gas inspectors shall devote their full time and undivided attention to the performance of their duties, and they shall be responsible for the inspection of all wells or well sites or other oil or gas facilities in their respective districts as often as may be required in the performance of their duties.

(f) All records of the office shall be open to the public.

§22-6-12. Plats prerequisite to drilling or fracturing wells; preparation and contents; notice and information furnished to coal operators, owners or lessees; issuance of permits; performance bonds or securities in lieu thereof; bond forfeiture.

(a) Before drilling for oil or gas, or before fracturing or stimulating a well on any tract of land, the well operator shall have a plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the tract of land is located, the name and acreage of the same, the names of the owners of adjacent tracts, the proposed or actual location of the well determined by survey, the courses and distances of such location from two permanent points or landmarks on said tract and the number to be given the well. In the event the tract of land on which the said well proposed to be drilled or fractured is located is known to be underlain by one or more coal seams, copies of the plat shall be forwarded by registered or certified mail to each and every coal operator operating said
coal seams beneath said tract of land, who has mapped the same
and filed such maps with the office of miners' health, safety and
training in accordance with chapter twenty-two-a of this code
and the coal seam owner of record and lessee of record, if any,
if said owner or lessee has recorded the declaration provided in
section thirty-six of this article, and if said owner or lessee is
not yet operating said coal seams beneath said tract of land.
With each of such plats there shall be enclosed a notice (form
for which shall be furnished on request by the Secretary)
addressed to the Secretary and to each such coal operator,
owner and lessee, if any, at their respective addresses, inform-
ing them that such plat and notice are being mailed to them
respectively by registered or certified mail, pursuant to the
requirements of this article.

(b) If no objections are made, or are found by the Secretary,
to such proposed location or proposed fracturing within fifteen
days from receipt of such plat and notice by the Secretary, the
same shall be filed and become a permanent record of such
location or fracturing subject to inspection at any time by any
interested person, and the Secretary may forthwith issue to the
well operator a permit reciting the filing of such plat, that no
objections have been made by the coal operators, owners and
lessees, if any, or found thereto by the Secretary, and authoriz-
ing the well operator to drill at such location, or to fracture the
well. Unless the Secretary has objections to such proposed
location or proposed fracturing or stimulating, such permit may
be issued prior to the expiration of such fifteen-day period upon
the obtaining by the well operator of the consent in writing of
the coal operator or operators, owners and lessees, if any, to
whom copies of the plat and notice shall have been mailed as
herein required, and upon presentation of such written consent
to the Secretary. The notice above provided for may be given to
the coal operator by delivering or mailing it by registered or
certified mail as above to any agent or superintendent in actual
charge of mines.
(c) A permit to drill, or to fracture or stimulate an oil or gas well, shall not be issued unless the application therefor is accompanied by a bond as provided in section twenty-six of this article.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

(a) There is hereby continued within the Treasury of the State of West Virginia the special fund known as the oil and gas operating permit and processing fund, and the secretary shall deposit with the State Treasurer to the credit of such special fund all fees collected under the provisions of subdivision ten, subsection (c), section two of this article.

The oil and gas operating permit and processing fund shall be administered by the secretary for the purposes of carrying out the provisions of this chapter.

The Secretary shall make an annual report to the Governor and to the Legislature on the use of the fund, and shall make a detailed accounting of all expenditures from the oil and gas operating permit and processing fund.

(b) In addition to any other fees required by the provisions of this article, every applicant for a permit to drill a well shall, before the permit is issued, pay to the Secretary a special reclamation fee of one hundred and fifty dollars for each activity for which a well work application is required to be filed: Provided, That a special reclamation fee shall not be assessed for plugging activities. Such special reclamation fee shall be paid at the time the application for a drilling permit is filed with the Secretary and the payment of such reclamation fee shall be a condition precedent to the issuance of said permit.

There is hereby continued within the Treasury of the State of West Virginia the special fund known as the oil and gas
reclamation fund, and the secretary shall deposit with the State Treasurer to the credit of such special fund all special reclamation fees collected. The proceeds of any bond forfeited under the provisions of this article shall inure to the benefit of and shall be deposited in such oil and gas reclamation fund.

The oil and gas reclamation fund shall be administered by the secretary. The Secretary shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have not been reclaimed or plugged or which have been improperly reclaimed or plugged. The Secretary, as funds become available in the oil and gas reclamation fund, shall reclaim and properly plug wells in accordance with said plans and specifications and in accordance with the provisions of this article relating to the reclaiming and plugging of wells and all rules promulgated thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering, administrative and research costs as may be necessary to properly effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

The Secretary may avail the division of any federal funds provided on a matching basis that may be made available for the purpose of reclaiming or plugging any wells.

The Secretary shall make an annual report to the Governor and to the Legislature setting forth the number of wells reclaimed or plugged through the use of the oil and gas reclamation fund provided for herein. Such report shall identify each such reclamation and plugging project, state the number of wells reclaimed or plugged thereby, show the county wherein such wells are located and shall make a detailed accounting of all expenditures from the oil and gas reclamation fund.

All wells shall be reclaimed or plugged by contract entered into by the secretary on a competitive bid basis as provided for
ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-3. Application of article; exclusions; application of chapter twenty-two-b to coalbed methane wells.
§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.
§22-21-7. Consent and agreement of coal owner or operator.
§22-21-20. Spacing.


Unless the context in which used clearly requires a different meaning, as used in this article:

(a) "Review board" means the West Virginia coalbed methane review board which shall be comprised of the members of the West Virginia shallow gas well review board provided for in article eight, chapter twenty-two-c of this code, the state geologist, a representative of the United Mine Workers of America, an employee of the gas industry, and the director of the office of miners' health, safety and training, and the chairman of the review board shall be the chairman of the West Virginia shallow gas review board;

(b) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable, and the noncoal roof and floor of said seam of coal;

(c) "Coalbed methane" means gas which can be produced from a coal seam, the rock or other strata in communication with a coal seam, a mined-out area or a gob well;

(d) "Coalbed methane owner" means any owner of coalbed methane;
(e) "Coalbed methane well" means any hole or well sunk, drilled, bored or dug into the earth for the production of coalbed methane for consumption or sale, including a gob well. The term "well" shall mean a coalbed methane well unless the context indicates otherwise. The term "coalbed methane well" does not include any shaft, hole or well sunk, drilled, bored or dug into the earth for core drilling, production of coal or water, venting gas from a mine area, or degasification of a coal seam, or any coalbed methane well extending from the surface into, but not below, a coal seam being mined after such well or its horizontal extension has been plugged in accordance with section twenty-three of this article;

(f) "Coalbed methane well operator" or "well operator" means any person who has the right to operate or does operate a coalbed methane well;

(g) "Coal operator" means any person who proposes to or does operate a coal mine;

(h) "Coal owner" means any person who owns or leases a coal seam;

(i) "Chief" means the chief of the office of oil and gas of the division of environmental protection provided for in section eight, article one of this chapter;

(j) "Director" means the director of the division of environmental protection;

(k) "Division" means the division of environmental protection;

(l) "Gob well" means a well drilled or vent hole converted to a well pursuant to this article which produces or is capable of producing coalbed methane or other natural gas from a distressed zone created above and below a mined-out coal seam by any prior full seam extraction of the coal;
(m) "Mine" or "mine areas," including the sub-definitions under "mine areas," shall have the same definitions as are provided in section two, article one, chapter twenty-two-a of this code;

(n) "Office" means office of oil and gas provided for in section seven, article one of this chapter;

(o) "Person" means any natural person, corporation, firm, partnership, partnership association, venture, receiver, trustee, executor, administrator, guardian, fiduciary, other representative of any kind, any recognized legal entity, or political subdivision or agency thereof;

(p) "Stimulate" means any action taken to increase the natural flow of coalbed methane or the inherent productivity of a coalbed methane well, including, but not limited to, fracturing, shooting, acidizing or water flooding, but excluding cleaning out, bailing or workover operations;

(q) "Waste" means: (i) Physical waste as the term is generally understood in the gas industry and as provided for in article six of this chapter, but giving special consideration to coal mining operations and the safe recovery of coal; (ii) the locating, drilling, equipping, operating, producing or transporting coalbed methane in a manner that causes or tends to cause a substantial reduction in the quantity of coalbed methane recoverable from a pool under prudent and proper operations, or that causes or tends to cause a substantial or unnecessary or excessive surface loss of coalbed methane; (iii) the drilling of more wells than are reasonably required to recover efficiently and economically the maximum amount of coalbed methane from a pool; or (iv) substantially inefficient, excessive or improper use, or the substantially unnecessary dissipation of reservoir pressure. Waste does not include coalbed methane vented or released from any mine area, the degasification of a
coal seam for the purpose of mining coal, the plugging of coalbed methane wells for the purpose of mining coal, coalbed methane vented or flared from a coalbed methane well, after completion, for the purpose of evaluating its economic viability, or the conversion of coalbed methane wells to vent holes for the purpose of mining coal;

(r) "Workable coalbed" or "workable coal seam" means any seam of coal twenty inches or more in thickness, or any seam of less thickness which is being commercially mined or can be shown to be capable of being commercially mined;

(s) "Secretary" means the Secretary of the Department of Environmental Protection.

§22-21-3. Application of article; exclusions; application of chapter twenty-two-b to coalbed methane wells.

(a) The provisions of this article apply to: (1) All lands in this state under which a coalbed is located, including any lands owned or administered by the state or any agency or subdivision thereof; and (2) any coalbed methane well.

(b) This article does not apply to or affect: (1) Any well otherwise permitted, approved or regulated under articles six, seven, eight, nine or ten of this chapter or article eight, chapter twenty-two-c of this code; (2) any ventilation fan, vent hole, mining apparatus, or other facility utilized solely for the purpose of venting any mine or mine area; or (3) the ventilation of any mine or mine area or degasification of any coal seam for the mining of coal.

(c) This article does not apply to or affect subsurface boreholes drilled from the mine face of an underground mine, except that the provisions of sections fifteen, sixteen, seventeen, eighteen and nineteen shall apply.
(d) To the extent that coalbed methane wells are similar to wells, as defined in section one, article six of this chapter, and the production of coalbed methane is similar to the production of natural gas, coalbed methane wells shall be treated as wells and coalbed methane treated as natural gas and subject to the following sections of article six of this chapter:

(1) The provisions of section three pertaining to the findings and orders of inspectors concerning violations, determination of reasonable time for abatement, extensions of time for abatement, special inspections, notice of findings and orders;

(2) The provisions of section four providing for the review of findings and orders by the chief, special inspection, annulment, revision of order and notice;

(3) The provisions of section five providing for the requirements of findings, orders and notices; posting of findings and orders; and judicial review of final orders of the chief;

(4) The provisions of section twenty-one providing for protective devices—installation of freshwater casings;

(5) The provisions of section twenty-two providing for a well log to be filed, contents, and authority to promulgate regulations. In addition to the requirements of such section, the operator shall certify that the well was drilled and completed as shown on the well plat required for a coalbed methane well, or in the alternative, file a revised well plat showing the actual location of the well and the coal seams in which the well is completed for production. Such log and certificate shall be served on all coal owners and operators who must be named in the permit application under section six of this article;
(6) The provisions of section twenty-eight providing for supervision by the chief over drilling and reclamation operations, complaints, hearings and appeals;

(7) The provisions of section twenty-nine providing for special reclamation funds and fees;

(8) The provisions of section thirty providing for reclamation requirements;

(9) The provisions of section thirty-one providing for preventing waste of gas, plan of operation required for wasting gas in process of producing oil and rejection thereof;

(10) The provisions of section thirty-two providing for the right of adjacent owner or operator to prevent waste of gas and recovery of costs;

(11) The provisions of section thirty-three providing for restraining waste;

(12) The provisions of section thirty-four providing for offenses and penalties;

(13) The provisions of section thirty-five providing for civil action for contamination or deprivation of freshwater source or supply and presumption;

(14) The provisions of section thirty-six providing for declaration of notice by owners and lessees of coal seams and setting out the form of such declaration; and

(15) The provisions of section thirty-nine providing for injunctive relief.

In addition to the foregoing and subject to the same qualifications, the provisions of article ten of this chapter shall apply to coalbed methane wells. Any well which is abandoned
or presumed to be abandoned under the provisions of this article shall be treated as an abandoned well under said article ten. In addition, the provisions of article seven of this chapter shall apply to permits issued pursuant to this article.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

(a) It is unlawful for any person to commence, operate, deepen or stimulate any coalbed methane well, to conduct any horizontal drilling of a well commenced from the surface for the purpose of commercial production of coalbed methane, or to convert any existing well, vent hole or other hole to a coalbed methane well, including in any case site preparation work which involves any disturbance of land, without first securing from the chief a permit pursuant to this article.

(b) Every permit application filed under this section shall be verified and shall contain the following:

(1) The names and addresses of (i) the well operator, (ii) the agent required to be designated under subsection (e) of this section, and (iii) every person or entity whom the applicant must notify under any section of this article;

(2) The name and address of each coal operator and each coal owner of record or providing a record declaration of notice pursuant to section thirty-six, article six of this chapter of any coal seam which is (i) to be penetrated by a proposed well, (ii) within seven hundred fifty horizontal feet of any portion of the proposed well bore; or (iii) within one hundred vertical feet of the designated completion coal seams of the proposed well, except that in the case of an application to convert a ventilation hole to a gob well, the name and address only of such owner or operator of the seams to be penetrated by a proposed well shall be necessary;
(3) The well name or such other identification as the chief
may require;

(4) The approximate depth to which the well is to be
drilled, deepened or converted, the coal seams (stating the depth
and thickness of each seam) in which the well will be com-
pleted for production, and any other coal seams (including the
depth and thickness of each seam) which will be penetrated by
the well;

(5) A description of any means to be used to stimulate the
well;

(6) If the proposed well will require casing or tubing to be
set, the entire casing program for the well, including the size of
each string of pipe, the starting point and depth to which each
string is to be set, and the extent to which each such string is to
be cemented;

(7) If the proposed operation is to convert an existing well,
as defined in section one, article six of this chapter, or to
convert a vertical ventilation hole to a coalbed methane well, all
information required by this section, all formations from which
production is anticipated, and any plans to plug any portion of
the well;

(8) Except for a gob well or vent hole proposed to be
converted to a well, if the proposed coalbed methane well will
be completed in some but not all coal seams for production, a
plan and design for the well which will protect all workable
coal seams which will be penetrated by the well;

(9) If the proposed operations will include horizontal
drilling of a well commenced on the surface, a description of
such operations, including both the vertical and horizontal
alignment and extent of the well from the surface to total depth;
and
Any other relevant information which the chief may require by rule.

(c) Each application for a coalbed methane well permit shall be accompanied by the following:

(1) The applicable bond prescribed by section eight of this article;

(2) A permit application fee of two hundred fifty dollars: Provided, That no permit application fee shall be required to modify an existing permit application for which the operator previously has submitted a permit fee under this section. All application fees required under this section shall be in lieu of and not in addition to any fees relating to discharges of storm water imposed under article eleven of this chapter: Provided, however, That upon a final determination by the United States Environmental Protection Agency regarding the scope of the exemption under section 402(1)(2) of the federal Clean Water Act (33 U.S.C.1342(l)(2)), which determination requires a “national pollutant discharge elimination system” permit for stormwater discharges from the oil and gas operations described therein, any permit fees for stormwater permits required under article eleven of this chapter for such operations shall not exceed one hundred dollars.

(3) The erosion and sediment control plan required under subsection (d) of this section;

(4) The consent and agreement of the coal owner as required by section seven and, if applicable, section twenty of this article;

(5) A plat prepared by a licensed land surveyor or registered engineer showing the district and county in which the drill site is located, the name of the surface owner of the drill site tract, the acreage of the same, the names of the surface owners
of adjacent tracts, the names of all coal owners underlying the
drill site tract, the proposed or actual location of the well
determined by a survey, the courses and distances of such
location from two permanent points or landmarks on said tract,
the location of any other existing or permitted coalbed methane
well or any oil or gas well located within two thousand five
hundred feet of the drill site, the number to be given the coalbed
methane well, and if horizontal drilling of a well commenced
on the surface is proposed, the vertical and horizontal alignment
and extent of the well; and

(6) A certificate by the applicant that the notice require-
ments of section nine of this article have been satisfied by the
applicant. Such certification may be by affidavit of personal
service, or the return receipt card, or other postal receipt, for
certified mailing.

(d) An erosion and sediment control plan shall accompany
each application for a permit. Such plan shall contain methods
of stabilization and drainage, including a map of the project
area indicating the amount of acreage disturbed. The erosion
and sediment control plan shall meet the minimum require-
ments of the West Virginia erosion and sediment control
manual as adopted and from time to time amended by the office
of oil and gas in consultation with the several soil conservation
districts pursuant to the control program established in this state
through Section 208 of the federal Clean Water Act. The
erosion and sediment control plan shall become part of the
terms and conditions of a permit and the provisions of the plan
shall be carried out where applicable in operations under the
permit. The erosion and sediment control plan shall set out the
proposed method of reclamation which shall comply with the
requirements of section thirty, article six of this chapter.

(e) The well operator named in such application shall
designate the name and address of an agent for such operator
who shall be the attorney-in-fact for the operator and who shall be a resident of the State of West Virginia, upon whom notices, orders or other communications issued pursuant to this article may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall within five days after the termination of such designation notify the office of such termination and designate a new agent.

(f) The well owner or operator shall install the permit number as issued by the chief in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications and manner of installation shall be in accordance with the rules of the chief.

(g) The chief shall deny the issuance of a permit if he or she determines that the applicant has committed a substantial violation of a previously issued permit, including the erosion and sediment control plan, or a substantial violation of one or more of the rules promulgated hereunder, and has failed to abate or seek review of the violation. In the event that the chief finds that a substantial violation has occurred with respect to existing operations and that the operator has failed to abate or seek review of the violation in the time prescribed, he or she may suspend the permit on which said violation exists, after which suspension the operator shall forthwith cease all work being conducted under the permit until the chief reinstates the permit, at which time the work may be continued. The chief shall make written findings of any such determination made by him or her and may enforce the same in the circuit courts of this state and the operator may appeal such suspension pursuant to the provisions of section twenty-five of this article. The chief shall make a written finding of any such determination.

(h) Any person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five thousand dollars, or be
§22-21-7. Consent and agreement of coal owner or operator.

(a) No permit shall be issued for a coalbed methane well unless and until the applicant has obtained and filed with the chief a consent and agreement from each owner and each operator of any workable coal seam in West Virginia twenty-eight inches or more in thickness which is within seven hundred fifty horizontal feet of the proposed well bore and (i) which coal seam the applicant proposes to stimulate or (ii) which coal seam is within one hundred vertical feet above or below a coal seam which the applicant proposes to stimulate. The requirement for consent and agreement contained in this section shall not be considered to impair, abridge or affect any contractual rights or objections arising out of a contract or lease which provides for the development of coalbed methane and stimulation of wells between the applicant and any coal owner or operator and the existence of any such contract or lease shall constitute a waiver of the requirement to file an additional signed consent and agreement. Such consent and agreement must provide: (i) That such coal owner or operator has been provided with a copy of the application for permit as required by section six of this article and with a copy of all plats and documents which must accompany the application; and (ii) that such coal owner or operator consents and agrees to the stimulation of the coal seam as described in such application.

(b) In the absence of the applicant submitting the consent described in subsection (a) above, the applicant may submit a request for hearing before the board accompanied by an affidavit which shall include the following:

(1) A statement that a coal owner or operator as described in subsection (a) of this section has refused to provide written authorization to stimulate the well;
(2) A statement detailing the efforts undertaken to obtain such authorization;

(3) A statement setting out any known reasons for the authorization not being provided; and

(4) A statement or other information in addition to that provided pursuant to subdivision (5), subsection (b), section six of this article necessary to provide prima facie evidence that the proposed method of stimulation will not render the coal seam unworkable, or considering all factors, impair mine safety.

(c) Upon receipt of a request and affidavit as set forth in subsection (b) of this section, the chief shall forward the application to the board to consider the proposed stimulation, or if other objections or notices are filed requiring a hearing before the board, the request hereunder may be included for consideration by the board along with other matters related to the application.

(d) If the authorization of a coal owner or operator has been withheld based upon reasons related to safety, the chief shall, concurrent with submission of the request and affidavit to the board, submit a copy of the application to the director of the office of miners’ health, safety and training who shall review the application as to issues of mine safety and within thirty days submit recommendations to the board.

§22-21-20. Spacing.

No coalbed methane well may be drilled closer than one hundred feet of the outermost boundary of the coalbed methane tract, leased premises, or unit from which coalbed methane is or will be produced or within one thousand six hundred linear feet of the location of an existing well or a proposed well for which a permit application is on file, unless all owners and operators of any affected workable coal seams agree in writing.
8 Affected workable coal seams for purposes of this section shall be those which will be penetrated or those seams more than twenty-eight inches in thickness from which production is targeted. Spacing shall otherwise be as provided in a pooling order issued by the chief, an order establishing special field rules or an order issued by the review board.

CHAPTER 110

(S. B. 748 — By Senators Kessler, Fanning, Jenkins, Minard, Caruth, Lanham, McKenzie and Weeks)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 21, 2005.]

AN ACT to amend and reenact §22-11-7a of the Code of West Virginia, 1931, as amended, relating to mitigation; deleting the mitigation requirement for isolated waters; and requiring the Director to provide credit for mitigation required as a component of the permit issuable by the U. S. Army Corps of Engineers pursuant to 33 U. S. C. §1344 to the extent that it satisfies state requirements.

Be it enacted by the Legislature of West Virginia:

That §22-11-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions; effective date.
(a) Any applicant for the water quality certification that seeks certification of activities covered by the United States army corps of engineers permits issued in accordance with 33 U. S. C. § 1344 and 33 C. F. R. Parts 323 or 330 for use at or in conjunction with a surface coal mining operation as defined in section three, article three of this chapter, certification may be issued subject to the following conditions:

(1) If the applicant's surface coal mining operation will not impact waters of the state designated as national resource waters and streams where trout naturally reproduce and will not impact wetlands of the state in a manner inconsistent with all applicable state or federal standards as the case may be, as required by the federal Clean Water Act, and if the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States army corps of engineers permits issued in accordance with 33 U. S. C. § 1344 and 33 C. F. R. Parts 323 or 330 is less than two hundred fifty acres, then the director may issue a water quality certification pursuant to the requirements of this section. If the watershed above the toe of the farthest downstream permanent structure impacted is equal to or greater than two hundred fifty acres, the director shall require that mitigation be undertaken. Additionally, the director may require mitigation for temporary impacts to waters of the state as specified in subdivision (2) of this subsection.

(2) If the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States army corps of engineers permits issued in accordance with 33 U. S. C. § 1344 and 33 C. F. R. Parts 323 or 330 is greater than or equal to two hundred fifty acres and all other necessary requirements are met consistent with this section, the director shall further condition a water quality certification on a requirement that the applicant mitigate the expected water quality impacts under the following conditions:
(A) The water quality certification may require mitigation at a ratio appropriate to the type of waters impacted, consistent with state or federal standards as required by the federal Clean Water Act, for the types and locations of waters impacted;

(B) The Director may accept mitigation on the permitted area, mitigation off the permitted area, mitigation banking of waters of the state, or any combination thereof, or any other mitigation measure acceptable to the Director; and

(C) The Director shall provide credit for any mitigation that is a required component of the permit issued by the United States Army Corps of Engineers pursuant to 33 U. S. C. §1344 to the extent that it satisfies required mitigation pursuant to this section.

(D) Upon completion of the work required by an agreement to conduct operations authorized by this subsection the surface coal mining operation shall obtain a certification from a registered professional engineer that all mitigation work specified in the agreement has been completed in accordance with the conditions of the water quality certification. The director shall promptly review the certification and provide to the surface coal mining operation with notice that all mitigation work has been successfully completed, or that further mitigation work is necessary to meet the conditions imposed by the water quality certification. The mitigation amount may not exceed two hundred thousand dollars per acre of stream disturbed above the toe of the farthest downstream permanent structure. Those moneys shall be deposited in the stream restoration fund under the jurisdiction of the Division of Environmental Protection and any expenditures from this fund after the thirtieth day of June, one thousand nine hundred ninety-eight, shall not be authorized from collections but shall only be authorized by appropriation by the Legislature. Additionally, the expenditures are only authorized in those
68 counties where the activity leading to the mitigation occurred
69 or in those counties adjacent to the counties where the activity
70 leading to the mitigation occurred. The Director shall by the
71 thirty-first day of December of each year provide a report to the
72 Joint Committee on Government and Finance on receipts and
73 expenditures from the stream restoration fund, the number of
74 acreage reclaimed by the Division through the use of these
75 funds and the effectiveness of achieving stream restoration
76 through the payment of the mitigation amounts into the fund in
77 lieu of reclamation by the certificate holder.

78 (3) The Director shall confer with representatives of the
79 surface coal mining industry and representatives of environ-
80 mental organizations with an interest in water quality in
81 developing a manual of approval options for mitigation on
82 permitted areas, mitigation off permitted areas and mitigation
83 involving banking of waters of the state.

84 (4) The proposed surface coal mining operation shall
85 comply with all applicable state and federal laws, rules and
86 regulations.

87 (5) The Director shall propose rules for legislative approval
88 in accordance with article three, chapter twenty-nine-a of this
89 code, for the purpose of implementing the provisions of this
90 section which rules shall include, but not be limited to, the
91 following:

92 (A) Establishing all necessary operational and performance
93 requirements for an operator undertaking activities covered by
94 this section;

95 (B) Modifying the provisions of this section, when neces-
96 sary and appropriate to bring the provisions of this section into
97 compliance with state or federal law or regulation; and
(C) Establishing the specific operational requirements for mining operations consistent with this section appropriate to protect the waters of this state during and following mining operations.

(b) The Joint Committee on Government and Finance may undertake or facilitate a study of the impact of mountaintop mining and valley fills upon the state of West Virginia.

(1) To facilitate the study, the Joint Committee on Government and Finance is further authorized to coordinate with and seek funding from appropriate federal agencies to facilitate the study including, but not limited to: The Environmental Protection Agency, Army Corps of Engineers, Office of Surface Mining and the Fish and Wildlife Service.

(2) In order to facilitate the research, the Joint Committee on Government and Finance shall appoint a council to coordinate and direct the research. The composition of the council shall be determined by the Joint Committee, but shall include representatives from the various interested parties as determined solely by the Joint Committee.

CHAPTER 111

(S. B. 406 — By Senators Dempsey and Unger)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-22B-1, §22-22B-2, §22-22B-3, §22-22B-4, §22-22B-5, §22-22B-6, §22-22B-7,
§22-22B-8, §22-22B-9, §22-22B-10, §22-22B-11, §22-22B-12, §22-22B-13 and §22-22B-14, all relating to the Uniform Environmental Covenants Act generally; defining certain terms; explaining rights and responsibilities of persons who sign environmental covenant; providing for subordination of interests; establishing requirements of environmental covenant; providing that environmental covenant runs with the land and is valid if meets requirements of act; setting forth effect of environmental covenant on other instruments; establishing relationship between environmental covenants and other land-use law; requiring environmental covenants be provided to certain persons; requiring environmental covenant amendments and terminations be recorded; providing environmental covenant is perpetual unless certain conditions met; authorizing amendment or termination by court or by consent; providing for enforcement of environmental covenant; providing for uniformity of application and construction of act; authorizing modification or application of certain parts of federal Electronic Signatures in Global and National Commerce Act; and providing for severability.

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 §22-22B-1, §22-22B-2, §22-22B-3, §22-22B-4, §22-22B-5, §22-22B-6, §22-22B-7, §22-22B-8, §22-22B-9, §22-22B-10, §22-22B-11, §22-22B-12, §22-22B-13 and §22-22B-14, all to read as follows:

ARTICLE 22B. UNIFORM ENVIRONMENTAL COVENANTS ACT.

§22-22B-1. Short title.
§22-22B-5. Validity; effect on other instruments.
§22-22B-6. Relationship to other land-use law.
§22-22B-9. Duration; amendment by court action.
§22-22B-10. Amendment or termination by consent.
§22-22B-12. Uniformity of application and construction.

§22-22B-1. Short title.

1 This article may be cited as the Uniform Environmental Covenants Act.


1 As used in this article and insofar as they are not in conflict with article twenty-two of this chapter, the following terms shall mean:

4 (1) “Activity and use limitations” means restrictions or obligations created under this article with respect to real property.

7 (2) “Agency” means the Department of Environmental Protection or any federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

(3) “Common interest community” means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person’s ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.

(4) “Environmental covenant” means a servitude arising under an environmental response project that imposes activity and use limitations.
(5) "Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

(A) Under a federal or state program governing environmental remediation of real property, including article twenty-two of this chapter;

(B) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

(C) Under a state voluntary clean-up program authorized in article twenty-two of this chapter.

(6) "Holder" means the grantee of an environmental covenant as specified in subsection (a), section three of this article.

(7) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.


(a) Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of
local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

(b) A right of an agency under this article or under an environmental covenant, other than a right as a holder, is not an interest in real property.

c) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights or protections granted or imposed under law other than this article except as provided in the covenant.

d) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(2) This article does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners’ association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that
person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.


(a) An environmental covenant must:

1. State that the instrument is an environmental covenant executed pursuant to this article;

2. Contain a legally sufficient description of the real property subject to the covenant;

3. Describe the activity and use limitations on the real property;

4. Identify every holder;

5. Be signed and notarized by the agency, every holder, and unless waived by the agency every owner of the fee simple of the real property subject to the covenant; and

6. Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a) of this section, an environmental covenant may contain other information, restrictions and requirements agreed to by the persons who signed it, including any:

1. Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;
(2) Requirements for periodic reporting describing compliance with the covenant;

(3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure and the location and extent of the contamination;

(5) Limitation on amendment or termination of the covenant in addition to those contained in sections nine and ten of this article; and

(6) Rights of the holder in addition to its right to enforce the covenant pursuant to section eleven of this article.

(c) In addition to other conditions for its approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

§22-22B-5. Validity; effect on other instruments.

(a) An environmental covenant that complies with this article runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to a person other than the original holder;

(3) It is not of a character that has been recognized traditionally at common law;
(4) It imposes a negative burden;

(5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) The benefit or burden does not touch or concern real property;

(7) There is no privity of estate or contract;

(8) The holder dies, ceases to exist, resigns or is replaced; or

(9) The owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of the enactment of this article during the regular session of the Legislature in two thousand five is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b) of this section or because it was identified as an easement, servitude, deed restriction or other interest. This article does not apply in any other respect to such an instrument.

(d) This article does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of this state.

§22-22B-6. Relationship to other land-use law.

This article does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this article
regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this article.


(a) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

(1) Each person that signed the covenant;

(2) Each person holding a recorded interest in the real property subject to the covenant;

(3) Each person in possession of the real property subject to the covenant;

(4) Each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) Any other person the agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.


(a) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in subsection (c), section nine of this article, an environmental covenant is subject to the
laws of this state governing recording and priority of interests in real property.

§22-22B-9. Duration; amendment by court action.

(a) An environmental covenant is perpetual unless it is:

(1) By its terms limited to a specific duration or terminated by the occurrence of a specific event;

(2) Terminated by consent pursuant to section ten of this article;

(3) Terminated pursuant to subsection (b) of this section;

(4) Terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) Terminated or modified in an eminent domain proceeding, but only if:

(A) The agency that signed the covenant is a party to the proceeding;

(B) All persons identified in subsections (a) and (b), section ten of this article are given notice of the pendency of the proceeding; and

(C) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in subsections (a) and (b), section ten of this article have been
given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The agency’s determination or its failure to make a determination upon request is subject to review pursuant to article five, chapter twenty-nine-a of this code.

(c) Except as otherwise provided in subsections (a) and (b) of this section, an environmental covenant may not be extinguished, limited or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

(d) An environmental covenant may not be extinguished, limited, or impaired except as authorized by this article.

§22-22B-10. Amendment or termination by consent.

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) The agency;

(2) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

(3) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) Except as otherwise provided in subdivision (2), subsection (d) of this section, the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment
of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

d) Except as otherwise provided in an environmental covenant:

(1) A holder may not assign its interest without consent of the other parties;

(2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a) of this section; and

(e) A court of competent jurisdiction may fill a vacancy in the position of holder.


1 A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

1 A party to the covenant;

(2) The agency or, if it is not the agency, the Department of Environmental Protection;

(3) Any person to whom the covenant expressly grants power to enforce;

(4) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or
(5) A municipality or other unit of local government in which the real property subject to the covenant is located.

(b) This article does not limit the regulatory authority of the agency or the Department of Environmental Protection under law other than this article with respect to an environmental response project.

(c) A person is not responsible for or subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

§22-22B-12. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.


This article modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U. S. C. Section 7001, et seq.) but does not modify, limit or supersede Section 101 of said Act (15 U.S.C. Section 7001(a)) or authorize electronic delivery of any of the notices described in Section 103 of said Act (15 U. S. C. Section 7003(b)).


If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-27-1, §22-27-2, §22-27-3, §22-27-4, §22-27-5, §22-27-6, §22-27-7, §22-27-8, §22-27-9, §22-27-10, §22-27-11, and §22-27-12, all relating to establishing a program to encourage voluntary reclamation of lands adversely affected by mining by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or reduction and abatement of water pollution; stating legislative purpose and intent; setting forth legislative findings; providing definitions for applicable terms; defining eligibility for the protections and immunities; setting forth specific exemptions from liability for landowners; setting forth specific exemptions from liability for persons who provide equipment at no cost or at cost for a reclamation project; and providing exceptions to coverage under the proposed legislation.

Be it enacted by the Legislature of West Virginia:


ARTICLE 27. ENVIRONMENTAL GOOD SAMARITAN ACT.

§22-27-1. Declaration of policy and purpose.
§22-27-1. Declaration of policy and purpose.

This article is intended to encourage the improvement of land and water adversely affected by mining, to aid in the protection of wildlife, to decrease soil erosion, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of the citizens of this state and to eliminate or abate hazards to health and safety. It is the intent of the Legislature to encourage voluntary reclamation of lands adversely affected by mining. The purpose of this article is to improve water quality and to control and eliminate water pollution resulting from mining extraction or exploration by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or the reduction and abatement of water pollution. This article is not intended to limit the liability of a person who by law is or may become responsible to reclaim the land or address the water pollution or anyone who by contract, order or otherwise is required to or agrees to perform the reclamation or abate the water pollution.

§22-27-2. Legislative findings.

The Legislature finds and declares as follows:

1. The state’s long history of mining has left some lands and waters unreclaimed and polluted.

2. The state’s long history of mining has left some lands and waters unreclaimed and polluted.
4 (2) These abandoned lands and polluted waters are unproductive, diminish the tax base and are serious impediments to the economic welfare and growth of this state.

7 (3) The unreclaimed lands and polluted waters present a danger to the health, safety and welfare of the people and the environment.

10 (4) The State of West Virginia does not possess sufficient resources to reclaim all the abandoned lands and to abate the water pollution.

13 (5) Numerous landowners, citizens, watershed associations, environmental organizations and governmental entities who do not have a legal responsibility to reclaim the abandoned lands or to abate the water pollution are interested in addressing these problems but are reluctant to engage in such reclamation and abatement activities because of potential liabilities associated with the reclamation and abatement activities.

20 (6) It is in the best interest of the health, safety and welfare of the people of this state and the environment to encourage reclamation of the abandoned lands and abatement of water pollution.

24 (7) That this act will encourage and promote the reclamation of these properties.


1 As used in this article unless used in a context that clearly requires a different meaning, the term:

3 (a) "Abandoned lands" means land adversely affected by mineral extraction and left or abandoned in an unreclaimed or inadequately reclaimed condition.
(b) "Consideration" means something of value promised, given or performed in exchange for something which has the effect of making a legally enforceable contract. For the purpose of this article, the term does not include a promise to a landowner to repair damage caused by a reclamation project or water pollution abatement project when the promise is made in exchange for access to the land.

(c) "Department" means the West Virginia Department of Environmental Protection.

(d) "Eligible land" means land adversely affected by mineral extraction and left or abandoned in an unclaimed or inadequately reclaimed condition or causing water pollution and for which no person has a continuing reclamation or water pollution abatement obligation.

(e) "Eligible landowner" means a landowner that provides access to or use of the project work area at no cost for a reclamation or water pollution abatement project who is not or will not become responsible under state or federal law to reclaim the land or address the water pollution existing or emanating from the land.

(f) "Eligible project sponsor" means a person that provides equipment, materials or services at no cost or at cost for a reclamation or water pollution abatement project who is not or will not become responsible under state or federal law to reclaim the land or address the water pollution existing or emanating from the land.

(g) "Landowner" means a person who holds either legal or equitable interest in real property.

(h) "Mineral" means any aggregate or mass of mineral matter, whether or not coherent, which is extracted by mining. This includes, but is not limited to, limestone, dolomite, sand,
gravel, slate, argillite, diabase, gneiss, micaceous sandstone
known as bluestone, rock, stone, earth, fill, slag, iron ore, zinc
ore, vermiculite, clay and anthracite and bituminous coal.

(i) “Permitted activity site” means a site permitted by the
department of environmental protection under the provisions of
article two, three or four of this chapter.

(j) “Person” means a natural person, partnership, association,
association members, corporation, an agency, instrumentality or entity of federal or state government or other legal
entity recognized by law as the subject of rights and liabilities.

(k) “Project work area” means that land necessary for a
person to complete a reclamation project or a water pollution
abatement project.

(l) “Reclamation project” means the restoration of eligible
land to productive use by regrading and revegetating the land to
stable contours that blend in and complement the drainage
pattern of the surrounding terrain with no highwalls, spoil piles
or depressions to accumulate water, or to decrease or eliminate
discharge of water pollution.

(m) “Water pollution” means the man-made or man-
induced alteration of the chemical, physical, biological and
radiological integrity of water located in the state.

(n) “Water pollution abatement facilities” means the
methods for treatment or abatement of water pollution located
on eligible lands. These methods include, but are not limited to,
a structure, system, practice, technique or method constructed,
installed or followed to reduce, treat or abate water pollution.

(o) “Water pollution abatement project” means a plan for
treatment or abatement of water pollution located on eligible
lands.
§22-27-4. Eligibility and project inventory.

(a) General rule. — An eligible landowner or eligible project sponsor who voluntarily provides equipment, materials or services at no charge or at cost for a reclamation project or a water pollution abatement project in accordance with the provisions of this article is immune from civil liability and may raise the protections afforded by the provisions of this article in any subsequent legal proceeding which is brought to enforce environmental laws or otherwise impose liability. An eligible landowner or eligible project sponsor is only entitled to the protections and immunities provided by this article after meeting all eligibility requirements and compliance with a detailed written plan of the proposed reclamation project or water pollution abatement project which is submitted to and approved by the department. The project plan shall include the objective of the project and a description of the work to be performed to accomplish the objective and shall, additionally, identify the project location, project boundaries, project participants and all landowners.

(b) Notice. — The department shall give written notice by certified mail to adjacent property owners and riparian land owners located downstream of the proposed project, provide Class IV public notice of the proposed project in a newspaper of general circulation, published in the locality of the proposed project, and shall give public notice in the state register. The project sponsor may also provide public notice. Any person having an interest which may be adversely affected by the proposed project has the right to file written objections to the department within thirty days after receipt of the written notice or within thirty days after the last publication of the Class IV notice. The department shall provide to the project sponsor a copy of each written objection received during the public comment period, which shall conclude at the expiration of the applicable thirty-day period provided for in this section.
(c) **Advice.** — The department may provide advice to the
landowner or to other interested persons based upon the
department’s knowledge and experience in performing reclama-
tion projects and water pollution abatement projects.

(d) **Departmental review.** — The department shall review
each proposed reclamation project and approve the project if
the department determines the proposed project:

1. Will result in the appropriate reclamation and regrading
   of the land according to all applicable laws and regulations;

2. Will result in the appropriate revegetation of the site;

3. Is not likely to result in pollution as defined in article
   eleven of this chapter; and

4. Is likely to improve the water quality and is not likely
to make the water pollution worse.

(e) **Project inventory.** — The department shall develop and
maintain a system to inventory and record each project, the
project location and boundaries, each landowner and each
person identified in a project plan provided to the department.
The inventory shall include the results of the department’s
review of the proposed project and, where applicable, include
the department’s findings under subsection (b), section ten of
this article.

(f) **Appeal.** — A person aggrieved by a department decision
to approve or disapprove a reclamation project or a water
pollution abatement project has the right to file an appeal with
the environmental quality board under the provisions of article
one, chapter twenty-two-b of this code.

§22-27-5. Landowner liability limitation and exceptions.
(a) General rule. — Except as specifically provided in subsections (b) and (c) of this section, an eligible landowner who provides access to the land, without charge or other consideration, which results in the implementation of a reclamation project or a water pollution abatement project:

1. Is immune from liability for any injury or damage suffered by persons working under the direct supervision of the project sponsor while such persons are within the project work area;

2. Is immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of an act or omission of the project sponsor which occurs during the implementation of the reclamation project or the water pollution abatement project;

3. Is immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a reclamation project or a water pollution abatement project;

4. Is immune from liability for any pollution resulting from a reclamation project or water pollution abatement project;

5. Is immune from liability for the operation, maintenance or repair of the water pollution abatement facilities constructed or installed during the project unless the eligible landowner negligently damages or destroys the water pollution abatement facilities or denies access to the project sponsor who is responsible for the operation, maintenance or repair the water pollution abatement facilities.

(b) Duty to warn. — The eligible landowner shall warn the project sponsor of known, latent, dangerous conditions located on the project work area which are not the subject of the reclamation project or the water pollution abatement project.
32 Nothing in this article shall limit an eligible landowner’s liability which results from the eligible landowner’s failure to warn of such known, latent, dangerous conditions.

35 (c) Exceptions to immunity. — Nothing in this article may limit an eligible landowner’s liability which results from a reclamation project or water pollution abatement project and which would otherwise exist:

39 (1) For injury or damage resulting from the landowner’s acts or omissions which are reckless or constitute gross negligence or willful misconduct.

42 (2) Where the landowner accepts or requires consideration for allowing access to the land for the purpose of implementing a reclamation project or water pollution abatement project or to operate, maintain or repair water pollution abatement facilities constructed or installed during a water pollution abatement project.

48 (3) For the landowner’s unlawful activities.

49 (4) For damage to adjacent landowners or downstream riparian landowners which results from a reclamation project or water pollution abatement project where written notice or public notice of the proposed project was not provided.

§22-27-6. Project sponsor liability limitation and exceptions.

1 (a) General rule. — Except as specifically provided in subsection (b) of this section, a project sponsor who provides equipment, materials or services at no cost or at cost for a reclamation project or a water pollution abatement project:

5 (1) Is immune from liability for any injury to or damage suffered by a person which arises out of or occurs as a result of the water pollution abatement facilities constructed or installed during the water pollution abatement project;
(2) Is immune from liability for any pollution emanating from the water pollution abatement facilities constructed or installed during the water pollution abatement project unless the person affects an area that is hydrologically connected to the water pollution abatement project work area and causes increased pollution by activities which are unrelated to the implementation of a water pollution abatement project, Provided that the project sponsor implements, operates, and maintains the project in accordance with the plans approved by the department;

(3) Is immune from liability for the operation, maintenance and repair of the water pollution abatement facilities constructed or installed during the water pollution abatement project.

(b) Exceptions. —

(1) Nothing in this article shall limit in any way the liability of a project sponsor which liability results from the reclamation project or the water pollution abatement project and which would otherwise exist:

(A) For injury or damage resulting from the project sponsor's acts or omissions which are reckless or constitute gross negligence or willful misconduct.

(B) For the person's unlawful activities.

(C) For damages to adjacent landowners or downstream riparian landowners which result from a reclamation project or a water pollution abatement project where written notice or public notice of the proposed project was not provided.

(2) Nothing in this article shall limit in any way the liability of a person who the department has found to be in violation of any other provision or provisions of this chapter.
1 Nothing in this article may be construed as waiving any existing permit requirements or waiving any local zoning requirements.

§22-27-8. Relationship to federal and state programs.
1 The provisions of this article shall not prevent the department from enforcing requirements necessary or imposed by the federal government as a condition to receiving or maintaining program authorization, delegation, primacy or federal funds.

1 If the department determines it will further the purposes of this article, the department may issue a general permit for each reclamation project or water pollution abatement project, which shall:

   (1) Encompass all of the activities included in the reclamation project or water pollution abatement project.

   (2) Be issued in place of any individual required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

1 (a) General rule. — Any person who under existing law shall be or may become responsible to reclaim the land or treat or abate the water pollution or any person who for consideration or who receives some other benefit through a contract or any person who through a consent order and agreement or is ordered to perform or complete reclamation or treat or abate water pollution as well as a surety which provided a bond for the site is not eligible nor may receive the benefit of the protections and immunities available under this article.
(b) Projects near mining or coal refuse sites. — This article does not apply to a reclamation project or a water pollution abatement project that is located adjacent to, hydrologically connected to or in close proximity to a site permitted under articles two, three or four of this chapter unless:

(1) The reclamation project or water pollution abatement project is submitted to the department in writing before the project is started; and

(2) The department finds:

(A) The reclamation project or the water pollution abatement project will not adversely affect the permittee's obligations under the permit and the applicable law;

(B) The activities on the project work area cannot be used by the permittee to avoid the permittee's reclamation or water pollution treatment or abatement obligations; and

(3) The department issues a written notice of its findings and the approval of the project.

(c) Projects in lieu of civil or administrative penalties. — This article shall not apply to a reclamation project or a water pollution abatement project that is performed in lieu of paying civil or administrative penalties.


A public or private water supply affected by contamination or the diminution caused by the implementation of a reclamation project or the implementation of a water pollution abatement project shall be restored or replaced by the department with an alternate source of water adequate in quantity and quality for the purposes served by the water supply.

The department may propose legislative rules in accordance with article three, chapter twenty-nine-a of this code as needed to implement the provisions of this article.
ARTICLE 28. COMMUNITY INFRASTRUCTURE INVESTMENT PROJECTS.

§22-28-1. Legislative findings.

The Legislature finds and declares that:

(a) There is a growing need for the extension of public water and sewer services throughout the state and that the extension of such services and facilities maintains the health and economic vitality of the citizens of West Virginia. In addition, access to such infrastructure facilities is equal essential to development in all regions of the state.

(b) The extension of public water and sewer services promotes public health and safety in that it enables businesses, residences, municipalities and other entities to comply with state and federal water quality standards.

(c) The cost of publicly owned sewer and water facilities are normally born by the state, its subdivisions and the citizens of West Virginia and public indebtedness incurred to construct such facilities constitutes a financial burden on the state and its political subdivisions, as well as residential consumers.
(d) The rates for public water and sewer services charged to customers of all service classes have risen in recent years due primarily to the cost of utility construction and the cost of debt service associated with such construction.

(e) There are private business entities that are in need of water and sewer services for various residential, commercial and industrial projects throughout the state and that those entities are willing to pay the cost associated with constructing needed public water and sewer services and to dedicate the facility to the local certificated public utility after construction of such facilities.

(f) Those private business entities need a method by which to enter into agreements with municipal utilities or public service districts that would enable the construction of new infrastructure as well as the expansion of existing facilities.

(g) The dedication of such infrastructure facilities to the local certificated public utility without cost greatly benefits the citizens of the state and promotes industrial, commercial and economic development.


For the purposes of this article, the following words or terms defined have the meaning ascribed to them herein:

(a) “Certificate of appropriateness” shall refer to the document evidencing approval of a project and is issued by the Secretary of the Department of Environmental Protection pursuant to the provisions of this article. The issuance of such a certificate shall exempt the project from the provisions of section eleven, article two, chapter twenty-four of this code and, in the case of a public service district, from the provisions of section twenty-five, article thirteen-a, chapter sixteen of this code.
(b) "Community infrastructure investment agreement" shall refer to a written agreement between a municipal utility or public service district and a person that provides for the transfer of legal title to a project facility from the person to the municipal utility or public service district.

(c) "Community infrastructure investment project" shall refer to any newly constructed or enlarged and improved project facility that may be transferred to a municipal utility or public service district without cost to the municipal utility or public service district pursuant to the provisions of this article.

(d) "Person" shall refer to any individual, partnership, firm, society, association, trust, corporation or other business entity.

(e) "Project cost" shall refer to the capital cost of proposed community infrastructure investment project facilities to be constructed pursuant to the provisions of this article. "Project cost" shall also refer to newly constructed or enlarged and improved existing project facilities. Project cost shall not refer to any of the costs or expenses of ordinary operation and maintenance of the project facilities once they become operational.

(f) "Project facilities" shall refer to waste water treatment plants or water treatment plants constructed pursuant to the provisions of this article and include, but are not limited to, related storage buildings or structures, meters, hydrants, pump stations, force and gravity mains, transmission lines and other such fixtures related to the construction of water or sewer facilities. Project facilities shall not refer to the ordinary extension of collection and distribution lines or facilities from or to the project constructed pursuant to the provisions of this article to the property of any user of project facilities.
(g) "Public service district" shall refer to those public corporations and political subdivisions of the state created pursuant to the provisions of section two, article thirteen-a, chapter sixteen of this code.

(h) "Secretary" shall refer to the Secretary of the Department of Environmental Protection established in section six, article one of this chapter.

§22-28-3. Creation of community infrastructure investment project; certificate of appropriateness; rule-making authority.

(a) There is hereby created a Community Infrastructure Investment Program within the Department of Environmental Protection. This Program will facilitate the construction or expansion of project facilities for the promotion of economic development and the protection of public health and environment in the state. Any public service district or municipal utility that wishes to accept a project facility constructed pursuant to a community infrastructure investment agreement with a project cost not to exceed ten million dollars may apply to the secretary for approval of such project. Nothing herein shall be construed to require a public service district or municipal utility to use this program.

(b) Where the Secretary shall have found that the community infrastructure investment project shall have met the requirements contained in this article, the Secretary shall issue a certificate of appropriateness to the municipal utility or public service district as evidence of such approval.

(c) Municipal utilities or public service districts may jointly enter into agreements with persons for the purpose of applying to the Secretary of the Department of Environmental Protection for approval of project facilities. The minimum terms and
conditions of such agreements are established by the provisions of section four of this article.

(d) The Secretary will, by legislative rule, establish the criteria for the approval of such projects and shall have sole authority to make such determination.

§22-28-4. Community infrastructure investment agreements; report to Joint Committee on Government and Finance.

(a) Municipal utilities and public service districts have the power and authority to enter into community infrastructure investment agreements with any person for the purpose of constructing new project facilities or substantially improving or expanding project facilities.

(b) Notwithstanding any other provision in this code to the contrary, the Secretary shall have the power and the authority to review and approve all such community infrastructure investment agreements pursuant to this article.

(c) Each such agreement shall contain as a minimum the following terms and conditions to be performed by the parties thereto:

(1) The project facilities shall be engineered and constructed in accordance with the requirements for new construction established by the municipal utility or public service district;

(2)Proof or certification of the financial ability of the municipal utility or public service district to maintain and operate the public facilities;

(3) Certification that upon completion and activation of the project facility or improvements to the project facility, the title
to the public facility shall be transferred without cost to the
municipal utility or public service district;

(4) A finding that the construction of the new public
facility, or the substantial improvement or expansion of an
existing public facility, either: (i) Fosters economic growth by
promoting commercial, industrial or residential development;
and (ii) improves water quality or otherwise enables the
affected territory to achieve compliance with any applicable
state or federal health or environmental law;

(5) The municipal utility or public service district will
receive or otherwise obtain without cost to the public all
necessary rights-of-way for the operation of the public facility;

(6) The rates charged by the municipal utility or public
service district to new customers to be served by the project
facility shall be the rates in effect at the time of transfer of the
project facility to the utility plus any additional cost of service
borne by the municipal utility or public service district as a
result of the project facility until such time as new rates may be
finally enacted by the municipal utility or proposed by the
public service district and approved by the Public Service
Commission and the rates charged by the municipal utility or
the public service district to existing customers shall not be
impacted as a result of the obligation of the public service
district or municipal utility pursuant to the community infra-
structure investment agreement;

(7) Confirmation that the agreement does not violate any
of the bond covenants imposed on the municipal utility or
public service district;

(8) Proof that necessary permits, where applicable, have
been obtained from the Division of Health and the Department
of Environmental Protection;
(9) Evidence that the person responsible for the construction of or improvements to the public facility has provided funding to the municipal utility or public service district for the engagement of an engineer qualified to design and certify the structural integrity and capacity of the project facility;

(10) Proof that the person responsible for construction of or improvements to the public facility has obtained a performance bond payable to the municipal utility or public service district equal to the estimated cost of construction: Provided, That the form of the bond required by this section shall be approved by the Secretary and may include, at the option of the Secretary, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, letters of credit, performance bonding fund participation as established by the Secretary, self-bonding or a combination of these methods; and

(11) Any other conditions that the secretary may determine to be relevant as established.

(d) Where the Secretary has found that the community infrastructure investment agreement meets the requirements contained in this article, the Secretary shall issue a certificate of appropriateness to the parties as evidence of such approval.

(e) Not later than thirty days prior to the issuance of a certificate of appropriateness for any community infrastructure investment project, the Secretary shall first submit a report of the same to the Joint Committee on Government and Finance.

§22-28-5. Authority of the Department of Environmental Protection and Division of Health not affected.

Nothing contained in this article shall be construed to affect the authority of the Department of Environmental
Protection pursuant to the provisions of this chapter, nor the
authority of the Division of Health pursuant to the provisions
of chapter sixteen of this code. Facilities discharging into the
Potomac River watershed and its tributaries shall be designed
to achieve nutrient reductions, for both Nitrogen and Phospho-
rus, consistent with West Virginia’s participation in the
Chesapeake Bay Program upon implementation of the Chesa-
apeake Bay standards by the Secretary.

§22-28-6. Time for approval.

The Secretary shall approve or reject all applications for a
community investment infrastructure project or agreement
within thirty days, unless, by mutual agreement, such time
period is extended. In no case shall the time period extend
beyond ninety days.

§22-28-7. Fees.

The Secretary shall establish by legislative rule a schedule
of fees reasonably calculated to pay for the costs of the
administration of the provisions of this article.

§22-28-8. Exemption from Public Service Commission approval.

All project facilities constructed or improved pursuant to
the provisions of this article shall be exempt from the provi-
sions of chapter twenty-four of this code until such time as title
to the public facility shall be transferred to the municipal utility
or public service district. Nothing herein shall be construed to
give the Public Service Commission authority to regulate or
intervene in the approval and construction of any project or
agreement provided in this article. Notwithstanding any other
provision of this code to the contrary, the acquisition of a
project facility by a municipality or public service district
under the provisions of this article shall not require the

1 The Secretary shall have the authority to propose legisla-
2 tive rules for promulgation in accordance with the provisions
3 of section one, article three, chapter twenty-nine-a of this code
4 to effectuate the purposes of this article. Notwithstanding any
5 provision of this code to the contrary, the proposed legislative
6 rules for this article filed in the state register by the first day of
7 August, two thousand five, may be filed as emergency rules.

CHAPTER 114

(Com. Sub. for S. B. 424 — By Senators Unger and Yoder)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §44-1-29, relating to the
authority of personal representatives with regard to conservation
or preservation easements; and providing that a personal represen-
tative, trustee, administrator or executor may sell, donate or
amend conservation or preservation easements under certain
conditions.

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 §44-1-29, to read as
follows:
ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-29. Authority of personal representative concerning conservation and preservation easements.

(a) A personal representative, trustee, administrator or executor of a decedent or a decedent’s estate is hereby granted the authority to:

1. Sell a conservation or preservation easement created prior to the decedent’s death under article twelve, chapter eight-a of this code or article twelve, chapter twenty of this code;

2. Donate a conservation or preservation easement created prior to the decedent’s death under article twelve, chapter eight-a of this code or article twelve, chapter twenty of this code;

3. Amend a conservation or preservation easement created prior to the decedent’s death under article twelve, chapter eight-a of this code or article twelve, chapter twenty of this code and recorded on the decedent’s real property in order to obtain the benefit of the estate tax exclusion allowed under §2031(c) of the United States Internal Revenue Code of 1986, as amended;

4. Execute a deed of conservation or preservation easement and related documents when decedent’s application to establish and convey an easement was approved by a holder during the nine-month period preceding the date of decedent’s death, but the deed of conservation or preservation easement and related documents were not signed by the decedent before his or her death: Provided, That before executing these documents, the personal representative, trustee or executor complies with the provisions of subsection (b) of this section; or

5. Execute a deed of conservation or preservation easement and related documents when decedent’s application to establish and convey an easement was submitted to a holder
before decedent’s death but is approved by a holder after the decedent’s death: Provided, That before executing these documents, the personal representative, trustee, administrator or executor complies with the provisions of subsection (b) of this section.

(b) The personal representative, trustee, administrator or executor shall ensure that the sale, donation, amendment or transfer of a conservation or preservation easement complies with the following:

(1) The proposed sale, donation, transfer or amendment satisfies the requirements set forth in the provisions of article twelve, chapter eight-a of this code or article twelve, chapter twenty of this code, as applicable to the particular easement;

(2) The proposed sale, donation, transfer or amendment is to a qualified conservation organization or holder and the organization or holder agrees to accept the conservation or preservation easement; and

(3) The sale, donation, transfer or amendment meets one of the following conditions:

(A) All heirs, beneficiaries and devisees with interests in the real estate affected provide written consent; or

(B) The will or other testamentary instrument directs the personal representative, trustee or executor to sell or donate the conservation or preservation easement; or

(C) At the time of the decedent’s death, the decedent had a pending application for a sale or donation of a conservation or preservation easement and such conservation or preservation easement was in process of settlement.
AN ACT to amend and reenact §6B-1-6 of the Code of West Virginia, 1931, as amended, as contained in chapter 1, Acts of the Legislature, first extraordinary session, two thousand five; to amend and reenact §6B-2-4 and §6B-2-10 of said code, as contained in said acts; and to amend and reenact §6B-3-3a and §6B-3-3c of said code, as contained in said acts, all relating generally to the administration of ethical standards of public officers and employees; revising confidentiality requirements for Ethics Commission members and staff, the Review Board, complainants and informants; revising provisions prohibiting willful disclosure of confidential information; prohibiting the submission of false or misleading information to the Commission; providing for the deposit of funds into the general revenue fund of the state; establishing fees in legislative rules; and providing for penalties.

Be it enacted by the Legislature of West Virginia:

That §6B-1-6 of the Code of West Virginia, 1931, as amended, as contained in chapter 1, Acts of the Legislature, first extraordinary session, two thousand five, be amended and reenacted; that §6B-2-4 and §6B-2-10 of said code, as contained in said acts, be amended and reenacted; and that §6B-3-3a and §6B-3-3c of said code, as contained in said acts, be amended and reenacted, all to read as follows:
Article 1. Short Title; Legislative Findings, Purposes and Intent; Construction and Application of Chapter; Severability.

2. West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearance Before Public Agencies.

3. Lobbyists.

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-6. Deposit of funds.

All moneys collected pursuant to this chapter except fines imposed pursuant to paragraph (D), subdivision (1), subsection (r), section four, article two of this chapter shall be deposited in the general revenue fund in the state treasury pursuant to the provisions of section two, article two, chapter twelve of this code.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCE BEFORE PUBLIC AGENCIES.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

§6B-2-10. Violations and penalties.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the Executive Director of the Commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the Commission or the complainant or his or her representative personally filed the complaint with the Commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or agent of a political party acting in his or her official capacity
may file a complaint for a violation of this chapter with the Commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the Commission under this section. Within fourteen days after the receipt of a complaint, the Executive Director shall refer the complaint to the Review Board created pursuant to section two-

(b) Upon the referral of a complaint by the Executive Director pursuant to subsection (a) of this section, the Review Board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the Commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the Review Board to be insufficient in this regard, the Review Board shall dismiss the complaint.

(c) Upon a finding by the Review Board that the complaint is sufficient, the Executive Director shall give notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked “Addressee only, personal and confidential”. The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the Commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the Review Board and that he or she may respond in writing to the Commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.
(d) Within the 45-day period following the mailing of a notice of investigation, the Review Board shall proceed to consider: (1) The allegations raised in the complaint; (2) any timely received written response of the respondent; and (3) any other competent evidence gathered by or submitted to the Commission which has a proper bearing on the issue of probable cause. A respondent may appear before the Review Board and make an oral response to the complaint. The Commission shall promulgate rules prescribing the manner in which a respondent may present his or her oral response. The Commission may ask a respondent to disclose specific amounts received from a source and request other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter if the information sought is considered to be probative as to the issues raised by a complaint or an investigation initiated by the Commission. Any information thus received shall be confidential except as provided by subsection (e) of this section. If a person asked to provide information fails or refuses to furnish the information to the Commission, the Commission may exercise its subpoena power as provided in this chapter and any subpoena issued by the Commission shall have the same force and effect as a subpoena issued by a circuit court of this state. Enforcement of any subpoena may be had upon application to a circuit court of the county in which the Review Board is conducting an investigation through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(e) (1) All investigations, complaints, reports, records, proceedings and other information received by the Commission and related to complaints made to the Commission or investigations conducted by the Commission pursuant to this section, including the identity of the complainant or respondent, are confidential and may not be knowingly and improperly disclosed by any current or former member or employee of the Commission or the Review Board except as follows:
(A) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the Commission with a copy of the Review Board’s order and the statement of charges prepared pursuant to the provisions of subsection (g) of this section, the complaint and all reports, records, nonprivileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential.

(B) After a finding of probable cause, 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 the hearing, as well as the Commission’s orders, are not confidential.

(C) The Commission 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 and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent’s request.

(E) Where the Commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

(2) If, in a specific case, the Commission 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 Commission shall order that all or a portion of the information communicated to the Commission
to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the Commission.

(f) If the members of the Review Board fail to find probable cause, the proceedings shall be dismissed by the Commission in an order signed by the members of the Review Board. Copies of the order of dismissal shall be sent to the complainant and served upon the respondent forthwith. If the Review Board decides by a unanimous vote that there is probable cause to believe that a violation under this chapter has occurred, the members of the Review Board shall sign an order directing the Commission staff to prepare a statement of charges and assign the matter for hearing to the Commission or a hearing examiner as the Commission may subsequently direct. The Commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The Commission's review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent's agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(g) At least eighty days prior to the date of the hearing, the Commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the Commission, by legislative rule, directs.

(h) The Commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner
employed by the Commission to preside at the taking of
evidence. The Commission shall, by legislative rule, establish
the general qualifications for hearing examiners. The legislative
rule shall also contain provisions which ensure that the func-
tions of a hearing examiner will be conducted in an impartial
manner and describe the circumstances and procedures for
disqualification of hearing examiners.

(i) A member of the Commission or a hearing examiner
presiding at a hearing may:

(1) Administer oaths and affirmations, compel the atten-
dance of witnesses and the production of documents, examine
witnesses and parties and otherwise take testimony and estab-
lish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the
ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of
issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the Ethics Commission
consistent with the provisions of this chapter.

(j) With respect to allegations of a violation under this
chapter, the complainant has the burden of proof. The West
Virginia Rules of Evidence governing proceedings in the courts
of this state shall be given like effect in hearings held before the
Commission or a hearing examiner. The Commission shall, by
rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall order a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the Commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the Commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency, the Commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party's proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the Commission for final decision.

(k) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the Commission, unless by leave of the Commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(l) The Commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof. Briefs may be filed by the parties in accordance with procedural rules promulgated by the Commission. The Commission shall issue a final decision in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the Commission acting as a hearing board in lieu of a
hearing examiner, within twenty-one days following the close of the evidence.

(m) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least seven members of the Commission.

(n) Members of the Commission shall recuse themselves from a particular case upon their own motion with the approval of the Commission or for good cause shown upon motion of a party. The remaining members of the Commission shall, by majority vote, select a temporary member of the Commission to replace a recused member: Provided, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection (b), section one of this article, as the recused member.

(o) Except for statements made in the course of official duties to explain Commission procedures, no member or employee or former member or employee of the Commission may make any public or nonpublic comment about any proceeding previously or currently before the Commission. Any member or employee or former member or employee of the Commission who violates this subsection is subject to the penalties contained in subsection (e), section ten of this article. In addition, violation of this subsection by a current member or employee of the Commission is grounds for immediate removal from office or termination of employment.

(p) A complainant may be assisted by a member of the Commission staff assigned by the Commission after a determination of probable cause.

(q) No employee of the Commission assigned to prosecute a complaint may participate in the Commission deliberations or communicate with Commission members or the public concerning the merits of a complaint.
(r) (1) If the Commission finds by evidence beyond a reasonable doubt that the facts alleged in the complaint are true and constitute a material violation of this article, it may impose one or more of the following sanctions:

(A) Public reprimand;

(B) Cease and desist orders;

(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed five thousand dollars per violation;

or

(E) Reimbursement to the Commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the Commission for its costs under this paragraph shall be collected by the Commission and deposited pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the Commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

(3) The Commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(s) At any stage of the proceedings under this section, the Commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the Commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: Provided, That negotiations leading to a conciliation agreement, as well as information obtained by the
Commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(t) Decisions of the Commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, or to the circuit court of the county where the violation is alleged to have occurred, only by the respondent and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.

(u) (1) Any person who in good faith files a verified complaint or any person, official or agency who gives credible information resulting in a formal complaint filed by Commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the Commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the Commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the Commission for the actual costs of its investigation.

In addition, the Commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.
(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.

(v) (1) If at any stage in the proceedings under this section it appears to a Review Board, a hearing examiner or the Commission that there is credible information or evidence that the respondent may have committed a criminal violation, the matter shall be referred to the full Commission for its consideration. If, by a vote of two thirds of the members of the full Commission, it is determined that probable cause exists to believe a criminal violation has occurred, the Commission shall refer the matter to the appropriate county prosecuting attorney having jurisdiction for a criminal investigation and possible prosecution. Deliberations of the Commission with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the referral of the matter to the prosecuting attorney results in a criminal conviction of the respondent, the Commission may resume its investigation or prosecution of the ethics violation, but may not impose a fine as a sanction if a violation is found to have occurred.

(2) If fewer than two thirds of the full Commission determine that a criminal violation has occurred, the Commission shall remand the matter to the Review Board, the hearing examiner or the Commission itself as a hearing board, as the case may be, for further proceedings under this article.

(w) The provisions of this section shall apply to violations of this chapter occurring after the thirtieth day of September, one thousand nine hundred eighty-nine, and within one year
before the filing of a complaint: Provided, That the applicable
statute of limitations for violations which occur on or after the
first day of July, two thousand five, is two years after the date
on which the alleged violation occurred.

§6B-2-10. Violations and penalties.

(a) Any person who violates the provisions of subsection
(e), (f) or (g), section five of this article or violates the provi-
sions of subdivision (1), subsection (e), section four of this
article is guilty of a misdemeanor and, upon conviction, shall be
confined in jail for a period not to exceed six months or shall be
fined not more than one thousand dollars, or both. A member or
employee of the Commission or the Review Board convicted of
violating said subdivision is subject to immediate removal from
office or discharge from employment.

(b) Any person who violates the provisions of subsection
(f), section six of this article by willfully and knowingly filing
a false financial statement or knowingly and willfully concealing
a material fact in filing the statement is guilty of a misde-
meanor and, upon conviction, shall be fined not more than one
thousand dollars, or confined in jail not more than one year, or
both.

(c) Any person who knowingly fails or refuses to file a
financial statement required by section six of this article is
guilty of a misdemeanor and, upon conviction, shall be fined
not less than one hundred dollars nor more than one thousand
dollars.

(d) If any Commission member or staff knowingly violates
subsection (o), section four of this article, such person, upon
conviction thereof, shall be guilty of a misdemeanor and shall
be fined not less than one hundred dollars nor more than one
thousand dollars.
(e) Any person who violates the provisions of subdivision (2), subsection (e), section four of this article by knowingly and willfully disclosing any information made confidential by an order of the Commission is subject to administrative sanction by the Commission as provided in subsection (r) of said section.

(f) Any person who knowingly gives false or misleading material information to the Commission or who induces or procures another person to give false or misleading material information to the Commission is subject to administrative sanction by the Commission as provided in subsection (r), section four of this article.

ARTICLE 3. LOBBYISTS.

§6B-3-3a. Registration fees.

§6B-3-3c. Lobbyist training course.

§6B-3-3a. Registration fees.

(a) Each lobbyist shall, at the time he or she registers, pay the Commission a base registration fee of one hundred dollars, plus one hundred dollars for each employer represented, to be filed with the initial registration statement and with each new registration statement filed by the lobbyist in subsequent odd numbered years. Whenever a lobbyist modifies his or her registration to add additional employers, an additional registration fee of one hundred dollars for each additional employer represented shall be paid to the Commission.

(b) All fees authorized and collected pursuant to this article shall be paid to the Ethics Commission and thereafter deposited pursuant to section six, article one of this chapter.

§6B-3-3c. Lobbyist training course.

The Commission shall provide a training course for registered lobbyists and prospective lobbyists at least twice
3 each year regarding the provisions of the ethics code relevant
to lobbyists. One such course shall be conducted during the
month of January. In addition to the registration fees authorized
in section three-a of this article, the Commission may collect a
reasonable fee established by legislative rule authorized
pursuant to article three, chapter twenty-nine-a of this code
from those attending lobbyist training, which is to be collected
by the Ethics Commission and deposited pursuant to section
six, article one of this chapter. To maintain registration and
engage in lobbying activities, a lobbyist must complete one
such training course per year.

CHAPTER 116

(H. B. 2885 — By Delegates Perdue, Long and Hatfield)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to repeal §16-3-4a of the Code of West Virginia, 1931, as
amended; to repeal §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4,
26-5A-5, §26-5A-6 and §26-5A-7 of said code; and to amend said
code by adding thereto a new article, designated §16-3D-1, §16-
3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-
3D-8 and §16-3D-9 all relating to tuberculosis testing, control,
treatment and commitment.

Be it enacted by the Legislature of West Virginia:

That §16-3-4a of the Code of West Virginia, 1931, as amended,
be repealed; and that §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4,
26-A-5, §26-5A-6 and §26-5A-7 of said code be repealed; and that
said code be amended by adding thereto a new article, designated §16-
ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-1. Purpose and legislative findings.
§16-3D-2. Definitions.
§16-3D-3. Compulsory testing for tuberculosis of school children and school personnel; Commissioner to approve the test; X-rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis.
§16-3D-4. Report of cases, admissions, registration of patients.
§16-3D-5. Forms for reporting and committing patients; other records.
§16-3D-6. Cost of maintenance and treatment of patients.
§16-3D-7. Procedure when patient is a health menace to others; court ordered treatment; requirements for discharge; appeals.
§16-3D-8. Return of escapees from state tuberculosis institutions.

§16-3D-1. Purpose and legislative findings.

(a) The purpose of this article is to bring together the state law governing compulsory testing for tuberculosis (TB) of students and school personnel as well as the statutes pertaining to the treatment, control and commitment of persons with the disease at hospitals, clinics and other health care facilities throughout the state.

(b) The targeted tuberculin testing and treatment guidelines published by the Centers for Disease Control and Prevention (CDC) in the year two thousand recommends that routine testing of low-risk populations for administrative purposes be discontinued. The elimination of routine retesting of school personnel in accordance with this recommendation will result in significant savings to the state.

(c) According to the CDC, high risk groups or persons that should be tested for latent TB infection include:
(1) Close contacts of a person known or suspected to have TB;

(2) Foreign-born persons from areas where TB is common;

(3) Residents and employees of high-risk congregate settings;

(4) Health care workers who serve high-risk clients;

(5) Medically underserved, low-income populations;

(6) High-Risk racial or ethnic minority populations;

(7) Children exposed to adults in high-risk categories;

(8) Persons who inject illicit drugs;

(9) Persons with HIV infection; and

(10) Persons with certain medical conditions, such as substance abuse, chest X-ray findings suggestive of previous TB, diabetes mellitus, silicosis, prolonged corticosteroid therapy, other immunosuppressive therapy, cancer of the head and neck, end-stage renal disease, intestinal bypass or gastrectomy, chronic malabsorption syndromes, or low body weight of ten percent or more below the ideal.

(d) Early diagnosis, proper and complete treatment for people with active TB disease prevents transmission to others as well as preventing the emergence of multidrug resistant TB.

(e) The TB Control Program should be funded at levels necessary to accomplish directly observed therapy for all patients with active TB disease in West Virginia and to implement targeted testing of high-risk groups.

§16-3D-2. Definitions.
As used in this article:

1. "Tuberculosis" means a communicable disease caused by the bacteria, Mycobacterium tuberculosis, which is demonstrated by clinical, bacteriological, radiographic or epidemiological evidence;

2. "Bureau" means the Bureau for Public Health in the Department of Health and Human Resources;

3. "Commissioner" means the Commissioner of the Bureau for Public Health, who is the state health officer;

4. "Local board of health," "local board" or "board" means a board of health serving one or more counties or one or more municipalities or a combination thereof;

5. "Local health department" means the staff of the local board of health; and

6. "Local health officer" means the individual physician with a current West Virginia license to practice medicine who supervises and directs the activities of the local health department services, staff and facilities and is appointed by the local board of health with approval by the Commissioner.

§16-3D-3. Compulsory testing for tuberculosis of school children and school personnel; Commissioner to approve the test; X-rays required for reactors; suspension from school or employment for pupils and personnel found to have tuberculosis.

(a) All students transferring from a school located outside this state or enrolling for the first time from outside the state shall furnish a certification from a licensed physician stating that a tuberculin skin test, approved by the Commissioner, has been made within four months prior to the beginning of the school year. If the student cannot produce certification from a
physician as required by this section then the student shall have
an approved tuberculin skin test done with the result read and
evaluated prior to admittance to school.

(b) Test results must be recorded on the certification
required by subsection (a) of this section. Positive reactors to
the skin test must be immediately evaluated by a physician and,
if medically indicated, X-rayed, and receive periodic X-rays
thereafter, when medically indicated. Pupils found to have
tuberculosis shall be temporarily removed from school while
their case is reviewed and evaluated by their physician and the
local health officer. Pupils shall return to school when the local
health officer indicates that it is safe and appropriate for them
to return.

(c) Notwithstanding any other provision of this code to the
contrary, all school personnel shall have one approved tubercu-
lin skin test at the time of employment performed by the local
health department or the person’s physician. Additional
tuberculosis skin tests or other medical screens may be required
by the local health department or Commissioner, if medically
indicated. Positive reactors and those with previous positive
skin tests are to be immediately referred to a physician for
evaluation and treatment or further studies. School personnel
found to have tuberculosis shall have their employment
suspended until the local health officer, in consultation with the
Commissioner, approves a return to work. School personnel
who have not had the required examination will be suspended
from employment until reports of examination are confirmed by
the local health officer.

(d) The local health officer shall be responsible for arrang-
ing proper follow-up of school personnel and students who are
unable to obtain physician evaluation for a positive tuberculin
skin test.
(e) The Commissioner shall have the authority to require selective testing of students and school personnel for tuberculosis when there is reason to believe that they may have been exposed to the tuberculosis organism. School nurses shall identify and refer any students or school personnel to the local health officer in instances where they have reason to suspect that the individual has been exposed to tuberculosis or has symptoms indicative of the disease.

§16-3D-4. Report of cases, admissions, registration of patients.

(a) Every physician practicing in this state, every public health officer in the state, and every chief medical officer having charge of any hospital or clinic or other similar public or private institution in the state shall report electronically or in writing to the local health department in the patient’s county of residence all information required by the Commissioner for every person having tuberculosis who comes under his or her observation or care. Such report shall be made within twenty-four hours after diagnosis.

(b) Every local health department shall forward all reports of tuberculosis cases filed pursuant to this section to the Bureau tuberculosis program within twenty-four hours of receipt of such reports.

(c) The chief medical officer of each tuberculosis institution, hospital or other health care facility shall report the admission of any patient with tuberculosis to the Bureau together with any other information the Commissioner may require. He or she shall make a similar report of the discharge or death of any patient. From such reports and other sources, the Bureau shall prepare and keep current a register of persons in this state with tuberculosis. The name of a person so registered shall not be made public nor shall the register be accessible to anyone except by order of the Bureau, the patient, or by the order of the judge of a court of record.
§16-3D-5. Forms for reporting and committing patients; other records.

1. (a) The Bureau shall prescribe the written and electronic forms for reporting all required information regarding patients with tuberculosis.

2. (b) The Bureau shall prescribe the written and electronic forms to be used in committing patients to any state hospital or other health care facility where care and treatment of tuberculosis patients is conducted.

§16-3D-6. Cost of maintenance and treatment of patients.

1. The cost of maintenance and treatment of patients admitted to state designated tuberculosis institutions shall be paid out of funds appropriated for the respective institutions. No patient shall be required to pay for such maintenance and treatment, but the institutions are authorized to receive any voluntary payments therefore.

§16-3D-7. Procedure when patient is a health menace to others; court ordered treatment; requirements for discharge; appeals.

1. (a) If any practicing physician, public health officer, or chief medical officer having under observation or care any person with tuberculosis is of the opinion that the environmental conditions of that person are not suitable for proper isolation or control by any type of local quarantine as prescribed by the Bureau, and that the person is unable or unwilling to conduct himself or herself and to live in such a manner as not to expose members of his or her family or household or other persons with whom he or she may be associated to danger of infection, he or she shall report the facts to the Bureau which shall investigate or have investigated the circumstances alleged.
(b) If the Commissioner or local health officer finds that any person's physical condition is a health menace to others, the Commissioner or local health officer shall petition the circuit court of the county in which the person resides, requesting an individualized course of treatment to deal with the person's current or inadequately treated tuberculosis. Refusal to adhere to prescribed treatment may result in an order of the court committing the person to a health care facility equipped for the treatment of tuberculosis: Provided, That if the Commissioner or local health officer determines that an emergency situation exists which warrants the immediate detention and commitment of a person with tuberculosis, an application for immediate involuntary commitment may be filed pursuant to section nine of this article.

(c) Upon receiving the petition, the court shall fix a date for hearing thereof and notice of the petition and the time and place for hearing shall be served personally, at least seven days before the hearing, upon the person with tuberculosis alleged to be dangerous to the health of others.

(d) If, upon hearing, it appears that the complaint of the Bureau is well founded, that other less restrictive treatment options have been exhausted, that the person has tuberculosis, and that the person is a danger to others, the court shall commit the individual to a health care facility equipped for the care and treatment of persons with tuberculosis. The person shall be deemed to be committed until discharged in the manner authorized in subsection (e) of this section: Provided, That the hearing and notice provisions of this subsection do not apply to immediate involuntary commitments as provided in section nine of this article.

(e) The chief medical officer of the institution to which any person with tuberculosis has been committed may discharge that person when, after consultation with the Commissioner and
the local health officer in the patient’s county of residence, it is agreed that the person may be discharged without danger to the health of others. The chief medical officer shall report immediately to the Commissioner and to the local health officer in the patient’s county of residence each discharge of a person with tuberculosis.

(f) Every person committed under the provisions of this section shall observe all the rules of the institution. Any patient so committed may, by direction of the chief medical officer of the institution, be placed apart from the others and restrained from leaving the institution so long as he or she continues to have tuberculosis and remains a health menace.

(g) Nothing in this section may be construed to prohibit any person committed to any institution under the provisions of this section from applying to the Supreme Court of Appeals for a review of the evidence on which the commitment was made. Nothing in this section may be construed or operate to empower or authorize the Commissioner or the chief medical officer of the institution to restrict in any manner the individual’s right to select any method of tuberculosis treatment offered by the institution.

§16-3D-8. Return of escapees from state tuberculosis institutions.

If any person confined in a state tuberculosis institution by virtue of an order of a circuit court as provided in sections seven and nine of this article shall escape, the chief medical officer shall issue a notice giving the name and description of the person escaping and requesting his or her apprehension and return to the hospital. The chief medical officer shall issue a warrant directed to the sheriff of the county commanding him or her to arrest and carry the escaped person back to the hospital, which warrant may be executed in any part of the state. If the person flees to another state, the chief medical

(a) An application for immediate involuntary commitment of a person with tuberculosis may be filed by the Commissioner or local health officer, in the circuit court of the county in which the person resides. The application shall be filed under oath, and shall present information and facts which establish that the person with tuberculosis has been uncooperative or irresponsible with regard to treatment, quarantine or safety measures, presents a health menace to others, and is in need of immediate hospitalization.

(b) Upon receipt of the application, the circuit court may enter an order for the individual named in the action to be detained and taken into custody for the purpose of holding a probable cause hearing. The order shall specify that the hearing be held forthwith and shall appoint counsel for the individual: Provided, That in the event immediate detention is believed to be necessary for the protection of the individual or others at a time when no circuit court judge is available for immediate presentation of the application, a magistrate may accept the application and, upon a finding that immediate detention is necessary, may order the individual to be temporarily committed until the earliest reasonable time that the application can be presented to the circuit court, which period of time shall not exceed twenty-four hours except as provided in subsection (c) of this section.
(c) A probable cause hearing shall be held before a magistrate or circuit judge of the county in which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed forty-eight hours, or as soon thereafter as possible.

(d) The individual shall be present at the probable cause hearing and shall have the right to present evidence, confront all witnesses and other evidence against him or her, and to examine testimony offered, including testimony by the Bureau or its designees.

(e) At the conclusion of the hearing the magistrate or circuit court judge shall enter an order stating whether there is probable cause to believe that the individual is likely to cause serious harm to himself, herself or others as a result of his or her disease and actions. If probable cause is found, the individual shall be immediately committed to a health care facility equipped for the care and treatment of persons with tuberculosis. The person shall remain so committed until discharged in the manner authorized pursuant to subsection (e), section seven of this article: Provided, That in the case of an alcoholic or drug user, the judge or magistrate shall first order the individual committed to a detoxification center for detoxification prior to commitment to health care facility equipped for the care and treatment of persons with tuberculosis.

(f) The Bureau 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, but not limited to, rules relating to the transport and temporary involuntary commitment of patients.
AN ACT to amend and reenact §16-4C-14 of the Code of West Virginia, 1931, as amended, relating to allowing paramedics the right to practice in a hospital emergency rule setting; and authorizing the promulgation of legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That §16-4C-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-14. Services that may be performed by emergency medical service personnel.

Notwithstanding any other provision of law, emergency medical service personnel may provide the services as determined by the commissioner by legislative rule pursuant to the provisions of article three, chapter twenty-nine-a of this code. Legislative rules governing provision of these services in a hospital emergency room setting shall be developed by the commissioner and shall include provisions allowing paramedics to function under the direct supervision of a registered professional nurse in a hospital emergency room setting. Provision of these services in an emergency room hospital setting shall not
be initiated until a legislative rule establishing training requirements, standards and requirements for these functions is in effect. The Legislature therefore directs the commissioner to propose this legislative rule on or before the first day of July, two thousand six. Further, the Commissioner may promulgate this rule as an emergency rule pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code. Any rule so promulgated shall provide that paramedics are under the jurisdiction of the commissioner. The West Virginia Board of Registered Professional Nurses may propose legislative rules, pursuant to article three, chapter twenty-nine-a of the code relating to the scope of practice for nurses as those practices relates to overseeing these paramedics. The provisions of this section and any rules promulgated thereunder may not be construed to alter in any manner the duties, role or responsibilities of attending physicians regarding the providing and oversight of patient care.

CHAPTER 118

(Com. Sub. for H. B. 2381 — By Delegates Amores, Webster, Palumbo and Kominar)

[Amended and again passed April 16, 2005, as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on May, 3, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5B-15; to amend and reenact §16-5C-5 of said code; to amend and reenact §16-5D-5 of said code; to amend and reenact §16-5E-1a of said code; and to amend and reenact §16-5N-5 of said code, all relating to patient
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 §16-5B-15; that §16-5C-5 of said code be amended and reenacted; that 16-5D-5 of said code be amended and reenacted; that §16-5E-1a of said code be amended and reenacted; and that §16-5N-5 of said code be amended and reenacted, all to read as follows:

Article

5B. Hospitals and Similar Institutions.
5C. Nursing Homes.
5D. Assisted Living Residences.
5E. Registration and Inspection of Service Providers in Legally Unlicensed Health Care Homes.
5N. Residential Care Communities.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-15. Hospital visitation.

(a) A public or private hospital licensed pursuant to the provisions of section two of this article is required to permit patient visitation privileges for nonrelatives unless otherwise requested by the patient or legal designee. For purposes of this section, the term "legal designee" means and includes those persons eighteen years of age or older, appointed by the patient to make health care decisions for the patient pursuant to the provisions of section six, article thirty of this chapter.
(b) It is the intent of the Legislature that this section facilitate a patient’s visitation with nonrelative individuals, and may not, in any way, restrict or limit allowable uses and disclosures of protected health information pursuant to the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d-2 and the accompanying regulations in 45 CFR 164.500.

(c) No provision of this section may be construed to prevent a hospital from otherwise restricting visitation privileges in order to prevent harm to the patient or disruption to the facility.

ARTICLE 5C. NURSING HOMES.

§16-5C-5. Rules; minimum standards for nursing homes.

(a) All rules shall be proposed for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. The director shall recommend the adoption, amendment or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article.

(b) The director shall recommend rules establishing minimum standards of operation of nursing homes including, but not limited to, the following:

(1) Administrative policies, including: (A) An affirmative statement of the right of access to nursing homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (B) a statement of the rights and responsibilities of residents in nursing homes which prescribe, as a minimum, such a statement of residents’ rights as included in the United States Department of Health and Human Services regulations, in force on the effective date of this article,
governing participation of nursing homes in the Medicare and Medicaid programs pursuant to titles eighteen and nineteen of the Social Security Act;

(2) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(3) Qualifications of facility’s administrators, medical directors, nurses, aides, and other personnel;

(4) Safety requirements;

(5) Sanitation requirements;

(6) Personal services to be provided;

(7) Dietary services to be provided;

(8) Medical records;

(9) Social and recreational activities to be made available;

(10) Pharmacy services;

(11) Nursing services;

(12) Medical services;

(13) Physical facility;

(14) Resident rights;

(15) Visitation privileges that:

(A) Permit immediate access to a resident, subject to the resident’s right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;
(B) Permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and

(C) Permit access to other specific persons or classes of persons consistent with state and federal law.

(16) Admission, transfer and discharge rights.

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

§16-5D-5. Rules; minimum standards for assisted living residences.

(a) The secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the purposes and intent of this article and to enable the secretary to exercise the powers and perform the duties conferred upon the secretary by this article.

(b) The secretary shall propose rules establishing minimum standards of operation of assisted living residences, including, but not limited to, the following:

(1) Administrative policies, including:

(A) An affirmative statement of the right of access to assisted living residences by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and

(B) A statement of the rights and responsibilities of residents;
(2) Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies and support personnel, according to the size and classification of the assisted living residence;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;

(8) Social and recreational activities to be made available;

(9) Physical facilities;

(10) Requirements related to provision of limited and intermittent nursing;

(11) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident; and

(12) Such other categories as the secretary determines to be appropriate to ensure resident’s health, safety and welfare.

(c) The secretary shall include in rules detailed standards for each of the categories of standards established pursuant to subsections (b) and (d) of this section and shall classify such standards as follows:

(1) Class I standards are standards the violation of which, as the secretary determines, would present either an imminent danger to the health, safety or welfare of any resident or a
substantial probability that death or serious physical harm would result;

(2) Class II standards are standards which the secretary determines have a direct or immediate relationship to the health, safety or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which the secretary determines have an indirect or a potential impact on the health, safety or welfare of any resident.

(d) An assisted living residence shall attain substantial compliance with standards established pursuant to this section and such other requirements for a license as may be established by rule under this article.

ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.

§16-5E-1a. Powers, rights and duties of the director.

In the administration of this article, the director shall have the following powers, duties and rights:

(a) To promulgate and enforce rules governing complaint investigations within the homes of legally unlicensed health care providers registered under this article. Such rules shall include the minimum health, safety and welfare standards in the following areas:

(1) Physical environment;

(2) Nutrition;

(3) Requirements related to limited and intermittent nursing care;
12 (4) Medication administration;

13 (5) Protective and personal services to be provided;

14 (6) Treatment;

15 (7) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident;

18 (8) Such other categories as the director determines to be appropriate to ensure residents' health, safety and welfare.

20 (b) To exercise as sole authority all powers relating to issuance, suspension and revocation of registration of legally unlicensed homes providing health care;

22 (c) To issue directed plans of correction for deficiencies identified during complaint investigations;

25 (d) To order closure of any home for failure to comply with a directed plan of corrections;

27 (e) To take all actions required under the provisions of sections three, four, five and six of this article; and

29 (f) To deny registration to any operator of a legally unlicensed home who is listed on the state abuse registry.

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

§16-5N-5. Rules; minimum standards for residential care communities.

1 (a) The secretary shall, by the first day of July, one thousand nine hundred ninety-eight, propose all rules that may be necessary or proper to implement or effectuate the purposes and intent of this article and to enable the director to exercise the
powers and perform the duties conferred herein. All rules authorized or required pursuant to this article shall be proposed by the secretary and promulgated in accordance with the provisions governing legislative rules, contained in article three, chapter twenty-nine-a of this code.

(b) The secretary shall propose rules establishing minimum standards for the operation of residential care communities, including, but not limited to, the following:

(1) Administrative policies, including: (i) An affirmative statement of the right of access to residential care communities by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (ii) a statement of the rights and responsibilities of residents;

(2) Minimum numbers and qualifications of residential care community personnel according to the size, classification and health care needs of the residential care community;

(3) Safety requirements, except for those fire and life safety requirements under the jurisdiction of the State Fire Marshal;

(4) Sanitation requirements;

(5) Protective and personal services required to be provided;

(6) Dietary services required to be provided;

(7) Maintenance of health records, including confidentiality;

(8) Social and recreational activities required to be made available;
(9) Physical facilities;

(10) Requirements related to limited and intermittent nursing care;

(11) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident; and

(12) Other items or considerations that the secretary considers appropriate to ensure the health, safety and welfare of residents of residential care communities.

c) The secretary shall propose rules that include detailed specifications for each category of standards required under subsections (b) and (d) of this section, and shall classify these standards as follows:

(1) Class I standards, the violation of which presents either an imminent danger to the health, safety or welfare of a resident or a substantial probability that death or serious physical harm may result;

(2) Class II standards, the violation of which directly implicates the health, safety or welfare of a resident, but which does not present imminent danger thereto; and

(3) Class III standards, the violation of which has an indirect or potential impact on the health, safety or welfare of any resident.

d) A residential care community shall attain substantial compliance in every category of standard enumerated in this section in order to be considered as being in substantial compliance with the requirements of this article and the rules promulgated hereunder.
(e) Until such time as the secretary proposes rules governing residential care communities under this section, existing rules governing residential board and care homes shall apply to residential care communities and shall be construed so as to conform with the provisions of this article in their application to residential care communities: Provided, That to the extent any provisions of the rule governing residential board and care homes conflict with the provisions of this article, the provisions of this article shall govern.

CHAPTER 119

(S. B. 236 — By Senators Prezioso, Hunter, Sharpe, Unger, Boley and Foster)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5R-6, all relating to the Alzheimer's Special Care Standards Act; establishing training requirements for employees, staff and contractors in certain health facilities on the subject of Alzheimer's disease.

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 §16-5R-6, to read as follows:

ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.
§16-5R-6. Alzheimer's and dementia care training; rules.

(a) For the purposes of this section, “resident” means an individual receiving care or services in an adult day care facility, nursing home, assisted living facility or residential care community.

(b) The Secretary shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-s of this code, setting minimum standards for Alzheimer’s and dementia care training of all staff, employees and contractors that come in regular and direct contact with residents.

(c) The standards established in this section shall apply to adult day care facilities, nursing homes, assisted living facilities and residential care communities who provide services under the supervision of a licensed operator.

CHAPTER 120

(Com. Sub. for S. B. 19 — By Senator Kessler)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to repeal §9-4-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-2-6 of said code, relating to elimination of the dormant Advisory Board for the Secretary of the Department of Health and Human Resources; and adding within the Department of Health and Human Resources the Office of Inspector General.
Be it enacted by the Legislature of West Virginia:

That §9-4-1 of the Code of West Virginia, 1931, as amended, be repealed; and that §9-2-6 of said code be amended and reenacted to read as follows:

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

§9-2-6. Powers of Secretary.

Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the Secretary, in addition to all other powers, duties and responsibilities granted and assigned to that office in this chapter and elsewhere by law, is authorized and empowered to:

1. Promulgate, amend, revise and rescind Department rules respecting the organization and government of the Department and the execution and administration of those powers, duties and responsibilities granted and assigned to that office in this chapter and elsewhere by law to the Department and the Secretary.

2. Promulgate, amend, revise and rescind Department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and policies, but not inconsistent with state law: Provided, That such rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of article two-e, chapter sixteen of this code by a licensed nurse midwife or midwife as this occupation is defined in section one, article fifteen, chapter thirty of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven of said article.
(3) Obtain by purchase or lease such grounds, buildings, office or other space, equipment, facilities and services as may be necessary for the execution and administration of those powers, duties and responsibilities granted and assigned by this chapter and elsewhere by law to the Department and the Secretary.

(4) Sign and execute in the name of the state by the state Department of Health and Human Resources any contract or agreement with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships or individuals.

(5) Establish such special funds as may be required by the federal Social Security Act, as amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of the benefits and provisions thereof relating to the federal-state assistance and federal assistance programs administered by the Department and to make payments into and disbursements out of any such special fund or funds in accordance with the requirements of the federal Social Security Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the state Department of Health and Human Resources, through the Secretary, is hereby authorized to accept any and all gifts or grants, whether in money, land, services or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund shall revert to the general revenue funds of this state. No expenses incurred pursuant to this special fund shall be a charge against the general funds of this state.

(6) Establish within the Department an Office of Inspector General for the purpose of conducting and supervising investigations and for the purpose of providing quality control for the
programs of the Department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the Secretary. Neither the Secretary nor any employee of the Department may prevent, inhibit or prohibit the Inspector General or his or her employees from initiating, carrying out or completing any investigation, quality control review or other activity oversight of public integrity by the Office of the Inspector General. The Secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of article six, chapter twenty-nine of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General.

(7) Provide at Department expense a program of continuing professional, technical and specialized instruction for the personnel of the Department.

(8) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the Department in moving his household furniture, effects and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a Department employee in moving his or her household furniture, effects and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee shall be paid more frequently than once in twelve months or for any movement other than from one place of employment in this state to another place of employment in this state.
(9) Establish and maintain such institutions as are necessary for the temporary care, maintenance and training of children and other persons.

(10) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance and federal assistance and which are not inconsistent with state law.

(11) Organize within the Department a Board of Review, consisting of a Chairman appointed by the Secretary and as many assistants or employees of the Department as may be determined by the Secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance and federal assistance, such Board of Review to have such powers of a review nature and such additional powers as may be granted to it by the Secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance.

(12) Provide by rules such review and appeal procedures within the Department of Health and Human Resources as may be required by applicable federal laws and rules respecting state assistance, federal-state assistance and federal assistance and as will provide applicants for, and recipients of all, classes of welfare assistance an opportunity to be heard by the Board of Review, a member thereof, or individuals designated by the Board, upon claims involving denial, reduction, closure, delay or other action or inaction pertaining to public assistance.

(13) Provide by rules, consistent with requirements of applicable federal laws and rules, application forms and application procedures for the various classes of public assistance.

(14) Provide locations for making applications for the various classes of public assistance.
(15) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of public assistance.

(16) Delegate to the personnel of the Department all powers and duties vested in the Secretary, except the power and authority to sign contracts and agreements.

(17) Make such reports in such form and containing such information as may be required by applicable federal laws and rules respecting federal-state assistance and federal assistance.

(18) Invoke any legal, equitable or special remedies for the enforcement of the provisions of this chapter.

CHAPTER 121

(Com. Sub. for H. B. 2816 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[Passed April 9, 2005, in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-1E-1, §5-1E-2, §5-1E-3, §5-1E-4 and §5-1E-5; and to amend and reenact §18-2-6a, §18-2-7a and §18-2-9 of said code, all relating to promoting healthy lifestyles; creating a Healthy Lifestyles Office in the Department of Health and Human Resources; establishing the functions of the Office; creating a special revenue account; establishing a voluntary private sector partnership program to encourage healthy lifestyles; establishing physical activity requirements in the schools; using body mass index as an indicator of progress;
encouraging the use of healthy beverages in schools; and adding requirements for health education.

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 §5-lE-1, §5-lE-2, §5-lE-3, §5-lE-4 and §5-lE-5; and that §18-2-6a, §18-2-7a and §18-2-9 of said code be amended and reenacted, all to read as follows:

Chapter 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.

ARTICLE 1E. HEALTHY WEST VIRGINIA PROGRAM.

§5-lE-1. Findings and purposes.
§5-lE-2. Creation of the Office of Healthy Lifestyles.
§5-lE-4. Partnership to encourage healthy lifestyles by children and families.
§5-lE-5. Creation of a Healthy Lifestyles Fund.

§5-lE-1. Findings and purposes.

1 The Legislature finds and declares that the rise in obesity and related weight problems accompanied by the resulting incidence of chronic disease has created a health care crisis that burdens the health care infrastructure of the state. The Legislature also finds that the State of West Virginia must take an informed, sensitive approach to communicate and educate the citizens of the state about health issues related to obesity and
inappropriate weight gain. The Legislature further finds that the state must take action to assist West Virginia citizens in engaging in healthful eating and regular physical activity. The Legislature further finds that the state must invest in research that improves understanding of inappropriate weight gain and obesity. These efforts are needed to coordinate the state’s interest in improving the health of its citizens and in reducing the cost of health care. Therefore, it is the purpose of this article to create, as an integral part of the Department of Health and Human Resources, an entity to coordinate the efforts of all agencies to prevent and remedy obesity and related weight problems and to ensure that all citizens are being educated on this serious health risk that is affecting the state.

§5-1E-2. Creation of the Office of Healthy Lifestyles.

There is hereby created the Office of Healthy Lifestyles within the Department of Health and Human Resources. The management of this office shall be provided in the manner determined by the Secretary of the Department of Health and Human Resources to be in the best interest of the state and its citizens.

§5-1E-3. Powers and duties of the Office.

The Office of Healthy Lifestyles shall:

1. Establish a Healthy Lifestyle Coalition to assure consistency of the public health and private sector approach to dealing with programs that address the problems that affect overweight and obese individuals; to provide a forum for discussing the issues that affect healthy lifestyles and to identify best practices that can be replicated. By the first day of July, two thousand five, the Governor shall appoint thirteen members of the Coalition whose terms shall be for a period of four years, and the members may be reappointed to a second term. The terms may be staggered by the Governor to assure continuity of
experience on the Coalition. Members shall represent state agencies, community organizations and other entities which have an interest and expertise in obesity. Members may not be compensated but shall receive reimbursement for expenses incurred while performing the business of the Coalition. The Coalition shall meet monthly for at least the first eighteen months of the Coalition to develop and implement an action plan to meet the goals established by the Coalition;

(2) Establish a clinical advisory committee to assure a unified approach using the latest research to assure consistency in program development;

(3) Establish a statewide voluntary private sector partnership and recognition program for employers, merchants, restaurants and other private sector businesses to encourage the development or further advance current programs that encourage healthy lifestyles;

(4) Coordinate higher education training programs for dietary and exercise physiology students with rural health care providers;

(5) Coordinate existing health promotion initiatives to assure clear, concise and consistent communication;

(6) Solicit, accept and expend grants, gifts, bequests, donations and other funds from any source for programs that will enable the state to accomplish the goals of this program;

(7) Develop a cross-agency series of goals to ensure consistency throughout the system of providers and agencies working in the area of improving lifestyles;

(8) Establish as a goal to increase the prevalence of healthy weight among all people in the state because obesity leads to diabetes, heart disease, strokes and kidney failure. These
diseases, often arising in older age as a result of unhealthy
lifestyles that began during a person’s youth, place an undue
financial burden on individuals, the health care industry and
state health care programs;

(9) Consider the resources of the local health departments
and recommend ongoing relationships, as appropriate, between
local health departments, family resource networks, faith-based
organizations, cooperative extension services, farm bureaus and
other health care providers;

(10) Encourage the development of incentives for participation
in employee wellness programs. Incentives may be based
upon, but should not be limited to, the employee’s completion
of health questionnaires or participating in healthy lifestyles
initiatives, and may use experiences of successful initiatives
that have occurred in this state. The action plan should include
among its targets, state government employees in this incentive
program;

(11) Build upon existing initiatives that focus on any of the
coalition’s goals, soliciting input from these initiatives and
eliminating duplication of efforts;

(12) Report its progress annually by the first of December
to the Legislative Oversight Commission on Health and Human
Resource Accountability.

§5-1E-4. Partnership to encourage healthy lifestyles by children
and families.

(a) The West Virginia Healthy Lifestyles program will
develop a statewide voluntary private sector partnership
program to work with businesses throughout the state that
encourage and promote healthy lifestyles among their employ-
ees and communities.
(b) Beginning the first day of July, two thousand five, those businesses voluntarily choosing to participate in the Healthy Lifestyles program shall submit their own detailed programs to the Office of Healthy Lifestyles for review. The programs should be creative and unique, highlighting the efforts of the business to promote healthy lifestyles to West Virginians through sensible diet and physical fitness.

(c) The West Virginia Healthy Lifestyles program will develop a recognition program for private sector enterprises that develop or advance programs that address the problems affecting overweight and obese individuals and that promote a healthy lifestyle.

(d) Any business program promoting healthy lifestyles that is recognized by the Office of Healthy Lifestyles will be issued a universally recognized logo, suitable for public display by the business.

(e) Marketing of programs recognized by the Office of Healthy Lifestyles shall take place through all state agencies. The West Virginia Public Employees Insurance Agency, the Bureau for Medical Services and the West Virginia Workers’ Compensation Commission shall aggressively market this program to their members for the purposes of health promotion among their members.

(f) The Office of Healthy Lifestyles shall market recognized programs to other businesses, as models, to help create additional programs promoting healthy lifestyles.

(g) The Office of Healthy Lifestyles shall report annually by the first day of December to the Legislative Oversight Commission on Health and Human Resources Accountability: (1) The number of participants; (2) the impact on businesses as established by a survey of participating businesses; and (3) the
§5-1E-5. Creation of a Healthy Lifestyles Fund.

There is hereby created in the State Treasury a separate special revenue account, which shall be an interest bearing account, to be known as the “Healthy Lifestyles Fund”. The special revenue account shall consist of all appropriations made by the Legislature, income from the investment of moneys held in the special revenue account and all other sums available for deposit to the special revenue account from any source, public or private. No expenditures for purposes of this section are authorized from collections except in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the general revenue fund but remains in the special revenue account and shall be used solely in a manner consistent with this article. No expenses incurred under this section shall be a charge against the general funds of the state.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6a. Sale of healthy beverages and soft drinks in schools.
§18-2-7a. Legislative findings; required physical education; program in physical fitness.
§18-2-9. Required courses of instruction; violation and penalty.

§18-2-6a. Sale of healthy beverages and soft drinks in schools.

(a) In order to generate funding for necessary programs and supplies, county boards may permit the sale of healthy beverages and soft drinks in county schools except during breakfast and lunch periods as follows:
(1) During a school day, soft drinks may not be sold in areas accessible to students in an elementary school, middle school or junior high school through vending machines on the premises, in school stores or in school canteens or through fundraisers by students, teachers, groups or by any other means. In elementary, middle school or junior high school, only healthy beverages may be sold in vending machines on the premises, in school canteens or through fundraisers by students, teachers, groups or by any other means. Nothing in this section shall be construed to prohibit or limit sale or distribution of any food or beverage item through fund-raising activities of students, teachers or educational groups when the items are intended for sale off the school grounds.

(2) Those high schools which permit the sale of soft drinks through vending machines also shall offer for sale healthy beverages. Of the total beverages offered for sale, at least fifty percent shall be healthy beverages. Vending machines containing healthy beverages shall be in the same location or substantially similar location as vending machines containing soft drinks.

(3) The sale of healthy beverages and soft drinks shall be in compliance with the rules of the National School Lunch Program and the School Breakfast Program of the State Board and the Nutrition Service of the United States Department of Agriculture, which became effective on the seventeenth day of June, one thousand nine hundred eighty-five. Seventy-five percent of the profits from the sale of healthy beverages and soft drinks shall be allocated by a majority vote of the faculty senate of each school and twenty-five percent of the profits from the sale of healthy beverages and soft drinks shall be allocated to the purchase of necessary supplies by the principal of the school.

(b) For the purposes of this section:
(1) "School day" means the period of time between the
arrival of the first student at the school building and the end of
the last instructional period; and

(2) "Healthy beverage" means water, one hundred percent
fruit and vegetable juice, low-fat milk and other juice beverages
with a minimum of twenty percent real juice.

§18-2-7a. Legislative findings; required physical education;
program in physical fitness.

(a) The Legislature hereby finds that obesity is a problem
of epidemic proportions in this state. There is increasing
evidence that all segments of the population, beginning with
children, are becoming more sedentary, more overweight, and
more likely to develop health risks and diseases including Type
II Diabetes, high blood cholesterol and high blood pressure. The
Legislature further finds that the promotion of physical activity
during the school day for school children is a crucial step in
combating this growing epidemic and in changing the attitudes
and behavior of the residents of this state toward health
promoting physical activity.

(b) As a result of these findings, the State Department of
Education shall establish the requirement that each child
enrolled in the public schools of this state actively participates
in physical education classes during the school year to the level
of his or her ability as follows:

(1) Kindergarten to and including grade five. — Not less
than thirty minutes of physical education, including physical
exercise and age appropriate physical activities, for not less
than three days a week.

(2) Grade six to and including grade eight. — Not less than
one full period of physical education, including physical
exercise and age appropriate physical activities, each school
day of one semester of the school year.
(3) Grade nine to and including grade twelve. — Not less than one full course credit of physical education, including physical exercise and age appropriate physical activities which shall be required for graduation and the opportunity to enroll in an elective lifetime physical education course.

(c) Enrollment in physical education classes and activities required by the provisions of this section shall not exceed, and shall be consistent with, state guidelines for enrollment in all other subjects and classes: Provided, That schools which do not currently have the number of certified physical education teachers or required physical setting may develop alternate programs that will enable current staff and physical settings to be used to meet the physical education requirements established herein. These alternate programs shall be submitted to the State Department of Education and the Healthy Lifestyle Council for approval. Those schools needing to develop alternate programs shall not be required to implement this program until the school year commencing two thousand six.

(d) The State Board shall prescribe a program within the existing health and physical education program which incorporates fitness testing, reporting, recognition, fitness events and incentive programs which requires the participation in grades four through eight and the required high school course. The program shall be selected from nationally accepted fitness testing programs designed for school-aged children that test cardiovascular fitness, muscular strength and endurance, flexibility and body composition: Provided, That nothing in this subsection shall be construed to prohibit the use of programs designed under the auspices of the President’s Council on Physical Fitness and Sports. The program shall include modified tests for exceptional students. Each school in the state shall participate in National Physical Fitness and Sports Month in May of each year and shall make every effort to involve the community it serves in the related events.
(e) Body mass index measures shall be used as an indicator of progress toward promoting healthy lifestyles among school-aged children. The body mass index measures shall be determined using student height and weight data and reported to the State Department of Education via the West Virginia Education Information System. Body mass index measures shall be included in kindergarten screening procedures. Students in grades four through eight and students enrolled in high school physical education courses shall have their body mass index measured through required fitness testing procedures. All school personnel responsible for conducting and reporting body mass index measures shall receive training or written documentation on the appropriate methodology for assessing the body mass index and reporting data in a manner that protects student confidentiality. All body mass index data shall be reported in aggregate to the Governor, the State Board of Education, the Healthy Lifestyles Coalition and the Legislative Oversight Commission on Health and Human Resource Accountability.

§18-2-9. Required courses of instruction; violation and penalty.

(a) In all public, private, parochial and denominational schools located within this state, there shall be given prior to the completion of the eighth grade at least one year of instruction in the history of the State of West Virginia. The schools shall require regular courses of instruction by the completion of the twelfth grade in the history of the United States, in civics, in the Constitution of the United States, and in the government of the State of West Virginia for the purpose of teaching, fostering and perpetuating the ideals, principles and spirit of political and economic democracy in America and increasing the knowledge of the organization and machinery of the government of the United States and of the State of West Virginia. The State Board shall, with the advice of the State Superintendent, prescribe the courses of study covering these subjects for the public schools. It shall be the duty of the
officials or boards having authority over the respective private, parochial and denominational schools to prescribe courses of study for the schools under their control and supervision similar to those required for the public schools. To further such study, every high school student eligible by age for voter registration shall be afforded the opportunity to register to vote pursuant to section twenty-two, article two, chapter three of this code.

(b) The State Board shall cause to be taught in all of the public schools of this state the subject of health education, including instruction in any of the grades six through twelve as considered appropriate by the county board, on: (1) The prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases; (2) substance abuse, including the nature of alcoholic drinks and narcotics, tobacco products, and other potentially harmful drugs, with special instruction as to their effect upon the human system and upon society in general; and (3) the importance of healthy eating and physical activity to maintaining healthy weight. The course curriculum requirements and materials for the instruction shall be adopted by the State Board by rule in consultation with the Department of Health and Human Resources. The State Board shall prescribe a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

An opportunity shall be afforded to the parent or guardian of a child subject to instruction in the prevention, transmission and spread of acquired immune deficiency syndrome and other sexually transmitted diseases to examine the course curriculum requirements and materials to be used in the instruction. The parent or guardian may exempt the child from participation in the instruction by giving notice to that effect in writing to the school principal.
(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding ten dollars for each violation, and each week during which there is a violation shall constitute a separate offense. If the person so convicted occupy a position in connection with the public schools, that person shall automatically be removed from that position and shall be ineligible for reappointment to that or a similar position for the period of one year.

CHAPTER 122

(Com. Sub. for H. B. 3328 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §15-5-1, §15-5-2, §15-5-3 and §15-5-13 of the Code of West Virginia, 1931, as amended, all relating to the Office of Emergency Services; changing the name of the Office of Emergency Services to the Division of Homeland Security and Emergency Management; transferring duties, functions, personnel and related entities; specifying qualifications of the Director; directing entities to coordinate and cooperate with the Secretary of the Department of Military Affairs and Public Safety as to the receipt of federal funds for homeland security and emergency services purposes; providing that the Governor may require certain reports from entities receiving services, equipment, supplies, materials or funds for homeland security and emergency services purposes; and requiring copies of reports to be furnished to the Legislature.
Be it enacted by the Legislature of West Virginia:

That §15-5-1, §15-5-2, §15-5-3 and §15-5-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-1. Policy and purpose.

In view of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness, resulting from terrorism, enemy attack, sabotage or other hostile action, or from fire, flood, earthquakes or other natural or man-made causes and in order to insure that preparations of this state will be adequate to deal with such disasters, and generally to provide for the common defense and to protect the public peace, health and safety and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary: (1) To create the Division of Homeland Security and Emergency Management and to authorize the creation of local and regional organizations for emergency services in the political subdivisions of the state; (2) to confer upon the Governor, and upon the executive heads of governing bodies of the political subdivisions of the state the emergency powers provided herein; (3) to provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency services and homeland security functions; (4) and to establish and implement comprehensive homeland security and emergency
management plans to deal with such disasters. It is further declared to be the purpose of this article and the policy of the state that all homeland security and emergency management funds and functions of this state be coordinated to the maximum extent with the Secretary of the Department of Military Affairs and Public Safety and with the comparable functions of the federal government including its various departments and agencies, of other states and localities and of private agencies of every type, so that the most effective preparation and use may be made of the nation’s and this state’s manpower, resources and facilities for dealing with any disaster that may occur.


As used in this article:

(a) “Emergency services” means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond and recover, to prevent, detect, deter and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage or other natural or other man-made causes. These functions include, without limitation, fire-fighting services, police services, medical and health services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may
be exercised during the period when there is an imminent threat thereof;

(b) "Local organization for emergency services" means an organization created in accordance with the provisions of this article by state or local authority to perform local emergency services function;

(c) "Mobile support unit" means an organization for emergency services created in accordance with the provisions of this article by state or local authority to be dispatched by the Governor to supplement local organizations for emergency services in a stricken area;

(d) "Political subdivision" means any county or municipal corporation in this state;

(e) "Board" means the West Virginia Disaster Recovery Board created by this article;

(f) "Code" means the Code of West Virginia, one thousand nine hundred thirty-one, as amended;

(g) "Community facilities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

(h) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action;
(i) "Disaster recovery activities" means activities undertaken prior to, during or following a disaster to provide, or to participate in the provision of, emergency services, temporary housing, residential housing, essential business activities and community facilities;

(j) "Essential business activities" means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or service deemed by the authority to be necessary for recovery from a disaster;

(k) "Person" means any individual, corporation, voluntary organization or entity, partnership, firm or other association, organization or entity organized or existing under the laws of this or any other state or country;

(l) "Recovery fund" means the West Virginia Disaster Recovery Trust Fund created by this article;

(m) "Residential housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and such other nonhousing facilities as may be incidental or appurtenant thereto;

(n) "Temporary housing" means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities as may be incidental or appurtenant thereto; and
(o) "Secretary" means the Secretary of the West Virginia Department of Military Affairs and Public Safety.


(a) The Office of Emergency Services is continued as the Division of Homeland Security and Emergency Management within the Department of Military Affairs and Public Safety. All of the allied, advisory, affiliated or related entities and funds associated with the Office of Emergency Services and all its functions, personnel and property, are transferred to, incorporated in and administered as a part of the Division of Homeland Security and Emergency Management. Wherever the words "Office of Emergency Services" appear in this code, they shall mean the Division of Homeland Security and Emergency Management.

(b) A Director of the Division of Homeland Security and Emergency Management shall be appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall consider applicants for Director who at a minimum: (1) Have at least five years managerial or strategic planning experience; (2) are knowledgeable in matters relating to public safety, homeland security, emergency management and emergency response; and (3) have at a minimum, a federally issued secret level security clearance or have submitted to or will submit to a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued secret level security clearance.

(c) The Director may employ such technical, clerical, stenographic and other personnel, fix their compensation and make expenditures within the appropriation to the Division or from other funds made available for the purpose of providing homeland security and emergency management services to
carry out the purpose of this article. Employees of the Division of Homeland Security and Emergency Management shall be members of the State Civil Service System and all appoint-ments of the office, except those required by law to be exempt, shall be a part of the classified service under the Civil Service System.

(d) The Director and other personnel of the Division of Homeland Security and Emergency Management shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing in the same manner as pro-vided for personnel of other state agencies.

(e) The Director, subject to the direction and control of the Governor through the Secretary of the Department of Military Affairs and Public Safety, shall be executive head of the Division of Homeland Security and Emergency Management and shall be responsible to the Governor and the Secretary of the Department of Military Affairs and Public Safety for carrying out the program for homeland security and emergency management in this state. The Director in consultation with the Secretary of the Department of Military Affairs and Public Safety shall coordinate the activities of all organizations for homeland security and emergency management within the state and maintain liaison with and cooperate with homeland security, emergency management and other emergency service and civil defense agencies and organizations of other states and of the federal government, and shall have additional authority, duties and responsibilities authorized by this article as may be prescribed by the Governor or the Secretary of the Department of Military Affairs and Public Safety.

(f) The Director shall have the power to acquire in the name of the state by purchase, lease or gift, real property and rights or easements necessary or convenient to construct thereon the necessary building or buildings for housing and homeland security and emergency management control center.
§15-5-13. Appropriations; acceptance of services, gifts, grants and loans.

(a) Each political subdivision shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency services or of its proportionate share of expenses of a regional organization for emergency services, or both.

(b) Whenever the federal government or any agency or officer thereof shall offer to any authority, corporation, partnership or other entity, public or private or the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes relating to homeland security or emergency services, the state, after consultation and in coordination with the Secretary and acting through the Governor, or a political subdivision after consultation and in coordination with the Secretary and acting with the consent of the Governor and through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials or funds on behalf of the state or the political subdivision and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) Whenever any person, firm or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes relating to homeland security or emergency services, the state, after consultation and in coordination with the Secretary and acting through the Governor, or the political
subdivision after consultation and in coordination with the Secretary and acting through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials or funds on behalf of the state or the political subdivision and subject to the terms of the offer.

(e) The Governor may require any agency, authority, corporation, partnership or other entity to furnish a report, in both written and electronic form, detailing the source and receipt of all services, equipment, supplies, materials or funds for purposes relating to homeland security or emergency services as a condition of receiving these from the state. Within ten days of the receipt of any reports required under this subsection, the Governor shall furnish copies thereof to the Legislature.

CHAPTER 123

(H. B. 2780 — By Delegates Perdue, R. Thompson, Ellem, Hamilton, Walters, Campbell and Tabb)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §29-22A-10 of the Code of West Virginia, 1931, as amended, relating to racetrack video lottery; increasing the allocation of racetrack video lottery net terminal income to be used for payment into the pension plan for employees of the Licensed Racing Association and correspondingly reducing the allocation of racetrack video lottery net terminal income...
income to licensees; deleting provisions relating to a racetrack which does not have a breeder’s program supported by the Thoroughbred Development Fund or Greyhound Breeding Development Fund, requiring the one and one-half percent of terminal net income designated for the West Virginia Thoroughbred Development Fund to be diverted to the special fund established by the licensee and used for payment of regular purses; limiting allocation to workers’ compensation and providing for distribution of certain funds to be deposited in the special fund established by the licensee and used for payment of regular purses; providing for expiration of certain income into the Workers’ Compensation Debt Reduction Fund.

Be it enacted by the Legislature of West Virginia:

That §29-22A-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

(a) The commission shall provide to manufacturers, or applicants applying for a manufacturer’s permit, the protocol documentation data necessary to enable the respective manufacturer’s video lottery terminals to communicate with the commission’s central computer for transmitting auditing program information and for activation and disabling of video lottery terminals.
(b) The gross terminal income of a licensed racetrack shall be remitted to the commission through the electronic transfer of funds. Licensed racetracks shall furnish to the commission all information and bank authorizations required to facilitate the timely transfer of moneys to the commission. Licensed racetracks must provide the commission thirty days' advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds. From the gross terminal income remitted by the licensee to the commission, the commission shall deduct an amount sufficient to reimburse the commission for its actual costs and expenses incurred in administering racetrack video lottery at the licensed racetrack, and the resulting amount after the deduction is the net terminal income. The amount deducted for administrative costs and expenses of the commission may not exceed four percent of gross terminal income: Provided, That any amounts deducted by the commission for its actual costs and expenses that exceeds its actual costs and expenses shall be deposited into the State Lottery Fund. For all fiscal years beginning on or after the first day of July, two thousand one, the commission shall not receive an amount of gross terminal income in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, but four percent of any amount of gross terminal income received in excess of the amount of gross terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be deposited into the fund established in section eighteen-a, article twenty-two of this chapter.

(c) Net terminal income shall be divided as set out in this subsection. For all fiscal years beginning on or after the first day of July, two thousand one, any amount of net terminal income received in excess of the amount of net terminal income received during the fiscal year ending on the thirtieth day of June, two thousand one, shall be divided as set out in section ten-b of this article. The licensed racetrack's share is in lieu of...
all lottery agent commissions and is considered to cover all
costs and expenses required to be expended by the licensed
racetrack in connection with video lottery operations. The
division shall be made as follows:

(1) The commission shall receive thirty percent of net
terminal income, which shall be paid into the State Lottery
Fund as provided in section ten-a of this article;

(2) Until the first day of July, two thousand five, fourteen
percent of net terminal income at a licensed racetrack shall be
deposited in the special fund established by the licensee, and
used for payment of regular purses in addition to other amounts
provided for in article twenty-three, chapter nineteen of this
code, on and after the first day of July, two thousand five, the
rate shall be seven percent of net terminal income;

(3) The county where the video lottery terminals are located
shall receive two percent of the net terminal income: Provided,
That:

(A) Beginning the first day of July, one thousand nine
hundred ninety-nine, and thereafter, any amount in excess of
the two percent received during the fiscal year one thousand
nine hundred ninety-nine by a county in which a racetrack is
located that has participated in the West Virginia Thoroughbred
Development Fund since on or before the first day of January,
one thousand nine hundred ninety-nine shall be divided as
follows:

(i) The county shall receive fifty percent of the excess
amount; and

(ii) The municipalities of the county shall receive fifty
percent of the excess amount, said fifty percent to be divided
among the municipalities on a per capita basis as determined by
the most recent decennial United States census of population;
and

(B) Beginning the first day of July, one thousand nine
hundred ninety-nine, and thereafter, any amount in excess of
the two percent received during the fiscal year one thousand
nine hundred ninety-nine by a county in which a racetrack other
than a racetrack described in paragraph (A) of this proviso is
located and where the racetrack has been located in a munici-
pality within the county since on or before the first day of
January, one thousand nine hundred ninety-nine shall be
divided, if applicable, as follows:

(i) The county shall receive fifty percent of the excess
amount; and

(ii) The municipality shall receive fifty percent of the
excess amount; and

(C) This proviso shall not affect the amount to be received
under this subdivision by any other county other that a county
described in paragraph (A) or (B) of this proviso;

(4) One percent of net terminal income shall be paid for and
on behalf of all employees of the licensed racing association by
making a deposit into a special fund to be established by the
racing commission to be used for payment into the pension plan
for all employees of the licensed racing association;

(5) The West Virginia Thoroughbred Development Fund
created under section thirteen-b, article twenty-three, chapter
nineteen of this code and the West Virginia Greyhound Breeding
Development Fund created under section ten of said article
shall receive an equal share of a total of not less than one and
one-half percent of the net terminal income;
(6) The West Virginia Racing Commission shall receive one percent of the net terminal income which shall be deposited and used as provided in section thirteen-c, article twenty-three, chapter nineteen of this code.

(7) A licensee shall receive forty-six and one-half percent of net terminal income.

(8) (A) The tourism promotion fund established in section twelve, article two, chapter five-b of this code shall receive three percent of the net terminal income: Provided, That for the fiscal year beginning the first day of July, two thousand three, the Tourism Commission shall transfer from the Tourism Promotion Fund five million dollars of the three percent of the net terminal income described in this section and section ten-b of this article into the fund administered by the West Virginia economic development authority pursuant to section seven, article fifteen, chapter thirty-one of this code, five million dollars into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to section six, article four, chapter five-a of this code and five million dollars into the tax reduction and federal funding increased compliance fund; and

(B) Notwithstanding any provision of paragraph (A) of this subdivision to the contrary, for each fiscal year beginning after the thirtieth day of June, two thousand four, this three percent of net terminal income and the three percent of net terminal income described in paragraph (B), subdivision (8), subsection (a), section ten-b of this article shall be distributed as provided in this paragraph as follows:

(i) 1.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Tourism Promotion Fund created under section twelve, article two, chapter five-b of this code;
(ii) 0.375 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Development Office Promotion Fund created under section three-b, article two, chapter five-b of this code;

(iii) 0.5 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Research Challenge Fund created under section ten, article one-b, chapter eighteen-b of this code;

(iv) 0.6875 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the Capitol Renovation and Improvement Fund administered by the Department of Administration pursuant to section six, article four, chapter five-a of this code; and

(v) 0.0625 percent of the total amount of net terminal income described in this section and in section ten-b of this article shall be deposited into the 2004 Capitol Complex Parking Garage Fund administered by the Department of Administration pursuant to section five-a, article four, chapter five-a of this code;

(9) (A) On and after the first day of July, two thousand five, seven percent of net terminal income shall be deposited into the Workers' Compensation Debt Reduction Fund created in section five, article two-d, chapter twenty-three of this code: Provided, That in any fiscal year when the amount of money generated by this subdivision totals eleven million dollars, all subsequent distributions under this subdivision shall be deposited in the special fund established by the licensee and used for the payment of regular purses in addition to the other amounts provided for in article twenty-three, chapter nineteen of this code;
(B) The deposit of the seven percent of net terminal income into the Workers' Compensation Debt Reduction Fund pursuant to this subdivision shall expire and not be imposed with respect to these funds and shall be deposited in the special fund established by the licensee and used for payment of regular purses in addition to the other amounts provided for in article twenty-three, chapter nineteen of this code, on and after the first day of the month following the month in which the Governor certifies to the Legislature that: (i) The revenue bonds issued pursuant to article two-d, chapter twenty-three of this code, have been retired or payment of the debt service provided for, and (ii) that an independent certified actuary has determined that the unfunded liability of the old fund, as defined in chapter twenty-three of this code, has been paid or provided for in its entirety; and

(10) The remaining one percent of net terminal income shall be deposited as follows:

(A) For the fiscal year beginning the first day of July, two thousand three, the veterans memorial program shall receive one percent of the net terminal income until sufficient moneys have been received to complete the veterans memorial on the grounds of the State Capitol Complex in Charleston, West Virginia. The moneys shall be deposited in the State Treasury in the Division of Culture and History Special Fund created under section three, article one-i, chapter twenty-nine of this code: Provided, That only after sufficient moneys have been deposited in the fund to complete the veterans memorial and to pay in full the annual bonded indebtedness on the veterans memorial, not more than twenty thousand dollars of the one percent of net terminal income provided for in this subdivision shall be deposited into a special revenue fund in the State Treasury, to be known as the "John F. 'Jack' Bennett Fund". The moneys in this fund shall be expended by the Division of Veterans Affairs to provide for the placement of markers for the
graves of veterans in perpetual cemeteries in this state. The
Division of Veterans Affairs shall promulgate legislative rules
pursuant to the provisions of article three, chapter twenty-nine-a
of this code specifying the manner in which the funds are spent,
determine the ability of the surviving spouse to pay for the
placement of the marker and setting forth the standards to be
used to determine the priority in which the veterans grave
markers will be placed in the event that there are not sufficient
funds to complete the placement of veterans grave markers in
any one year, or at all. Upon payment in full of the bonded
indebtedness on the veterans memorial, one hundred thousand
dollars of the one percent of net terminal income provided for
in this subdivision shall be deposited in the special fund in the
Division of Culture and History created under section three,
article one-i, chapter twenty-nine of this code and be expended
by the Division of Culture and History to establish a West
Virginia veterans memorial archives within the cultural center
to serve as a repository for the documents and records pertain-
ing to the veterans memorial, to restore and maintain the
monuments and memorial on the capitol grounds: Provided,
however, That five hundred thousand dollars of the one percent
of net terminal income shall be deposited in the State Treasury
in a special fund of the Department of Administration, created
under section five, article four, chapter five-a of this code, to be
used for construction and maintenance of a parking garage on
the State Capitol Complex; and the remainder of the one
percent of net terminal income shall be deposited in equal
amounts in the Capitol Dome and Improvements Fund created
under section two, article four, chapter five-a of this code and
cultural facilities and capitol resources matching grant program
fund created under section three, article one of this chapter.

(B) For each fiscal year beginning after the thirtieth day of
June, two thousand four:
(i) Five hundred thousand dollars of the one percent of net terminal income shall be deposited in the State Treasury in a special fund of the Department of Administration, created under section five, article four, chapter five-a of this code, to be used for construction and maintenance of a parking garage on the State Capitol Complex; and

(ii) The remainder of the one percent of net terminal income and all of the one percent of net terminal income described in paragraph (B), subdivision (9), subsection (a), section ten-b of this article twenty-two-a shall be distributed as follows: The net terminal income shall be deposited in equal amounts into the Capitol Dome and Capitol Improvements fund created under section two, article four, chapter five-a of this code and the cultural facilities and capitol resources matching grant program fund created under section three, article one, chapter twenty-nine of this code until a total of one million five hundred thousand dollars is deposited into the cultural facilities and capitol resources matching grant program fund; thereafter, the remainder shall be deposited into the Capitol Dome and Capitol Improvements Fund.

(d) Each licensed racetrack shall maintain in its account an amount equal to or greater than the gross terminal income from its operation of video lottery machines, to be electronically transferred by the commission on dates established by the commission. Upon a licensed racetrack’s failure to maintain this balance, the commission may disable all of a licensed racetrack’s video lottery terminals until full payment of all amounts due is made. Interest shall accrue on any unpaid balance at a rate consistent with the amount charged for state income tax delinquency under chapter eleven of this code. The interest shall begin to accrue on the date payment is due to the commission.
(e) The commission's central control computer shall keep accurate records of all income generated by each video lottery terminal. The commission shall prepare and mail to the licensed racetrack a statement reflecting the gross terminal income generated by the licensee's video lottery terminals. Each licensed racetrack shall report to the commission any discrepancies between the commission's statement and each terminal's mechanical and electronic meter readings. The licensed racetrack is solely responsible for resolving income discrepancies between actual money collected and the amount shown on the accounting meters or on the commission's billing statement.

(f) Until an accounting discrepancy is resolved in favor of the licensed racetrack, the commission may make no credit adjustments. For any video lottery terminal reflecting a discrepancy, the licensed racetrack shall submit to the commission the maintenance log which includes current mechanical meter readings and the audit ticket which contains electronic meter readings generated by the terminal's software. If the meter readings and the commission's records cannot be reconciled, final disposition of the matter shall be determined by the commission. Any accounting discrepancies which cannot be otherwise resolved shall be resolved in favor of the commission.

(g) Licensed racetracks shall remit payment by mail if the electronic transfer of funds is not operational or the commission notifies licensed racetracks that remittance by this method is required. The licensed racetracks shall report an amount equal to the total amount of cash inserted into each video lottery terminal operated by a licensee, minus the total value of game credits which are cleared from the video lottery terminal in exchange for winning redemption tickets, and remit the amount as generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than
noon on the day when the payment would otherwise be completed through electronic funds transfer.

(h) Licensed racetracks may, upon request, receive additional reports of play transactions for their respective video lottery terminals and other marketing information not considered confidential by the commission. The commission may charge a reasonable fee for the cost of producing and mailing any report other than the billing statements.

(i) The commission has the right to examine all accounts, bank accounts, financial statements and records in a licensed racetrack’s possession, under its control or in which it has an interest and the licensed racetrack shall authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records by the commission.

CHAPTER 124

(S. B. 531 — By Senator Unger)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §16-51-1, §16-51-2, §16-51-3, §16-51-4, §16-51-5 and §16-51-6 of the Code of West Virginia, 1931, as amended, all relating to the Hospice Licensure Act; requiring compliance with the Centers for Medicare and Medicaid Services; and penalties.

Be it enacted by the Legislature of West Virginia:
That §16-51-1, §16-51-2, §16-51-3, §16-51-4, §16-51-5 and §16-51-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 51. HOSPICE LICENSURE ACT.

§16-51-1. Purpose and short title.

This article shall be known as the Hospice Licensure Act. The purpose of this Act is to establish licensing requirements for hospices. It is the intent of the Legislature to establish, promote and make available within this state a comprehensive hospice care program for the treatment of physical, emotional and mental symptoms of terminal illness.

§16-51-2. Definitions.

(a) “Bereavement services” means support services designed to assist individuals to experience, respond emotionally to and adjust to the death of another person.

(b) “Hospice” means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration which provides palliative and supportive medical and other health services to terminally ill individuals and their families. Hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual and other special needs which are experienced during the final stages of illness and during dying and bereavement.
(c) "Interdisciplinary team" means the hospice patient and the patient's family, the attending physician and the following hospice personnel: Physician, nurse, social worker, clergy and trained volunteer. Providers of supportive services such as mental health, pharmaceutical and any other appropriate allied health services may also be included on the team as the needs of the individual dictate.

(d) "Palliative services" means treatment directed at controlling pain, relieving other symptoms and focusing on the special needs of the individual and family as they experience the stress of the dying process, rather than treatment designed for investigation and intervention for the purpose of cure or prolongation of life.

(e) "Terminally ill" means that an individual has a medical prognosis that his or her life expectancy is six months or less or another length of time determined by the centers for medicare and medicaid services and designated in federal hospice regulations.

(f) "Secretary" means the Secretary of the West Virginia Department of Health and Human Resources. The Secretary may define in regulation any term or phrase used in this article which is not expressly defined.

§16-5I-3. Hospices to obtain license; application; fees and inspections.

(a) No person, partnership, association or corporation or any governmental unit or any division, department, board or agency thereof may operate a hospice without first obtaining a license from the Secretary in accordance with the provisions of this article and the rules lawfully promulgated hereunder.

(b) Any person, partnership, association or corporation or any governmental unit or any division, department, board or
agency thereof desiring a license hereunder shall file with the Secretary an application in such form as the Secretary shall prescribe and furnish accompanied by a fee to be determined by the Board of Health, based upon the number of persons served by the hospice. The Secretary shall inspect the hospice prior to issuing a license. Upon receipt and review of an application for license, the Secretary shall issue a license if the hospice is in compliance with the provisions of this article and with the rules lawfully promulgated hereunder. The license is not transferable or assignable.

(c) A license shall expire one year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted on forms furnished by the Secretary. A license shall be renewed if the Secretary determines that the applicant is in compliance with this article and with all rules promulgated hereunder.

(d) The Secretary or his or her designee shall inspect all hospices that are subject to rules adopted pursuant to this article periodically and at least as often as required by the Centers for Medicare and Medicaid Services in order to determine compliance with the provisions of this article and with rules adopted hereunder, and regulations promulgated by the Centers for Medicare and Medicaid Services.

§16-51-4. Suspension; revocation.

(a) The Secretary is authorized to suspend or revoke a license issued hereunder if the provisions of this article or of the rules are violated.

(b) Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time and place set for the hearing on the complaint, which date shall not be less than thirty days from the time notice is given. Such notice shall be
sent by registered mail to the licensee at the address where the
hospice concerned is located. The licensee shall be entitled to
be represented by legal counsel at the hearing.

(c) If a license is revoked as herein provided, a new
application for a license shall be considered by the Secretary if,
when and after the conditions upon which revocation was based
have been corrected and evidence of this fact has been fur-
nished. A new license shall then be granted after proper
inspection has been made and all provisions of this article and
rules promulgated hereunder have been satisfied.

(d) All of the pertinent provisions of article five, chapter
twenty-nine-a of this code shall apply to and govern any
hearing authorized and required by the provisions of this article
and the administrative procedure in connection with and
following any such hearing, with like effect as if the provisions
of said article five were set forth in extenso in this section.

(e) Any applicant or licensee who is dissatisfied with the
decision of the Secretary as a result of the hearing provided in
this section may, within thirty days after receiving notice of the
decision, appeal to the circuit court, in term or in vacation, of
Kanawha County for judicial review of the decision.

(f) The court may affirm, modify or reverse the decision of
the Secretary and either the applicant or licensee or the Secre-
tary may appeal from the court’s decision to the Supreme Court
of Appeals.

§16-51-5. Secretary of Health and Human Resources to establish
rules.

The Secretary of the Department of Health and Human
Resources may promulgate rules in accordance with the
provisions of chapter twenty-nine-a of this code for the
licensure of hospice programs to ensure adequate care, treat-
ment, health, safety, welfare and comfort of hospice patients. Such rules shall include, but not be limited to:

(a) The qualifications and supervision of licensed and nonlicensed personnel;

(b) The provision and coordination of inpatient care and in-home treatment services, including the development of a written plan of care;

(c) The management, operation, staffing and equipping of the hospice program;

(d) The clinical and business records kept by the hospice;

(e) The procedures for the review of utilization and quality of patient care; and

(f) Such other requirements as the Secretary determines to be appropriate.

§16-5I-6. Violations; penalties; injunction.

(a) Any person, partnership, association or corporation and any local governmental unit or any division, department, board or agency thereof which establishes, conducts, manages or operates a hospice without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be assessed a civil penalty by the Secretary not to exceed fifty dollars for each violation. Each day of continuing violation after conviction shall be considered a separate violation.

(b) Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation or any
AN ACT to amend and reenact §7-18-2, §7-18-9, and §7-18-14 of the Code of West Virginia, 1931, as amended, all relating to the hotel occupancy tax generally; allowing municipalities to increase the rate of tax imposed to six percent; exempting certain hotels from the imposition of the tax; authorizing imposition of certain tax by counties on certain hotels located in municipality; requiring public hearings on proposed increases; providing additional legislative findings as to purposes for which public financial support should be provided; and providing a misdemeanor criminal penalty for members of governing bodies who vote for or cause expenditures of tax revenues for purposes not specified in said article.

Be it enacted by the Legislature of West Virginia:

That §7-18-2, §7-18-9 and §7-18-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-2. Rate of tax.
§7-18-9. Total amount collected to be remitted.
§7-18-14. Proceeds of tax; application of proceeds.

§7-18-2. Rate of tax.

The rate of tax imposed shall be three percent of the consideration paid for the use or occupancy of a hotel room: Provided, That on and after the first day of July, two thousand five, a municipality may by ordinance increase the rate of tax imposed in this section to not more than six percent of the consideration paid for the use or occupancy of a hotel room: Provided, however, That notwithstanding any other provision of this article to the contrary, a municipality may not impose any tax authorized by this article on a hotel located within its corporate limits upon which a county was imposing a tax authorized by this article on or after the first day of January, two thousand five, and continuously thereafter to and including the effective date of annexation of the territory in which the hotel is located pursuant to article six, chapter eight of this code and as to that hotel, the county is authorized to continue to impose and collect the tax authorized by this article at the rate of three percent of the consideration paid for the use or occupancy of a hotel room: Provided further, That in the event the county commission duly enters an order of record that ceases to impose the tax authorized by this article on that hotel, then, as to that hotel, the municipality in which the hotel is located by reason of the annexation may impose the tax authorized by this article. Prior to the second reading of an ordinance proposed by a municipality to increase the rate of tax, the municipality shall conduct a properly noticed public hearing on the issue. The consideration paid for the use or occupancy of a hotel room shall not include the amount of tax imposed on the transaction under article fifteen, chapter eleven of this code or charges for meals, valet service, room service, telephone service or other
§7-18-9. Total amount collected to be remitted.

A profit may not accrue to any person as a result of the collection of the tax authorized under this article. Notwithstanding that the total amount of taxes collected by a hotel operator may be in excess of the amount for which a consumer would be liable by the application of the levy imposed under this article for the occupancy of a hotel room or rooms, the total amount of all taxes collected by any hotel operator shall be remitted to the taxing authority as hereinafter provided.

§7-18-14. Proceeds of tax; application of proceeds.

(a) Application of proceeds. — The net proceeds of the tax collected and remitted to the taxing authority pursuant to this article shall be deposited into the general revenue fund of such municipality or county commission and, after appropriation thereof, shall be expended only as provided in subsections (b) and (c) of this section.

(b) Required expenditures. — At least fifty percent of the net revenue receivable during the fiscal year by a county or a municipality pursuant to this article shall be expended in the following manner for the promotion of conventions and tourism:

(1) Municipalities. — If a convention and visitor’s bureau is located within the municipality, county or region, the governing body of such municipality shall appropriate the percentage required by this subsection to that bureau. If a convention and visitor’s bureau is not located within such municipality, county or region, then the percentage appropriation required by this subsection shall be appropriated as follows:
20 (i) Any hotel located within such municipality, county or region may apply to such municipality for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such municipality, for uses directly related to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection: Provided, That prior to appropriating any moneys to such hotel such municipality shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

33 (ii) If there is more than one convention and visitor’s bureau located within a municipality, county or region, the city council may allocate the tax authorized by this article to one or more of such bureaus in such portion as the city council in its sole discretion determines.

38 (iii) The balance of net revenue required to be expended by this subsection shall be appropriated to the regional travel council serving the area in which the municipality is located.

41 (2) Counties. — If a convention and visitor’s bureau is located within a county or region, the county commission shall appropriate the percentage required by this subsection to that convention and visitor’s bureau. If a convention and visitor’s bureau is not located within such county or region, then the percentage appropriation required by this subsection shall be appropriated as follows:

48 (i) Any hotel located within such county or region may apply to such county for an appropriation to such hotel of a portion of the tax authorized by this article and collected by such hotel and remitted to such county, for uses directly related
to the promotion of tourism and travel, including advertising, salaries, travel, office expenses, publications and similar expenses. The portion of such tax allocable to such hotel shall not exceed seventy-five percent of that portion of such tax collected and remitted by such hotel which is required to be expended pursuant to this subsection: Provided, That prior to appropriating any moneys to such hotel such county shall require the submission of, and give approval to, a budget setting forth the proposed uses of such moneys.

(ii) If there is more than one convention and visitor’s bureau located within a county or region, the county commission may allocate the tax authorized by this article to one or more of such bureaus in such portion as the county commission in its sole discretion determines.

(iii) The balance of net revenue required to be expended by this subsection shall be appropriated to the regional travel council serving the area in which the county is located.

(3) Legislative finding. — The Legislature hereby finds and declares that in order to attract new business and industry to this state and to retain existing business and industry all to provide the citizens of the state with economic security, and to advance the business prosperity and economic welfare of this state, it is necessary to enhance recreational and tourism opportunities. Therefore, in order to promote recreation and tourism, the Legislature finds that public financial support should be provided for constructing, equipping, improving and maintaining projects, agencies and facilities which promote recreation and tourism. The Legislature also finds that the support of convention and visitor’s bureaus, hotels and regional travel councils is a public purpose for which funds may be expended. Local convention and visitor’s bureaus, hotels and regional travel councils receiving funds under this subsection may expend such funds for the payment of administrative expenses,
and for the direct or indirect promotion of conventions and tourism, and for any other uses and purposes authorized by subdivisions (1) and (2) of this subsection.

(c) Permissible expenditures. — After making the appropriation required by subsection (b) of this section, the remaining portion of the net revenues receivable during the fiscal year by such county or municipality, pursuant to this article, may be expended for one or more of the purposes set forth in this subsection, but for no other purpose. The purposes for which expenditures may be made pursuant to this subsection are as follows:

(1) The planning, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipment, maintenance, repair and operation of publicly owned convention facilities, including, but not limited to, arenas, auditoriums, civic centers and convention centers;

(2) The payment of principal or interest or both on revenue bonds issued to finance such convention facilities;

(3) The promotion of conventions;

(4) The construction, operation or maintenance of public parks, tourist information centers and recreation facilities (including land acquisition);

(5) The promotion of the arts;

(6) Historic sites;

(7) Beautification projects; or

(8) Medical care, in an amount not exceeding one hundred thousand dollars, in any county where: (i) There is an urgent necessity to preserve the delivery of acute medical care
services; (ii) there is an increase in need for acute medical care services directly related to tourism; (iii) recurrent flooding in the county significantly disrupts, on a periodic basis, the delivery of acute medical care services; (iv) there is an inadequate economic base within the county from any source other than tourism to preserve the delivery of acute medical care services; (v) there is an inadequate economic base directly related to low population in the county, specifically, a population of less than ten thousand persons according to the census of the year one thousand nine hundred ninety; and (vi) there is one and only one hospital within the county; and the county commission makes specific findings, by resolution, that all of the foregoing conditions within the county exist.

(d) Definitions. — For purposes of this section, the following terms are defined:

(1) Convention and visitor's bureau and visitor's and convention bureau. — “Convention and visitor’s bureau” and “visitor’s and convention bureau” are interchangeable and either shall mean a nonstock, nonprofit corporation with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the municipality, county or region in which such convention and visitor’s bureau or visitor’s and convention bureau is located or engaged in business within.

(2) Convention center. — “Convention center” means a convention facility owned by the state, a county, a municipality or other public entity or instrumentality and shall include all facilities, including armories, commercial, office, community service and parking facilities and publicly owned facilities constructed or used for the accommodation and entertainment of tourists and visitors, constructed in conjunction with the convention center and forming reasonable appurtenances thereto.
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(3) Fiscal year. — “Fiscal year” means the year beginning the first day of July and ending the thirtieth day of June of the next calendar year.

(4) Net proceeds. — “Net proceeds” means the gross amount of tax collections less the amount of tax lawfully refunded.

(5) Promotion of the arts. — “Promotion of the arts” means activity to promote public appreciation and interest in one or more of the arts. It includes the promotion of music for all types, the dramatic arts, dancing, painting and the creative arts through shows, exhibits, festivals, concerts, musicals and plays.

(6) Recreational facilities. — “Recreational facilities” means and includes any public park, parkway, playground, public recreation center, athletic field, sports arena, stadium, skating rink or arena, golf course, tennis courts and other park and recreation facilities, whether of a like or different nature, that are owned by a county or municipality.

(7) Region. — “Region” means an area consisting of one or more counties that have agreed by contract to fund a convention and visitor’s bureau to promote those counties.

(8) Regional travel council. — “Regional travel council” means a nonstock, nonprofit corporation, with a full-time staff working exclusively to promote tourism and to attract conventions, conferences and visitors to the region of this state served by the regional travel council.

(9) Historic site. — “Historic site” means any site listed on the United States national register of historic places, or listed by a local historical landmarks commission, established under state law, when such sites are owned by a city, a county or a non-profit historical association and are open, from time to time, to accommodate visitors.
177  (e) Any member of a governing body who willingly and  
178  knowingly votes to or causes to be expended moneys generated  
179  by the provisions of this section for purposes other than  
180  specifically set forth in this section is guilty of a misdemeanor  
181  and, upon conviction thereof, shall be fined not more than one  
182  hundred dollars.

CHAPTER 126

(Com. Sub. for H. B. 2890 — By Delegate DeLong)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §20-2-5 of the Code of West Virginia,  
1931, as amended, relating generally to unlawful methods of  
hunting; and making it unlawful to hunt or conduct hunts for a fee  
where the hunter is not in the same physical location as the  
wildlife.

Be it enacted by the Legislature of West Virginia:

    That §20-2-5 of the Code of West Virginia, 1931, as amended, be  
amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

*§20-2-5. Unlawful methods of hunting and fishing and other  
    unlawful acts.

1    Except as authorized by the Director, it is unlawful at any  
2    time for any person to:

*CLERK'S NOTE: This section was also amended by S. B. 476 (Chapter 127), which  
passed prior to this act.
(1) Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

(2) Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge except as may be authorized by rules promulgated by the Director or by law;

(3) Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it is lawful to hunt or take raccoon, opossum or skunk by the use of artificial light subject to the restrictions set forth in this subdivision: Provided, however, That it is lawful to hunt or take coyotes by the use of amber- or red-colored artificial light subject to the restrictions set forth in this subdivision. No person is guilty of a violation of this subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in jail for not less than ten days nor more than one hundred days;
(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as authorized by rules promulgated by the Director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the Director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and nonmigratory wild birds within any county of the state unless he or she has in his or her possession a permit in writing issued to him or her by the Director: Provided, That this section shall not prohibit hunting or taking of unprotected species of wild animals and wild birds and migratory wild birds, during the open season, in the open fields, open water and open marshes of the state;

(9) Have in his or her possession a loaded firearm or a firearm from the magazine of which all shells and cartridges have not been removed, in or on any vehicle or conveyance, or its attachments, within the state, except as may otherwise be provided by law or regulation. Except as hereinafter provided, between five o’clock postmeridian of one day and seven o’clock antemeridian, eastern standard time of the day following, any unloaded firearm, being lawfully carried in accordance
with the foregoing provisions, shall be so carried only when in a case or taken apart and securely wrapped. During the period from the first day of July to the thirtieth day of September, inclusive, of each year, the foregoing requirements relative to carrying certain unloaded firearms are permissible only from eight-thirty o'clock postmeridian to five o'clock antemeridian, eastern standard time: Provided, That the time periods for carrying unloaded and uncased firearms are extended for one hour after the postmeridian times and one hour before the antemeridian times established above if a hunter is preparing to or in the process of transporting or transferring the firearms to or from a hunting site, campsite, home or other place of abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement by which wildlife may be taken after the hour of five o'clock antemeridian on Sunday on private land without the written consent of the landowner any wild animals or wild birds except when a big game season opens on a Monday, the Sunday prior to that opening day will be closed for any taking of wild animals or birds after five o'clock antemeridian on that Sunday: Provided, That traps previously and legally set may be tended after the hour of five o'clock antemeridian on Sunday and the person so doing may carry only a twenty-two caliber firearm for the purpose of humanely dispatching trapped animals. Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, in addition to any fines that may be imposed by this or other sections of this code, shall be subject to a one hundred-dollar fine;

(11) Hunt with firearms or long bow while under the influence of intoxicating liquor;

(12) Hunt, catch, take, kill, injure or pursue a wild animal or bird with the use of a ferret;
(13) Buy raw furs, pelts or skins of fur-bearing animals unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any fish at any time by any means other than by rod, line and hooks with natural or artificial lures unless otherwise authorized by law or rules issued by the Director: Provided, That snaring of any species of suckers, carp, fallfish and creek chubs shall at all times be lawful;

(15) Employ or hire, or induce or persuade, by the use of money or other things of value, or by any means, any person to hunt, take, catch or kill any wild animal or wild bird except those species on which there is no closed season, or to fish for, catch, take or kill any fish, amphibian or aquatic life which is protected by the provisions of this chapter or rules of the Director or the sale of which is prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport, possess or use any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States for the protection of migratory birds and wild mammals concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six, except during the time and in the manner and numbers prescribed by the Federal Migratory Bird Treaty Act, 16 U. S. C. § 703, et seq., and regulations made thereunder;

(17) Kill, take, catch or have in his or her possession, living or dead, any wild bird other than a game bird; or expose for sale or transport within or without the state any bird except as aforesaid. No part of the plumage, skin or body of any protected bird shall be sold or had in possession for sale except mounted or stuffed plumage, skin, bodies or heads of the birds legally taken and stuffed or mounted, irrespective of whether the bird
was captured within or without this state, except the English or
European sparrow (passer domesticus), starling (sturnus
vulgaris) and cowbird (molothrus ater), which may not be
protected and the killing thereof at any time is lawful;

(18) Use dynamite or any like explosive or poisonous
mixture placed in any waters of the state for the purpose of
killing or taking fish. Any person violating the provisions of
this subdivision is guilty of a felony and, upon conviction
thereof, shall be fined not more than five hundred dollars or
imprisoned for not less than six months nor more than three
years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow or
arrows, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields or use a
crossbow to hunt for, take or attempt to take any wildlife;

(21) Take or attempt to take turkey, bear, elk or deer with
any arrow unless the arrow is equipped with a point having at
least two sharp cutting edges measuring in excess of three
fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow
having an explosive head or shaft, a poisoned arrow or an arrow
which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway or from
aircraft, motor-driven watercraft, motor vehicle or other land
conveyance;

(24) Permit any dog owned by him or her or under his or
her control to chase, pursue or follow upon the track of any wild
animal or wild bird, either day or night, between the first day of
May and the fifteenth day of August next following: Provided,
That dogs may be trained on wild animals and wild birds,
except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: Provided, however, That nonresidents may not train dogs in this state at any time except during the legal small game hunting season: Provided further, That the person training said dogs does not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(25) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold the trial at any time of the year upon obtaining a permit as is provided in section fifty-six of this article. The person responsible for obtaining the permit shall prepare and keep an accurate record of the names and addresses of all persons participating in said trial and make same readily available for inspection by any conservation officer upon request;

(26) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by rule of the Director asauthorized by subdivision (6), section seven, article one of this chapter;

(27) Hunting on public lands on Sunday after five o'clock antemeridian is prohibited; and

(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock antemeridian: Provided, That the provisions of this subdivision
do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:

Shall hunting on Sunday be authorized in ________ County?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election, or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred
four weeks. If a majority votes “yes”, no election reconsidering 
the action may be held for a period of five years. A local option 
election may thereafter be held if a written petition of qualified 
voters residing within the county equal to at least five percent 
of the number of persons who were registered to vote in the 
next preceding general election is received by the county 
commission of the county in which Sunday hunting is autho-
rized. The petition may be in any number of counterparts. The 
election shall take place at the next primary or general election 
scheduled more than ninety days following receipt by the 
county commission of the petition required by this subsection: 
Provided, That the issue may not be placed on the ballot until 
all statutory notice requirements have been met. No local law 
or regulation providing any penalty, disability, restriction, 
regulation or prohibition of Sunday hunting may be enacted and 
the provisions of this article preempt all regulations, rules, 
ordinances and laws of any county or municipality in conflict 
with this subdivision.

(29) Hunt or conduct hunts for a fee where the hunter is not 
physically present in the same location as the wildlife being 
hunted within West Virginia.

CHAPTER 127

(S. B. 476 — By Senators Facemyer, Bowman and Barnes)

[Passed March 22, 2005; in effect ninety days from passage.] 
[Approved by the Governor on April 4, 2005.] 

AN ACT to amend and reenact §20-2-5 of the Code of West Vir-
ginia, 1931, as amended, relating to use of red-colored artificial 
light when hunting coyotes.
Be it enacted by the Legislature of West Virginia:

That §20-2-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

*§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

Except as authorized by the Director, it is unlawful at any time for any person to:

1. Shoot at or to shoot any wild bird or animal unless it is plainly visible to him or her;

2. Dig out, cut out or smoke out, or in any manner take or attempt to take, any live wild animal or wild bird out of its den or place of refuge except as may be authorized by rules promulgated by the Director or by law;

3. Make use of, or take advantage of, any artificial light in hunting, locating, attracting, taking, trapping or killing any wild bird or wild animal, or to attempt to do so, while having in his or her possession or subject to his or her control, or for any person accompanying him or her to have in his or her possession or subject to his or her control, any firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or animal: Provided, That it is lawful to hunt or take raccoon, opossum or skunk by the use of artificial light subject to the restrictions set forth in this subdivision: Provided, however, that it is lawful to hunt or take coyotes by the use of amber- or red-colored artificial light subject to the restrictions set forth in this subdivision. No person is guilty of a violation of this

*CLERK'S NOTE: This section was also amended by H. B. 2890 (Chapter 126), which passed subsequent to this act.
subdivision merely because he or she looks for, looks at, attracts or makes motionless a wild bird or wild animal with or by the use of an artificial light, unless at the time he or she has in his or her possession a firearm, whether cased or uncased, bow, arrow, or both, or other implement or device suitable for taking, killing or trapping a wild bird or wild animal, or unless the artificial light (other than the head lamps of an automobile or other land conveyance) is attached to, a part of, or used from within or upon an automobile or other land conveyance.

Any person violating the provisions of this subdivision is guilty of a misdemeanor and, upon conviction thereof, shall for each offense be fined not less than one hundred dollars nor more than five hundred dollars and shall be imprisoned in jail for not less than ten days nor more than one hundred days;

(4) Hunt for, take, kill, wound or shoot at wild animals or wild birds from an airplane, or other airborne conveyance, an automobile, or other land conveyance, or from a motor-driven water conveyance, except as authorized by rules promulgated by the Director;

(5) Take any beaver or muskrat by any means other than by trap;

(6) Catch, capture, take or kill by seine, net, bait, trap or snare or like device of any kind any wild turkey, ruffed grouse, pheasant or quail;

(7) Destroy or attempt to destroy needlessly or willfully the nest or eggs of any wild bird or have in his or her possession the nest or eggs unless authorized to do so under rules promulgated by or under a permit issued by the Director;

(8) Except as provided in section six of this article, carry an uncased or loaded gun in any of the woods of this state except during the open firearms hunting season for wild animals and
nonmigratory wild birds within any county of the state unless
he or she has in his or her possession a permit in writing issued
to him or her by the Director: Provided, That this section shall
not prohibit hunting or taking of unprotected species of wild
animals and wild birds and migratory wild birds, during the
open season, in the open fields, open water and open marshes
of the state;

(9) Have in his or her possession a loaded firearm or a
firearm from the magazine of which all shells and cartridges
have not been removed, in or on any vehicle or conveyance, or
its attachments, within the state, except as may otherwise be
provided by law or regulation. Except as hereinafter provided,
between five o’clock postmeridian of one day and seven
o’clock antemeridian, eastern standard time of the day follow-
ing, any unloaded firearm, being lawfully carried in accordance
with the foregoing provisions, shall be so carried only when in
a case or taken apart and securely wrapped. During the period
from the first day of July to the thirtieth day of September,
inclusive, of each year, the foregoing requirements relative to
carrying certain unloaded firearms are permissible only from
eight-thirty o’clock postmeridian to five o’clock antemeridian,
eastern standard time: Provided, That the time periods for
carrying unloaded and uncased firearms are extended for one
hour after the postmeridian times and one hour before the
antemeridian times established above if a hunter is preparing
to or in the process of transporting or transferring the firearms
to or from a hunting site, campsite, home or other place of
abode;

(10) Hunt, catch, take, kill, trap, injure or pursue with
firearms or other implement by which wildlife may be taken
after the hour of five o’clock antemeridian on Sunday on
private land without the written consent of the landowner any
wild animals or wild birds except when a big game season
opens on a Monday, the Sunday prior to that opening day will
be closed for any taking of wild animals or birds after five
o’clock antemeridian on that Sunday:  Provided, That traps
previously and legally set may be tended after the hour of five
o’clock antemeridian on Sunday and the person so doing may
carry only a twenty-two caliber firearm for the purpose of
humanely dispatching trapped animals. Any person violating
the provisions of this subdivision is guilty of a misdemeanor
and, upon conviction thereof, in addition to any fines that may
be imposed by this or other sections of this code, shall be
subject to a one hundred-dollar fine;

(11) Hunt with firearms or long bow while under the
influence of intoxicating liquor;

(12) Hunt, catch, take, kill, injure or pursue a wild animal
or bird with the use of a ferret;

(13) Buy raw furs, pelts or skins of fur-bearing animals
unless licensed to do so;

(14) Catch, take, kill or attempt to catch, take or kill any
fish at any time by any means other than by rod, line and hooks
with natural or artificial lures unless otherwise authorized by
law or rules issued by the Director:  Provided, That snaring of
any species of suckers, carp, fallfish and creek chubs shall at all
times be lawful;

(15) Employ or hire, or induce or persuade, by the use of
money or other things of value, or by any means, any person to
hunt, take, catch or kill any wild animal or wild bird except
those species on which there is no closed season, or to fish for,
catch, take or kill any fish, amphibian or aquatic life which is
protected by the provisions of this chapter or rules of the
Director or the sale of which is prohibited;

(16) Hunt, catch, take, kill, capture, pursue, transport,
possess or use any migratory game or nongame birds included
in the terms of conventions between the United States and
Great Britain and between the United States and United
Mexican States for the protection of migratory birds and wild
mammals concluded, respectively, the sixteenth day of August,
one thousand nine hundred sixteen, and the seventh day of
February, one thousand nine hundred thirty-six, except during
the time and in the manner and numbers prescribed by the
and regulations made thereunder;

(17) Kill, take, catch or have in his or her possession, living
or dead, any wild bird other than a game bird; or expose for
sale or transport within or without the state any bird except as
aforesaid. No part of the plumage, skin or body of any
protected bird shall be sold or had in possession for sale except
mounted or stuffed plumage, skin, bodies or heads of the birds
legally taken and stuffed or mounted, irrespective of whether
the bird was captured within or without this state, except the
English or European sparrow (passer domesticus), starling
(sturnus vulgaris) and cowbird (molothrus ater), which may not
be protected and the killing thereof at any time is lawful;

(18) Use dynamite or any like explosive or poisonous
mixture placed in any waters of the state for the purpose of
killing or taking fish. Any person violating the provisions of
this subdivision is guilty of a felony and, upon conviction
thereof, shall be fined not more than five hundred dollars or
imprisoned for not less than six months nor more than three
years, or both fined and imprisoned;

(19) Have a bow and gun, or have a gun and any arrow or
arrows, in the fields or woods at the same time;

(20) Have a crossbow in the woods or fields or use a
crossbow to hunt for, take or attempt to take any wildlife;
(21) Take or attempt to take turkey, bear, elk or deer with any arrow unless the arrow is equipped with a point having at least two sharp cutting edges measuring in excess of three fourths of an inch wide;

(22) Take or attempt to take any wildlife with an arrow having an explosive head or shaft, a poisoned arrow or an arrow which would affect wildlife by any chemical action;

(23) Shoot an arrow across any public highway or from aircraft, motor-driven watercraft, motor vehicle or other land conveyance;

(24) Permit any dog owned by him or her or under his or her control to chase, pursue or follow upon the track of any wild animal or wild bird, either day or night, between the first day of May and the fifteenth day of August next following: Provided, That dogs may be trained on wild animals and wild birds, except deer and wild turkeys, and field trials may be held or conducted on the grounds or lands of the owner or by his or her bona fide tenant or tenants or upon the grounds or lands of another person with his or her written permission or on public lands at any time: Provided, however, That nonresidents may not train dogs in this state at any time except during the legal small game hunting season: Provided further, That the person training said dogs does not have firearms or other implements in his or her possession during the closed season on wild animals and wild birds, whereby wild animals or wild birds could be taken or killed;

(25) Conduct or participate in a field trial, shoot-to-retrieve field trial, water race or wild hunt hereafter referred to as trial: Provided, That any person, group of persons, club or organization may hold the trial at any time of the year upon obtaining a permit as is provided in section fifty-six of this article. The person responsible for obtaining the permit shall prepare and
keep an accurate record of the names and addresses of all persons participating in said trial and make same readily available for inspection by any conservation officer upon request;

(26) Except as provided in section four of this article, hunt, catch, take, kill or attempt to hunt, catch, take or kill any wild animal, wild bird or wild fowl except during the open season established by rule of the Director as authorized by subdivision (6), section seven, article one of this chapter;

(27) Hunting on public lands on Sunday after five o'clock antemeridian is prohibited; and

(28) Hunt, catch, take, kill, trap, injure or pursue with firearms or other implement which wildlife can be taken, on private lands on Sunday after the hour of five o'clock antemeridian: Provided, That the provisions of this subdivision do not apply in any county until the county commission of the county holds an election on the question of whether the provisions of this subdivision prohibiting hunting on Sunday shall apply within the county and the voters approve the allowance of hunting on Sunday in the county. The election is determined by a vote of the resident voters of the county in which the hunting on Sunday is proposed to be authorized. The county commission of the county in which Sunday hunting is proposed shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the fourteen consecutive days next preceding the election.

On the local option election ballot shall be printed the following:
Shall hunting on Sunday be authorized in ________ County?

[ ] Yes [ ] No

(Place a cross mark in the square opposite your choice.)

Any local option election to approve or disapprove of the proposed authorization of Sunday hunting within a county shall be in accordance with procedures adopted by the commission. The local option election may be held in conjunction with a primary or general election, or at a special election. Approval shall be by a majority of the voters casting votes on the question of approval or disapproval of Sunday hunting at the election.

If a majority votes against allowing Sunday hunting, no election on the issue may be held for a period of one hundred four weeks. If a majority votes "yes", no election reconsidering the action may be held for a period of five years. A local option election may thereafter be held if a written petition of qualified voters residing within the county equal to at least five percent of the number of persons who were registered to vote in the next preceding general election is received by the county commission of the county in which Sunday hunting is authorized. The petition may be in any number of counterparts. The election shall take place at the next primary or general election scheduled more than ninety days following receipt by the county commission of the petition required by this subsection: Provided, That the issue may not be placed on the ballot until all statutory notice requirements have been met. No local law or regulation providing any penalty, disability, restriction, regulation or prohibition of Sunday hunting may be enacted and the provisions of this article preempt all regulations, rules, ordinances and laws of any county or municipality in conflict with this subdivision.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §20-2-5g and §20-2-42w, all relating to authorizing crossbow hunting for certain disabled persons: providing crossbow specifications; and establishing permit requirements.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §20-2-5g and §20-2-42w, all to read as follows:

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5g. Use of a crossbow by certain physically disabled persons.
§20-2-42w. Class Y special crossbow hunting permit for certain disabled persons.

§20-2-5g. Use of a crossbow by certain physically disabled persons.

(a) Notwithstanding any other provision of this code to the contrary, a person who possesses a valid Class Y permit in accordance with section forty-two-w of this article may, during the designated archery hunting season, hunt with a crossbow.

(b) Only crossbows meeting all of the following specifications may be used for hunting in West Virginia:
(1) The crossbow has a minimum draw weight of one hundred twenty-five pounds;

(2) The crossbow has a working safety; and

(3) The crossbow is used with bolts and arrows not less than eighteen inches in length with a broad head having at least two sharp cutting edges, measuring at least 3/4 of an inch in width.

§20-2-42w. Class Y special crossbow hunting permit for certain disabled persons.

(a) On or after the first day of January, two thousand six, a Class Y permit shall be a special statewide hunting permit and shall entitle the permittee to hunt all wildlife during established archery seasons. An application shall be furnished by the director and a Class Y permit allowing the holder to use a crossbow, during the archery hunting seasons, to applicants who meet the following requirements:

(1) He or she holds a Class Q permit;

(2) He or she has a permanent and substantial loss of function in one or both hands while failing to meet the minimum standards of the upper extremity pinch, grip and nine-hole peg tests administered under the direction of a licensed physician; or

(3) A permanent and substantial loss of function in one or both shoulders while failing to meet the standards of the standard shoulder strength test, administered under the direction of a licensed physician.

(b) The application form shall include a written statement or report prepared by a physician, prepared no more than six months preceding the application and verifying that the applicant is physically disabled as described in this section. As
22 part of the application, the applicant shall authorize, by written
23 release, an examination of all medical records regarding his or
24 her qualifying disability. When completed, the permit form
25 constitutes a Class Y permit. The Class Y permit and a com-
26 pleted license application shall be submitted to the Division,
27 which will issue a wallet-sized card to the permittee. The card
28 and all other documents and identification required to be carried
29 by this article shall be in the permittee’s possession when
30 hunting.

31 (c) A Class Y permit must be accompanied by a valid
32 statewide hunting license or the applicant must be exempt from
33 hunting licenses as provided in this chapter.

CHAPTER 129

(Com. Sub. for S. B. 107 — By Senators Love,
Dempsey, Lanham, Barnes and Yoder)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §20-2-7 of the Code of West Virginia,
1931, as amended, relating to hunting with dogs; and providing
that persons may not be guilty of hunting without permission,
under certain circumstances, when the person’s dog pursues an
animal or wild bird onto another person’s land without the
person’s direction or encouragement.

Be it enacted by the Legislature of West Virginia:

That §20-2-7 of the Code of West Virginia, 1931, as amended, be
amended and reenacted to read as follows:
ARTICLE 2. WILDLIFE RESOURCES.

§20-2-7. Hunting, trapping or fishing on lands of another; damages and compensation.

(a) It is unlawful for any person to shoot, hunt, fish or trap upon the fenced, enclosed or posted lands of another person; or to peel trees or timber, build fires or do any other act in connection with shooting, hunting, fishing or trapping on such lands without written permission in his or her possession from the owner, tenant or agent of the owner.

(b) Any person who hunts, traps or fishes on land without the permission of the owner, tenant or agent of the owner is guilty of a misdemeanor and liable to the owner or person suffering damage for all costs and damages for: (1) Killing or injuring any domestic animal or fowl; (2) cutting, destroying or damaging any bars, gates or fence or any part of the property; or (3) leaving open any bars or gates resulting in damage to the property.

(c) The owner, tenant or agent of the owner may arrest a person violating this section and immediately take him or her before a magistrate. The owner, tenant or agent of the owner is vested with the powers and rights of a conservation officer for these purposes. The officers charged with the enforcement of the provisions of this chapter shall enforce the provisions of this section if requested to do so by the owner, tenant or agent of the owner, but not otherwise.

(d) The provisions of subsections (b) and (c) of this section related to criminal penalties and being subject to arrest are inapplicable to a person whose dog, without the person’s direction or encouragement, travels onto the fenced, enclosed or posted land of another in pursuit of an animal or wild bird: Provided, That the pursuit does not result in the taking of game from the fenced, enclosed or posted land and does not result in
30 the killing of domestic animals or fowl or other damage to or on
31 the fenced, enclosed or posted land.

CHAPTER 130

(Com. Sub. for H. B. 3048 — By Mr. Speaker, Mr. Kiss, and
Delegates Michael, Beach and Tabb)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to repeal §20-2-39, §20-2-40, §20-2-40b, §20-2-41,
§20-2-43, §20-2-44a, §20-2-45, §20-2-46b, §20-2-46c,
§20-2-46d, §20-2-46f, §20-2-46g, §20-2-46i, §20-2-46j,
§20-2-46k, §20-2-46l, §20-2-46m and §20-2-63 of the Code of
West Virginia, 1931, as amended; to amend and reenact
§20-2-30a, §20-2-33, §20-2-44 and §20-2-44b of said code; to
amend said code by adding thereto twenty-four new sections,
designated §20-2-33b, §20-2-42, §20-2-42a, §20-2-42b,
§20-2-42c, §20-2-42d, §20-2-42e, §20-2-42f, §20-2-42g,
§20-2-42h, §20-2-42i, §20-2-42j, §20-2-42k, §20-2-42l,
§20-2-42m, §20-2-42n, §20-2-42o, §20-2-42p, §20-2-42q,
§20-2-42r, §20-2-42s, §20-2-42t, §20-2-42u and §20-2-42v; and
to amend and reenact §20-2B-6, §20-2B-7, §20-2B-8, §20-2B-9
and §20-2B-10 of said code, all relating to the restructuring of the
hunting and fishing license system; increasing fees; providing an
effective date; creating a system to index fees to the Consumer
Price Index; and providing for requirements for certification of
training.

Be it enacted by the Legislature of West Virginia:
§20-2-44a, §20-2-45, §20-2-46b, §20-2-46c, §20-2-46d, §20-2-46f,
§20-2-46g, §20-2-46i, §20-2-46j, §20-2-46k, §20-2-46l, §20-2-46m
and §20-2-63 of the Code of West Virginia, 1931, as amended, be
repealed; that §20-2-30a, §20-2-33, §20-2-44 and §20-2-44b of said
code be amended and reenacted; that said code be amended by adding
thereto twenty-four new sections, designated §20-2-33b, §20-2-42,
§20-2-42a, §20-2-42b, §20-2-42c, §20-2-42d, §20-2-42e, §20-2-42f,
§20-2-42g, §20-2-42h, §20-2-42i, §20-2-42j, §20-2-42k, §20-2-42l,
§20-2-42m, §20-2-42n, §20-2-42o, §20-2-42p, §20-2-42q, §20-2-42r,
§20-2-42s, §20-2-42t, §20-2-42u and §20-2-42v; and that §20-2B-6,
§20-2B-7, §20-2B-8, §20-2B-9 and §20-2B-10 of said code be
amended and reenacted, all to read as follows:

Article

2. Wildlife Resources.

2B. Wildlife Endowment Fund.

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or
uttering training certificate; penalties.

§20-2-33. Authority of Director to designate agents to issue licenses; bonds;
fees.

§20-2-33b. Electronic application donation to fund the Coyote Management
Program.

§20-2-42. Effective date and indexing of license and stamp fees.

§20-2-42a. Class A resident hunting and trapping license.

§20-2-42b. Class B resident fishing license.

§20-2-42c. Class C courtesy statewide hunting and fishing license.

§20-2-42d. Class E nonresident hunting and trapping license.

§20-2-42e. Class EE nonresident bear hunting license.

§20-2-42f. Class F nonresident fishing license.

§20-2-42g. Class H nonresident small game hunting license.

§20-2-42h. Class J nonresident small game shooting preserve license.

§20-2-42i. Class LL nonresident one-day fishing license.

§20-2-42j. Class X resident hunting, fishing and trapping license.

§20-2-42k. Class XJ resident junior and Class XXJ nonresident junior hunting,
fishing and trapping license.

§20-2-42l. Class A-l small arms hunting stamp.

§20-2-42m. Class I nonresident national forest hunting, trapping and fishing
stamp.
§20-2-42n. Class N resident and Class NN nonresident antlerless deer hunting stamp.
§20-2-42o. Class O resident and Class OO nonresident trout fishing stamp.
§20-2-42p. Class RG resident and Class RRG nonresident gun deer hunting stamp for an additional deer.
§20-2-42q. Class RB resident and Class RRB nonresident archery deer hunting stamp for an additional deer.
§20-2-42r. Class RM resident and Class RRM nonresident muzzleloader deer hunting stamp for an additional deer.
§20-2-42s. Class UU nonresident archery deer hunting stamp.
§20-2-42t. Class VV nonresident muzzle-loading deer hunting stamp.
§20-2-42u. Class WW nonresident turkey hunting stamp.
§20-2-42v. Class BG resident big game stamp.
§20-2-44. Free fishing days.
§20-2-44b. Bear damage stamp; proceeds to be paid into bear damage fund; purposes, etc.

§20-2-30a. Certificate of training; falsifying, altering, forging, counterfeiting or uttering training certificate; penalties.

(a) Notwithstanding any other provisions of this article, no hunting license or stamp may be issued to any person who was born on or after the first day of January, one thousand nine hundred seventy-five, unless the person submits to the person authorized to issue hunting licenses a certificate of training as provided in this section or proof of completion of any course which promotes as a major objective safety in the handling of firearms and of bow and arrows and which course is approved by the hunter education association or the Director, or provides a State of West Virginia resident or nonresident hunting license from the previous hunting season that displays a certification of training, or attests that a hunter training course has been completed when purchasing a license or stamp online.

(b) The Director shall establish a course in the safe handling of firearms and of bows and arrows, such as the course approved by the hunter education association. This course shall be given at least once per year in each county in this state and shall be taught by instructors certified by the Director. In
establishing and conducting this course, the Director may cooperate with any reputable association or organization which promotes as a major objective safety in the handling of firearms and of bows and arrows: Provided, That any person holding a Class A-L or AB-L lifetime resident license obtained prior to his or her fifteenth birthday shall be required to obtain a certificate of training as provided in this section before hunting or trapping pursuant to said license. This course of instruction shall be offered without charge, except for materials or ammunition consumed. Upon satisfactory completion of the course, each person instructed in the course shall be issued a certificate of training for the purposes of complying with the requirements of subsection (a) of this section. The certificate shall be in the form prescribed by the Director and shall be valid for hunting license application purposes.

(c) (1) Upon satisfactory completion of this course, any person whose hunting license has been revoked for a violation of the provisions of this chapter may petition the Director for a reduction of his or her revocation time. However, under no circumstances may the time be reduced to less than one year.

(2) Successful completion of this course shall be required to consider the reinstatement of a hunting license of any person whose license has been revoked due to a conviction for negligent shooting of a human being or of livestock under the provisions of section fifty-seven of this article, and who petitions the Director for an early reinstatement of his or her hunting privileges. Such a petitioner shall also comply with the other requirements for consideration of reinstatement contained in section thirty-eight of this article.

(d) It is unlawful for any person to falsify, alter, forge, counterfeit or utter a certificate of training. Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less
than five hundred dollars nor more than one thousand dollars, or confined in jail for a period not to exceed one year, or both fined and imprisoned.

(e) Nothing herein contained shall mandate that any county school district in the state be responsible for implementing hunter safety education programs.

§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 compensation 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 prescribed in this article, an electronic issuance fee to be prescribed by the Director: And provided further, That, notwithstanding any provision of this code to the contrary, an electronic issuance fee of at least two dollars shall be assessed on each Go Wild transaction. The electronic issuance fee shall be dedicated to the administration and maintenance of Go Wild. The Director may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code increasing the license issuing fees authorized by this section.

(c) In lieu of the license issuance fee prescribed in subsection (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 application 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.

§20-2-33b. Electronic application donation to fund the Coyote Management Program.

(a) (1) Effective the first day of January, two thousand six, every application for a hunting or fishing electronic license
(2) The license applicant will be offered an opportunity to designate a donation in the amount of two dollars for the Coyote Management Program.

(b) There is hereby created a special revenue account, designated the “Coyote Management Fund” into which all donations derived under this section shall be deposited. Moneys in this account shall be expended solely for the purposes set forth in subsection (c) of this section. Funds paid into this account may also be derived from the following sources: (1) All interest or return on investment accruing to this account; (2) Any gifts, grants, bequests, transfers, appropriations or other donations which may be received from any governmental entity or unit or any person, firm, foundation, or corporation; and (3) any appropriations by the Legislature which may be made for the purposes of this section. Any balance including accrued interest and other earnings at the end of any fiscal year shall not revert to the general fund but shall remain in the fund for the purposes set forth in this section.

(c) The moneys in the fund shall be paid out, at the sole discretion and direction of the director, to address coyote management issues.

§20-2-42. Effective date and indexing of license and stamp fees.

The license and stamp fees in article two and two-b of this chapter as amended during the regular session of the 2005 regular session of the Legislature shall become effective on the first day of January, two thousand six. The Director may from time to time propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, changing any license or stamp fee set forth in this article or in
§20-2-42a. Class A resident hunting and trapping license.

A Class A license is a resident hunting and trapping license and entitles the licensee to hunt and trap all legal species of wild animals and wild birds in all counties of the state, except that the licensee may not hunt deer during the deer archery and muzzleloader seasons, or black bear, wild turkey or wild boar during the respective seasons, and except as prohibited by rules of the Director or Natural Resources Commission and when additional licenses, stamps or permits are required. It shall be issued only to residents or aliens lawfully residing in the United States who have been domiciled residents of West Virginia for a period of thirty consecutive days or more immediately prior to the date of their application for a license. The fee for the license is eighteen dollars. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42b. Class B resident fishing license.

A Class B license is a resident fishing license and entitles the licensee to fish for all legal fish except trout and to take frogs in all counties of the state, except as prohibited by rules of the Director or Natural Resources Commission and when additional licenses, stamps or permits are required. It shall be issued only to residents or aliens lawfully residing in the United States who have been domiciled residents of West Virginia for a period of thirty consecutive days or more immediately prior
to the date of their application for a license. The fee for the license is eighteen dollars. To fish for trout, a Class B license holder must purchase and carry a valid Class O stamp or Class O-L license. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42c. Class C courtesy statewide hunting and fishing license.

A Class C license is a courtesy hunting and fishing license and entitles the licensee to hunt and fish in all counties of this state. It may be issued by the Director upon application made to him or her and without fee to:

1. Members and agents of the United States Fish and Wildlife Service;
2. Members of State Commissions of other states extending similar courtesies;
3. Diplomatic and consular representatives of foreign countries;
4. Persons engaged in scientific wildlife research;
5. Nonresident outdoor writers and other nonresidents engaged in promoting an interest in the Natural Resources of the State of West Virginia.

Not more than one hundred courtesy licenses shall be issued in one year. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42d. Class E nonresident hunting and trapping license.

A Class E license is a nonresident hunting and trapping license and entitles the licensee to hunt and trap all legal species
of wild animals and wild birds in all counties of the state except
as prohibited by rules of the Director or Natural Resources
Commission and except when other licenses, stamps or permits
are required. The fee for the license is one hundred ten dollars.
This is a base license and does not require the purchase of a
prerequisite license to participate in the activities specified in
this section, except as noted.

§20-2-42e. Class EE nonresident bear hunting license.

A Class EE license is a nonresident bear hunting license
and entitles the licensee to hunt bear in all counties of the state,
except as prohibited by rules of the Director or Natural Re-
sources Commission and except when additional licenses,
stamps or permits are required. The fee for the license is one
hundred fifty dollars. This is a base license and does not require
the purchase of a prerequisite license to participate in the
activities specified in this section, except as noted.

§20-2-42f. Class F nonresident fishing license.

A Class F license is a nonresident fishing license and
entitles the licensee to fish for all legal fish except trout and to
take frogs, in all counties of the state except as prohibited by
rules of the Director or Natural Resources Commission and
except when additional licenses, stamps or permits are required.
The fee for the license is thirty-five dollars. To fish for trout, a
Class F license holder must purchase and carry a valid Class
OO trout stamp. This is a base license and does not require the
purchase of a prerequisite license to participate in the activities
specified in this section, except as noted.

§20-2-42g. Class H nonresident small game hunting license.

A Class H license is a nonresident small game hunting
license and entitles the licensee to hunt small game in all
counties of the state, except as prohibited by rules of the
Director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee, excluding Sunday in counties closed to Sunday hunting. The fee for the license is twenty-five dollars. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42h. Class J nonresident small game shooting preserve license.

A Class J license is a nonresident small game shooting preserve license and entitles the licensee to hunt small game on designated shooting preserves, except as prohibited by rules of the Director or Natural Resources Commission and except when additional licenses, stamps or permits are required, for a period of six consecutive hunting days chosen by the licensee, excluding Sunday in counties closed to Sunday hunting. The fee for the license is ten dollars. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42i. Class LL nonresident one-day fishing license.

A Class LL license is a nonresident fishing license and entitles the licensee to fish for all legal fish except trout and to take frogs in all counties of the state for the calendar date chosen by the buyer and which will be specified on the license, except as prohibited by rules of the Director or Natural Resources Commission and except when additional licenses, stamps or permits are required. To fish for trout, a Class LL licensee must purchase and carry a valid Class 00 trout stamp. The fee for the license is three dollars. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.
§20-2-42j. Class X resident hunting, fishing and trapping license.

A Class X license is a resident hunting, fishing and trapping license and entitles the licensee to hunt and trap for all legal species of wild animals and wild birds, to fish for all legal species of fish except trout and to take frogs in all counties of the state, except as prohibited by the rules of the Director or Natural Resources Commission and when additional licenses, stamps or permits are required. No additional fees shall be required of Class X licensees for a Class CS stamp. To fish for trout, a Class X licensee must purchase and carry a valid Class O stamp or Class O-L license. The Class X license shall be issued only to residents or aliens lawfully residing in the United States who have been domiciled residents of West Virginia for a period of thirty consecutive days or more immediately prior to the date of their application for a license. The fee for the license is thirty-three dollars. The portion of the Class X license fee equal to the annual fee for the Class CS stamp shall be designated as conservation stamp revenue and expended pursuant to section nine, article two-b of this code. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-42k. Class XJ resident junior and Class XXJ nonresident junior hunting, fishing and trapping license.

A Class XJ license is a resident junior hunting, fishing and trapping license and a Class XXJ license is a nonresident junior hunting, fishing and trapping license. These licenses entitle the licensee to hunt and trap for all legal species of wild animals and wild birds, to fish for all legal species of fish except trout and to take frogs in all counties of the state, except as prohibited by the rules of the Director or Natural Resources Commission and when additional licenses, stamps and permits are required. No additional fees are required of Class XJ licensees for a Class CS stamp. No additional fees are required of Class
XXJ licensees for Class I, UU, VV or WW stamps. To fish for trout, Class XJ or XXJ licensees must purchase and carry a valid Class O or OO stamp or O-L license. The Class XJ license may be issued only to a resident who has not reached his or her eighteenth birthday and is otherwise required by section twenty-seven of this article to purchase a license. The Class XXJ license may be issued to a nonresident who has not reached his or her eighteenth birthday and is otherwise required by section twenty-seven of this article to purchase a license. The fee for the Class XJ license is fifteen dollars. The portion of the Class XJ license fee equal to the annual fee for the Class CS stamp shall be designated as conservation stamp revenue and expended pursuant to section nine of article two-b. The fee for the Class XXJ license is fifteen dollars. In addition to buying a Class XXJ license, a nonresident must purchase a Class CS/LE stamp as required in section ten of article two-b. This is a base license and does not require the purchase of a prerequisite license to participate in the activities specified in this section, except as noted.

§20-2-421. Class A-1 small arms hunting stamp.

Notwithstanding the provisions of section two, article seven, chapter sixty-one of this code, a Class A-1 stamp is a small arms hunting stamp. To be eligible to get a Class A-1 stamp, a person must be legally able to possess a firearm. If a person is otherwise qualified, a Class A-1 stamp may be issued to a person twenty-one years of age or older who holds a valid resident or nonresident hunting license, or to a person who is a resident sixty-five years of age or older, but a Class A-1 stamp shall never be issued to a person who has been convicted of a misdemeanor associated with the use of firearms or dangerous weapons or who has been convicted of a felony. A Class A-1 stamp entitles the licensee to hunt, as otherwise permitted by the provisions of this chapter, but only during small game and big game seasons as established annually by the Director, with either a revolver or pistol which has a barrel at least four inches
in length. Unless otherwise permitted by the Code of West Virginia, a Class A-1 stamp entitles the licensee to carry or have in his or her possession only one revolver or pistol when going to and from his or her home or residence and a place of hunting and while hunting: Provided, That the Class A-1 stamp may not be valid unless the licensee has in his or her possession a valid resident or nonresident hunting license or is a resident sixty-five years of age or older: Provided, however, That at all times, when not actually hunting, the revolver or pistol shall be unloaded. While hunting, the licensee shall carry the revolver or pistol in an unconcealed and easily visible place. The fee for the stamp is eight dollars. A lifetime Class A-1 stamp may be issued to anyone otherwise qualified and holding a valid Class A-L or AB-L license or to a resident sixty-five years of age or older. The lifetime Class A-1 stamp will be issued in a form prescribed by the Director. The fee for a lifetime Class A-I stamp is seventy-five dollars. All fees collected for the issuance of the Class A-I and lifetime Class A-1 stamps shall be deposited in the State Treasury and credited to the law-enforcement section of the Division of Natural Resources. The fees collected shall be paid out of the State Treasury on order of the Director and used solely for law-enforcement purposes. Any person convicted of a misdemeanor associated with the use of firearms or dangerous weapons or convicted of a felony, or any person who becomes legally unable to possess a firearm shall immediately surrender the stamp to the Division of Natural Resources. A holder of a Class A-1 or lifetime Class A-1 stamp is required to purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42m. Class I nonresident national forest hunting, trapping and fishing stamp.

A Class I stamp is a nonresident national forest hunting, trapping and fishing stamp and entitles the licensee, when within national forest land in West Virginia, to hunt legal species in season; to trap fur-bearing animals in season; and to
fish in the waters therein. The stamp shall be issued only to a nonresident holding a Class E, EE, F, H or LL license. The fee for the stamp is two dollars. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42n. Class N resident and Class NN nonresident antlerless deer hunting stamp.

A Class N stamp is a resident deer hunting stamp for antlerless deer. A Class NN stamp is a nonresident deer hunting stamp for antlerless deer. These stamps entitle the licensee to hunt and take antlerless deer of either sex during the Class N season. The fee for a Class N stamp is ten dollars and the fee for a Class NN stamp is twenty-five dollars. Class N and NN stamps may be issued only for the purpose of removing antlerless deer when the Director determines it essential for proper management of the wildlife resources. The Director may promulgate rules governing the issuance and use of the Class N and NN stamps as deemed necessary to limit, on a fair and equitable basis, the number of persons who may hunt for antlerless deer in a county, or part of a county. When the Director determines it essential that a Class N or NN season be held in a particular county or part of a county, that season shall be set by the Natural Resources Commission as provided in section seventeen, article one of this chapter. Bona fide resident landowners or their resident children, or resident parents, bona fide resident tenants of such land and bona fide resident stockholders of resident corporations which are formed for the primary purpose of hunting or fishing and which are the fee simple owners of no less than one thousand acres of land upon which the antlerless deer may be hunted are not required to have a Class N stamp in their possession while hunting antlerless deer on their own land during the Class N season. A resident hunter, including those not required to purchase a license pursuant to section twenty-seven of this article, must
purchase and carry a valid Class N stamp. A nonresident hunter must purchase and carry a valid Class NN stamp. These stamps require that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42o. Class O resident and Class OO nonresident trout fishing stamp.

A Class O stamp is a resident trout fishing stamp. A Class OO stamp is a nonresident trout fishing stamp. These stamps entitle the licensee to fish for trout in all counties of the state, except as prohibited by rules of the Director or Natural Resources Commission. The fee for a Class O stamp is ten dollars and the fee for a Class OO stamp is fifteen dollars. The revenue derived from the sale of these stamps shall be deposited in the State Treasury and credited to the Division of Natural Resources and shall be used and paid out, upon order of the Director, for state trout program expenses. These stamps, issued in a form prescribed by the Director, shall be in addition to a Class AB-L, B, B-L, F, LL, X, XJ or XXJ license or Class Q permit. These stamps require that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42p. Class RG resident and Class RRG nonresident gun deer hunting stamp for an additional deer.

The Director has the authority to issue a Class RG resident and a Class RRG nonresident gun deer hunting stamp when deemed essential for the proper management of the wildlife resources. These stamps allow the licensee to hunt and take an additional deer as designated by the Director. The fee for a Class RG stamp is twenty dollars and the fee for a Class RRG stamp is forty dollars. The Director may promulgate rules in accordance with article three, chapter twenty-nine-a of this code.
§20-2-42q. Class RB resident and Class RRB nonresident archery deer hunting stamp for an additional deer.

The Director has the authority to issue a Class RB resident and a Class RRB nonresident archery deer hunting stamp when deemed essential for the proper management of the wildlife resources. This stamp allows the licensee to hunt and take an additional deer as designated by the Director. The fee for a Class RB stamp is twenty dollars and the fee for a Class RRB stamp is thirty-five dollars. The Director may promulgate rules in accordance with article three, chapter twenty-nine-a of this code governing the issuance and use of these stamps. These stamps require that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42r. Class RM resident and Class RRM nonresident muzzle-loader deer hunting stamp for an additional deer.

The Director shall have the authority to issue a Class RM resident and a Class RRM nonresident muzzle-loader deer hunting stamp when deemed essential for the proper management of the wildlife resources. These stamps allow the licensee to hunt and take an additional deer as designated by the Director. The fee for a Class RM stamp is fifteen dollars and the fee for a Class RRM stamp is thirty-five dollars. The Director may promulgate rules in accordance with article three, chapter twenty-nine-a of this code governing the issuance and use of these stamps. These stamps require that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.
§20-2-42s. Class UU nonresident archery deer hunting stamp.

A Class UU stamp is a nonresident archery deer hunting stamp and entitles the licensee to hunt and take deer with a bow during the archery deer season in all counties of the state, except as prohibited by the rules of the Director or Natural Resources Commission. The fee for a Class UU stamp is thirty dollars. The stamp, issued in a form prescribed by the Director, shall be in addition to a Class E license. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42t. Class VV nonresident muzzle-loading deer hunting stamp.

A Class VV stamp is a nonresident muzzle-loading deer hunting stamp and entitles the licensee to hunt and take deer with a muzzle-loader during muzzle-loading deer seasons in all counties of the state, or parts thereof, excluding Logan, McDowell, Mingo and Wyoming counties, as set by the Natural Resources Commission in accordance with section seventeen, article one of this chapter. The Director may promulgate rules in accordance with article three, chapter twenty-nine-a of this code governing the issuance and use of this stamp. The stamp, issued in a form prescribed by the Director, shall be in addition to a Class E license. The fee for a Class VV stamp is thirty dollars. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-42u. Class WW nonresident turkey hunting stamp.

A Class WW stamp is a nonresident turkey hunting stamp and entitles the licensee to hunt and take turkey during any turkey hunting season, except as prohibited by the rules of the Director or Natural Resources Commission. The fee for a Class
§20-2-42v. Class BG resident big game stamp.

A Class BG stamp is a resident big game stamp and entitles the Class A and Class Q licensee to hunt deer during the deer archery and muzzle-loader seasons, and bear, wild turkey and wild boar during the respective seasons, except as prohibited by rules of the Director or Natural Resources Commission. The fee for the stamp is ten dollars. The stamp, issued in a form prescribed by the Director, shall be in addition to a Class A license or Class Q permit. This stamp requires that the licensee purchase the appropriate base license before participating in the activities specified in this section, except as noted.

§20-2-44. Free fishing days.

The Director may designate up to two days each year as free sport fishing days. On a designated free fishing day, an individual is entitled to fish for all legal fish in all counties of the state without having a valid West Virginia fishing license and without the payment of any license fee, subject to the same privileges and restrictions applicable to a holder of any such license.

§20-2-44b. Bear damage stamp; proceeds to be paid into bear damage fund; purposes, etc.

To hunt bear in this state, a licensed hunter shall have, in addition to a Class A, A-L, AB-L, X or XJ, in the case of a resident, or a Class C or EE, in the case of a nonresident, a bear damage stamp issued by the Division of Natural Resources. The fee for the stamp is ten dollars. All proceeds from the sale of
stamps shall be paid into the bear damage fund which shall be
maintained by the Division of Natural Resources for paying
claims of property owners for damages to real and personal
property caused by acts of bear and to cover the expense of
black bear research programs within the state. This stamp
requires that the licensee purchase the appropriate base license
before participating in the activities specified in this section,
except as noted.

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.
§20-2B-9. Class CS resident conservation stamp; purposes, etc.
§20-2B-10. Class CS/LE nonresident conservation law-enforcement and sports
education stamp.


In accordance with the intent of sections thirty-four and
forty-two-o, article two of this chapter and pursuant to sections
three and four of this article, income accruing from the invest-
ments of the wildlife endowment fund shall be distributed in the
following manner:

(1) Income accruing from the investment of moneys
resulting from the sale of Class O-L licenses shall be distributed
and disbursed in the same manner as revenues accruing from
the sale of Class O licenses as provided in section forty-two-o,
article two of this chapter.

(2) Income accruing from the investment of any portion of
the principal of the wildlife endowment fund which, at the time
of its deposit into the fund, is specifically designated for the
activities of a particular section within the Division, shall
accrue solely to that section within the Division; and
(3) All other income accruing from the investments of the wildlife endowment fund shall be distributed within the Division in the same manner as provided in section thirty-four, article two of this chapter.

§20-2B-7. Lifetime hunting, fishing and trapping licenses created.

(a) Pursuant to section three of this article, the Director may issue the following lifetime hunting, fishing and trapping licenses and for the lifetime of the licensee, the lifetime licenses serve in lieu of the equivalent annual license: Lifetime resident statewide hunting and trapping license; lifetime resident combination statewide hunting, fishing and trapping license; lifetime statewide fishing license; and lifetime resident trout fishing license: Provided, That a full-time nonresident student who attends an in-state college or university is not eligible to purchase any of these lifetime licenses.

(b) The Director shall propose a rule for legislative approval in accordance with article three, chapter twenty-nine-a of this code, setting the fees for the lifetime licenses. The rule shall provide that the fee for any resident who has not reached his or her second birthday shall be one half of the adult fee set under the rule. The fees for lifetime licenses shall be twenty-three times the fee for the equivalent annual licenses or stamps.


Pursuant to section seven of this article, lifetime licensees shall be entitled to the same privileges and subject to the same restrictions as licensees possessing the equivalent annual license with the following exceptions:

(1) Class A-L, AB-L, B-L and O-L licenses shall be valid for the lifetime of the licensee;
(2) A Class O-L lifetime resident trout fishing license shall be issued only to residents of the state and shall be valid only when accompanied by a Class AB-L, B, B-L, X or XJ license; and

(3) No additional fee shall be required of Class A-L, AB-L or B-L licensees for the conservation stamp required by section nine of this article. No additional fee shall be required of Class A-L or AB-L licensees for the Class BG stamp required by section forty-two-v, article two of this chapter.

§20-2B-9. Class CS resident conservation stamp; purposes, etc.

A resident hunter, angler or trapper licensed to hunt, fish or trap in this state shall have, in addition to a Class A or B license, a Class CS conservation stamp. The fee for the stamp is five dollars.

The revenue derived from the sale of conservation stamps shall be deposited in the State Treasury and shall be credited to the Division of Natural Resources. The revenue shall be used and paid out, upon order of the Director, for capital improvements and land purchases or leases benefitting wildlife except that at the discretion of the Director, a maximum of twenty percent of the revenue may be used for the operation and maintenance of capital improvements and lands: Provided, That none of this revenue shall be expended for the purchase of wetlands, or for land to be flooded so as to create wetlands, to attract migratory waterfowl within sixty air miles of any established poultry industry: Provided, however, That no expenditures of the revenue derived from the sale of the conservation stamps shall be made for recreational facilities or activities that are used by or for the benefit of the general public rather than by or for purchasers of hunting, fishing or trapping licenses. Any unexpended moneys derived from the sale of conservation stamps shall be carried forward to the next fiscal year.

(a) Any nonresident hunter, angler or trapper licensed to hunt, fish or trap in this state, in addition to a Class E, EE, F, H, LL or XXJ license, shall have a Class CS/LE nonresident conservation, law-enforcement and sports education stamp. The fee for the stamp is twelve dollars.

(b) The revenue derived from the sale of Class CS/LE stamps shall be deposited in the State Treasury and shall be credited to the Division of Natural Resources. Fifty percent of the revenue shall be used and paid out, upon order of the Director, for the law-enforcement section's expenses relating to the general enforcement of state laws pertaining to the conservation of fish and wildlife and law-enforcement education programs for hunters, anglers and trappers: Provided, That no expenditures of the revenue derived from the sale of the Class CS/LE stamp shall be made for law-enforcement purposes not directly related to the wildlife resources of the state or for the educational programs set forth in this subsection. Fifty percent of the revenue shall be used and paid out for capital improvements and land purchases or leases benefiting wildlife except that at the discretion of the Director, a maximum of twenty percent of the revenue may be used for the operation and maintenance of the capital improvements and lands: Provided, however, That no expenditures of the revenue derived from the sale of the conservation stamps shall be made for recreational facilities that are used by or for the benefit of the general public rather than by or for purchasers of hunting, fishing or trapping licenses. Any unexpended moneys derived from the sale of Class CS/LE stamps shall be carried forward to the next fiscal year.
AN ACT to amend and reenact section 7, chapter 26 of the Acts of the Legislature, regular session, 1925 (municipal charters), as last amended by chapter 175, Acts of the Legislature, regular session, 1991, relating to Greater Huntington Park and Recreation District; authorizing the District to impose fees and issue revenue bonds; requiring an election on the imposition of fees and issuance of revenue bonds; notice and election requirements; and authorizing the new fees to secure and pay the revenue bonds.

Be it enacted by the Legislature of West Virginia:

That section 7, chapter 26, Acts of the Legislature, regular session, 1925 (municipal charters), as last amended by chapter 175, Acts of the Legislature, regular session, 1991, be amended and reenacted to read as follows:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

§7. Financing and financial powers.

1 The park district shall have the following powers to:

2 (1) Make charges to the public for services offered or goods sold by the park district.

4 (a) Charges for services may be in the form of, but not limited to: Admission and entrance fees; exclusive use and
rental fees; user fees; license and permit fees; equipment rental;
program maintenance fees; instructor fees; special accommodation-
tion fees; amusement fees; restricted membership fees; and
cemetery service fees.

(b) Charges for goods sold may be in the forms of, but not
limited to: Beverages and foods; novelties and gifts; clothing;
athletic equipment and supplies; cemetery plots, crypts,
monuments, memorials, markers, vaults and any other forms of
merchandise sold in connection with the burial of the dead; and
other items that may pertain to the operation and maintenance
of the park district.

(2) Impose upon the users of the park system reasonable
service fees in addition to the service fees authorized by
paragraph (a), subdivision (1) of this section. As used in this
section, “users” means any persons to whom the park system is
made available.

(a) The board of directors of the park district may adopt one
or more resolutions establishing the amount and manner of
collection of the fees and providing for reasonable penalties for
failure to pay service fees. No resolution imposing a service fee
is effective until it is ratified by a majority of the legal votes
cast by the qualified voters of the district at a primary or
general election.

(b) In addition to meeting the ballot and election require-
ments set forth in subdivision (3) of this section, the ballot
question must set forth the service fee, the manner in which it
will be imposed and the general use to which the proceeds of
the service fee shall be put. From time to time, the board may
submit additional resolutions imposing additional service fees
to the district’s electors for approval pursuant to this section.

(3) Issue revenue bonds or refunding revenue bonds for the
district, in the manner prescribed by the applicable provisions
of sections seven, ten, twelve and sixteen, article sixteen, chapter eight of the Code of West Virginia, 1931, as amended. No revenue bonds, except for refunding revenue bonds, may be issued under this section until all questions connected with the bonds are first submitted to a vote of the qualified electors of the district for which the bonds are to be issued, and receive a majority of all the votes cast for and against the issuance. The ballot question must set forth:

(a) The necessity for issuing the bonds;

(b) Purpose or purposes for which the proceeds of bonds are to be expended;

(c) Total indebtedness, bonded or otherwise;

(d) Amount of the proposed bond issue;

(e) Maximum term of bonds and series;

(f) Maximum rate of interest;

(g) Date of election;

(h) That the park district is authorized to collect fees to provide funds for the payment of the interest upon the bonds and the principal at maturity, and the approximate amount of fees necessary for this purpose.

(i) Notice of any election shall be given by publication, within fourteen consecutive days next preceding the date of the election, of the resolution imposing the service fee as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area for publication shall be the district. All of the provisions of the general election laws of this State concerning primary or general elections, when not in conflict with the provisions of
this section, shall apply to elections hereunder, insofar as practicable.

(4) Annually levy on each one hundred dollars of the assessed valuation of the property taxable in said park district, within the corporate boundaries of the city of Huntington according to the last assessment thereof for state and county purposes, as follows:

On Class I property, one and one-half cents; on Class II property, three cents; on Class IV property, six cents. The park district may levy a lesser amount, in which case the above levies shall be reduced proportionately. These levies shall be made at the time and in the manner provided by article eight, chapter eleven of the Code of West Virginia, one thousand nine hundred thirty—one, as amended; except that the levies shall be included in the maximum rates for the city of Huntington as established by law.

After the park district has made the levy, it shall certify to the finance director of the city of Huntington the amount of the said levy, and the finance director shall thereupon extend the levy upon the tax tickets, and all levies made by the park district shall be collected by the finance director who shall occupy a fiduciary relationship with the park district, and then such levy funds shall be paid to the park district upon written order of the park district signed by the president of the park district and countersigned by the secretary of the park district.

Levies for support, maintenance and operation.

(5) In order to ensure adequate support for the maintenance and operation of the park district, the following governing authorities shall, upon written request by the park district, levy annually as follows within the respective taxing districts of the governing authorities, on each one hundred dollars of assessed valuation of the property taxable in the area served by it
according to the last assessment for state and county purposes, amounts not exceeding the following amounts for fiscal year beginning the first day of July, one thousand nine hundred eighty-three:

(a) The county commission of Cabell County, for the first year of the act and annually thereafter: Class I, .433 cents; Class II, .866 cents; Class III and Class IV, 1.73 cents.

(b) The county commission of Wayne County, for the first year of the act and annually thereafter: Class I, .0066 cents; Class II, .0132 cents; Class III and Class IV, .0266 cents.

(c) The board of education of the county of Cabell shall provide funds available to the board through special and excess levies for the first year of the act and annually thereafter: Class I, .433 cents; Class II, .866 cents; Class III and Class IV, 1.73 cents.

(d) The city of Huntington, for the first year of the act and annually thereafter: Class I, one and three-tenths cents; Class II, two and six-tenths cents; Class III and Class IV, five and two-tenths cents.

(e) The town of Milton, for the first year of the act and annually thereafter: Class I, one and three-tenths cents; Class II, two and six-tenths cents; Class III and Class IV, five and two-tenths cents.

In addition to the aforesaid amounts which, upon written request by said board, the governing authorities shall levy, each such governing authority may support the park district with any other general or special revenues or excess levies. All income realized by the operation of the park district from any sources other than the above levies shall be used by the board of directors for support of the park district.
All money collected or appropriated by the foregoing governing authorities for park district purposes shall be deposited in a special account of the park district and shall be disbursed by that board for the purpose of operating such park district.

(6) Assess the cost of improvements to or construction of streets, sidewalks, sewers, curbs, alleys, public ways or easements, or portions thereof, upon the abutting property owners whose property lies within the park district. Such assessments shall require approval of a majority of the commissioners present and voting and shall be commenced and conducted in such manner as is prescribed by article eighteen, chapter eight of the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

(7) The municipalities of Huntington and Milton and the counties of Cabell and Wayne are hereby empowered, and authorized to issue, in the manner prescribed by law, revenue bonds or general obligation bonds for the purpose of raising funds to establish, construct, improve, extend, develop, maintain or operate a system of public parks and recreational facilities for the city or counties, or to refund any bonds of the city or counties, the proceeds of which were expended in the establishing, constructing, improving, extending, developing, maintaining or operating of such public park and recreation system or any part thereof. Any bonds issued for any of the purposes stated in this section shall contain in the title or subtitle thereto the words “public park and recreation bonds”, in order to identify the same, and shall be of such form, denomination and maturity and shall bear such rate of interest as shall be fixed by ordinance of the governing body of the city or counties. The governing body may provide for the issuance of bonds for other lawful purposes of the city or counties in the same ordinance in which provision shall be made for the issuance of bonds under the provisions of this section. The park
district shall pay all of the costs and expenses of any election which shall be held to authorize the issuance of public park and recreation bonds only. The costs and expenses of holding an election to authorize the issuance of public park and recreation bonds and bonds for other city or county purposes shall be paid by the park district and the city or counties respectively, in the proportion that the public park and recreation bonds bear to the total amount of bonds authorized.

Whenever the governing body of the city or counties and the requisite majority of the legal votes cast at the election thereof shall authorize in the manner prescribed by law, the issuance of bonds for the purpose of establishing, constructing, improving, extending, developing, maintaining or operating, or any combination of the foregoing, a system of public parks and recreational facilities for the city or counties or for refunding any outstanding bonds, the proceeds of which were applied to any of said purposes, said bonds shall be issued and delivered to the park district to be by it sold in the manner prescribed by law and the proceeds thereof shall be paid into the treasury of the park district and the same shall be applied and utilized by the park district for the purposes prescribed by the ordinance authorizing the issuance of such bonds. In any ordinance for the issuance of bonds for such purposes, it shall be a sufficient statement of the purposes for creating the debt to specify that the same is for the purpose of establishing, constructing, improving, extending, developing, maintaining or operating, or any combination of the foregoing, a public park and recreation system for the city or counties, without specifying the particular establishment, construction, improvement, extension, development, maintenance or operation contemplated; but an ordinance for refunding bonds shall designate the issue and the number of bonds which it is proposed to refund.

(8) Sue and be sued; make contracts and guarantees; incur liabilities; borrow or lend money for any time period deemed
advise by the commission, sell, mortgage, lease, exchange, transfer or otherwise dispose of its property; or pledge its property as collateral or security for any time period deemed advisable by the commission.

(9) Create trusts of such kind as will expedite the efficient management of the property and other assets owned or controlled by the park district. The trustee, whether individual or corporate, in any such trust shall have a fiduciary relationship with the park district and may be removed by the park district for good cause shown or for a breach of the fiduciary relationship with the park district.

CHAPTER 132

(Com. Sub. for H. B. 2128 — By Delegates Perry, Pino, Leach and Michael)

[Passed April 6, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 14, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-20-29, relating to authorizing the Executive Director of the Regional Jail and Correctional Facility Authority to establish an inmate furlough program and providing civil immunity.

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 §31-20-29, to read as follows:
§31-20-29. Furlough program.

(a) The Executive Director, or his or her designee, is authorized to establish under legislative rules promulgated by the Executive Director pursuant to article three, chapter twenty-nine-a of this code a furlough program for inmates under the Authority's control and custody in accordance with the following provisions:

(1) The program may include, but is not limited to, granting furloughs or special escorts for specified inmates under the Authority's control and custody to attend funerals or make hospital visits to terminally ill family members.

(2) The Executive Director shall establish criteria to be used in determining which inmates are not likely to jeopardize public safety and should be granted a furlough or a special escort through this program.

(3) The Executive Director is authorized to establish any other guidelines he or she considers necessary to administer the program and to ensure public safety, including, but not limited to:

(A) Guidelines relating to eligibility for consideration, restrictions, conditions and procedures; and

(B) The family relationship an inmate must have with the deceased or terminally ill individual in order to qualify for consideration for a furlough.

(b)(1) The Regional Jail and Correctional Facility Authority, its members, Executive Director and employees of the Authority are 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 or arising out of any actual or alleged act of an inmate while on a furlough granted under this section.

(2) The immunity from suit and liability provided in this subsection does not extend to liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any person identified in subdivision (1) of this subsection.

CHAPTER 133

(Com. Sub. for H. B. 2878 — By Delegates H. White, Ron Thompson, Hrutkay, Perry, Azinger and G. White)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §23-1-1b of the Code of West Virginia, 1931, as amended; to amend and reenact §33-41-8 of said code; and to amend said code by adding thereto a new section, designated §33-41-8a, all relating to insurance fraud; authorizing the Insurance Commissioner to assign the Workers’ Compensation Fraud and Abuse Unit to investigate insurance fraud; permitting the Insurance Commissioner’s Fraud Unit to investigate Workers’ Compensation fraud and the forgery of insurance documents; designating the Fraud Unit a criminal justice agency for purposes of access to information; and requiring fingerprinting and background checks of applicants for employment with the Fraud Unit.

Be it enacted by the Legislature of West Virginia:
That §23-1-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-41-8 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-41-8a, all to read as follows:

Chapter
23. Workers' Compensation.
33. Insurance.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1b. Executive Director; qualifications; oath; seal; removal; powers and duties.

(a) The Executive Director shall be hired by the board of managers for a term not to exceed five years and may be retained based on overall performance for additional terms: Provided, That the Executive Director of the Division of Workers' Compensation on the date of the enactment of this section in the year two thousand three shall serve as the initial Executive Director of the commission and shall receive the same salary and benefits as received as the Executive Director of the Division of Workers' Compensation through and until the board of managers establishes his or her salary and benefits as the Executive Director of the Commission. The position of Executive Director shall be full-time employment. Except for the initial Executive Director, candidates for the position of Executive Director shall have a minimum of a bachelor of arts or science degree from an accredited four-year college or university in one or more of the following disciplines: Finance; economics; insurance administration; law; public administration; accounting; or business administration. Candidates for the position of Executive Director will be considered based on their demonstrated education, knowledge and a minimum of ten years' experience in the areas of workers' compensation,
insurance company management, administrative and management experience with an organization comparable in size to the Workers' Compensation Commission or any relevant experience which demonstrates an ability to effectively accomplish the purposes of this chapter.

(b) The Executive Director shall not be a candidate for or hold any other public office or trust, nor shall he or she be a member of a political committee. If he or she becomes a candidate for a public office or becomes a member of a political committee, his or her office as Executive Director shall be immediately vacated.

(c) The Executive Director, before entering upon the duties of his or her office, shall take and subscribe to the oath prescribed by section five, article IV of the State Constitution. The oath shall be filed with the Secretary of State.

(d) The Executive Director shall have an official seal for the authentication of orders and proceedings, upon which seal shall be engraved the words "West Virginia Workers' Compensation Commission" and any other design prescribed by the board of managers. The courts in this state shall take judicial notice of the seal of the commission and in all cases copies of orders, proceedings or records in the office of the West Virginia Workers' Compensation Commission are equal to the original in evidence.

(e) The Executive Director shall not be a member of the board of managers.

(f) The Executive Director shall serve until the expiration of his or her term, resignation or until removed by a two-thirds vote of the full board of managers. The board of managers and the Executive Director may, by agreement, terminate the term of employment at any time.
(g) The Executive Director shall have overall management responsibility and administrative control and supervision within the Workers' Compensation commission and has the power and duty to:

1. Establish, with the approval of the board of managers, the overall administrative policy of the Commission for the purposes of this chapter;

2. Employ, direct and supervise all employees required in the connection with the performance of the duties assigned to the Commission by this chapter and fix the compensation of the employees in accordance with the provisions of article six, chapter twenty-nine of this code: Provided, That the Executive Director shall identify which members of the staff of the Workers' Compensation Commission shall be exempted from the salary schedules or pay plan adopted by the state personnel board and further identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation and shall file this information with the Director of the Division of Personnel no later than the thirty-first day of December, two thousand three, and thereafter as changes are made or at least annually: Provided, however, That, effective the first day of July, two thousand six, if the Commission has not been terminated or otherwise discontinued, all employees of the Commission shall be exempt and otherwise not under the jurisdiction of the provisions of the statutes, rules and regulations of the classified service set forth in article six, chapter twenty-nine of this code and article six-a of said chapter and are afforded no protections, rights or access to procedures set forth in said provision. All commission employees shall be employees at will unless his or her employment status is altered by an express, written employment contract executed on behalf of the Commission and the employee. The Commission and its employees shall be exempt and otherwise not under the jurisdiction of the state personnel
board, the Department of Personnel, or any other successor
agency, and their statutes, rules and regulations;

(3) Reorganize the work of the Commission, its divisions,
sections and offices to the extent necessary to achieve the most
efficient performance of its functions. All persons employed by
the Workers' Compensation Division in positions that were
formerly supervised and directed by the Commissioner of the
Bureau of Employment Programs under chapter twenty-one-a
of this code are hereby assigned and transferred in their
respective classifications to the Workers' Compensation
Commission effective the first day of October, two thousand
deep three. Further, the Executive Director may select persons that
are employed by the Bureau of Employment Programs on the
effective date of the enactment of this section in the year two
deep thousand three to be assigned and transferred to the Workers'
Compensation Commission in their respective classifications,
such assignment and transfer to take effect no later than the
thirty-first day of December, two thousand three. Employees in
the classified service who have gained permanent status as of
the effective date of this article will not be subject to further
qualifying examination in their respective classifications by
reason of any transfer required by the provisions of this
subdivision. Due to the emergency currently existing at the
Commission and the urgent need to develop fast, efficient
claims processing, management and administration, the
Executive Director is hereby granted authority to reorganize
internal functions and operations and to delegate, assign,
transfer, combine, establish, eliminate and consolidate responsi-
bilities and duties to and among the positions transferred under
the authority of this subdivision. The Division of Personnel
shall cooperate fully by assisting in all personnel activities
necessary to expedite all changes for the Commission. The
Executive Director is hereby granted authority to reorganize
internal functions and operations and to delegate, assign,
transfer, combine, establish, eliminate and consolidate responsi-
bilities and duties to and among the positions transferred under
the authority of this subdivision. The Division of Personnel
shall cooperate fully by assisting in all personnel activities
necessary to expedite all changes for the Commission and shall
otherwise continue to provide all necessary administrative
support to the Commission in connection with the ommission’s
personnel needs until the company established in article two-c
of this chapter becomes operational. Nothing contained in this
subdivision shall be construed to either abridge the rights of
employees within the classified service of the state to the
procedures and protections set forth in article six, chapter
twenty-nine of this code or to preclude the reclassification or
reallocations of positions in accordance with procedures set forth
in said article;

(4) Exempt no more than twenty-five of any of the newly
created positions from the classified service of the state, the
employees of which positions shall serve at the will and
pleasure of the Executive Director. The Executive Director
shall report all exemptions made under this subdivision to the
Director of the Division of Personnel no later than the first day
of January, two thousand four, and thereafter as the Executive
Director determines to be necessary;

(5) With the advice and approval of the board of managers,
propose operating guidelines and policies to standardize
administration, expedite commission business and promote the
efficiency of the services provided by the Commission;

(6) Prepare and submit to the board of managers informa-
tion the board requires for classifications of occupations or
industries; the basis for premium rates, taxes, surcharges and
assessment for administrative charges, for assessments related
to loss experience, for assessments of prospective risk exposure,
for assessments of deficit management and deficit reduction
costs incurred, for other deficit management and deficit
(7) Keep accurate and complete accounts and records necessary to the collection, administration and distribution of the workers’ compensation funds;

8) Sign and execute in the name of the state, by “The Workers’ Compensation Commission”, any contract or agreement;

(9) Make recommendations and an annual report to the Governor concerning the condition, operation and functioning of the Commission;

(10) Invoke any legal or special remedy for the enforcement of orders or the provisions of this chapter;

(11) Prepare and submit for approval to the board of managers a budget for each fiscal year, including estimates of the costs and necessary expenditures of the Commission in the discharge of all duties imposed by this chapter as well as the costs of furnishing office space to the officers and employees of the Commission;

(12) Ensure that all employees of the Commission follow the orders, operating guidelines and policies of the Commission as they relate to the Commission’s overall policymaking, management and adjudicatory duties under this chapter;

(13) Delegate all powers and duties vested in the Executive Director to his or her appointees and employees; but the Executive Director is responsible for their acts;
(14) Provide at Commission expense a program of continuing professional, technical and specialized instruction for the personnel of the Commission. The Executive Director shall consult with and report at least annually to the Legislative Oversight Commission on Workforce Investment for Economic Development to obtain the most appropriate training using all available resources;

(15) (A) Contract or employ counsel to perform all legal services for the Commission including, but not limited to, representing the Executive Director, board of managers and Commission in any administrative proceeding and in any state or federal court. Additionally, the Commission may, but shall not be required to, call upon the Attorney General for legal assistance and representation as provided by law. The Attorney General shall not approve or exercise authority over in-house counsel or contract counsel hired pursuant to this section;

(B) In addition to the authority granted by this section to the Executive Director and notwithstanding any provision to the contrary elsewhere in this code, use any attorney regularly employed by the Commission or the Office of the Attorney General to represent the Commission, the Executive Director or the board of managers in any matter arising from the performance of its duties or the execution of its powers under this chapter. In addition, the Executive Director, with the approval of the board of managers, may retain counsel for any purpose in the administration of this chapter relating to the collection of any amounts due from employers to the Commission: Provided, That the allocation of resources for the purpose of any collections shall be pursuant to the plan developed by the board of managers. The board of managers shall solicit proposals from counsel who are interested in representing the Commission under the terms of this subdivision. Thereafter, the board of managers shall select any attorneys it determines necessary to pursue the collection objectives of this subdivision:
(i) Payment to retained counsel may either be hourly or by other fixed fee, or as determined by the court or administrative law judge as provided in this section. A contingency fee payable from the amount recovered by judgment or settlement for the Commission is only permitted, to the extent not prohibited by federal law, when the assets of a defendant or respondent are depleted so that a full recovery plus attorneys’ fees is not possible;

(ii) In the event that any collections action, other than a collections action against a claimant, initiated either by retained counsel or other counsel on behalf of the Commission results in a judgment or settlement in favor of the Commission, the court or, if there was no judicial component to the action, the administrative law judge, shall determine the amount of attorneys’ fees that shall be paid by the defendants or respondents to the retained or other counsel representing the Commission. If the court is to determine the amount of attorneys’ fees, it shall include in its determination the amount of fee that should be paid for the representation of the Commission in pursuing the administrative component, if any, of the action. The amount so paid shall be fixed by the court or the administrative law judge in an amount no less than twenty percent of its recovery. Any additional amount of attorneys’ fees shall be determined by use of the following factors:

(I) The counsel’s normal hourly rate or, if the counsel is an employee of the Commission or is an employee of the Office of the Attorney General, an hourly rate the court or the administrative law judge determines to be customary based upon the attorney’s experience and skill level;

(II) The number of hours actually expended on the action;

(III) The complexity of the issues involved in the action;
(IV) The degree of risk involved in the case with regard to the probability of success or failure;

(V) The overhead costs incurred by counsel with regard to the use of paralegals and other office staff, experts and investigators; and

(VI) The public purpose served or public objective achieved by the attorney in obtaining the judgment or settlement on behalf of the Commission;

(iii) Notwithstanding the provisions of paragraph (B) of this subdivision, if the Commission and the defendants or respondents to any administrative or judicial action settle the action, the parties may negotiate a separate settlement of attorneys’ fees to be paid by the defendants or respondents above and beyond the amount recovered by the Commission. In the event that a settlement of attorneys’ fees is made, it must be submitted to the court or administrative law judge for approval;

(iv) Any attorney regularly employed by the Commission or by the Office of the Attorney General may not receive any remuneration for his or her services other than the attorney’s regular salary. Any attorneys’ fees awarded for an employed attorney are payable to the Commission;

(16) Propose rules for promulgation by the board of managers under which agencies of this state shall revoke or refuse to grant, issue or renew any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit whose account is in default with the Commission with regard to the administration of this chapter. The term “agency” includes any unit of state government such as officers, agencies, divisions, departments, boards, commissions, authorities or public corporations. An employing unit is not in default if it has entered into a repay-
ment agreement with the Commission and remains in compliance with its obligations under the repayment agreements;

(A) The rules shall provide that, before granting, issuing or renewing any contract, license, permit, certificate or other authority to conduct a trade, profession or business to or with any employing unit, the designated agencies shall review a list or lists provided by the Commission of employers that are in default. If the employing unit’s name is not on the list, the agency, unless it has actual knowledge that the employing unit is in default with the Commission, may grant, issue or renew the contract, license, permit, certificate or other authority to conduct a trade, profession or business. The list may be provided to the agency in the form of a computerized database or databases that the agency can access. Any objections to the refusal to issue or renew shall be reviewed under the appropriate provisions of this chapter. The prohibition against granting, issuing or renewing any contract, license, permit, certificate or other authority under this subdivision shall remain in full force and effect as promulgated under section six, article two, chapter twenty-one-a of this code until the rules required by this subsection are promulgated and in effect;

(B) The rules shall also provide a procedure allowing any agency or interested person, after being covered under the rules for at least one year, to petition the Commission to be exempt from the provisions of the rules;

(17) Deposit to the credit of the appropriate special revenue account or fund, notwithstanding any other provision of this code and to the extent allowed by federal law, all amounts of delinquent payments or overpayments, interest and penalties thereon and attorneys’ fees and costs collected under the provisions of this chapter. The amounts collected shall not be treated by the Auditor or Treasurer as part of the general revenue of the state;
(18) Recommend for approval of the board of managers rules for the administration of claims management by self-insured employers and third-party administrators including regulation and sanctions for the rejection of claims and for maintaining claim records and ensuring access to all claim records by interested claimants, claimant representatives, the Commission and the Office of Judges;

(19) Recommend for approval of the board of managers, rules to eliminate the ability of an employer to avoid an experience modification factor by virtue of a reorganization of a business;

(20) Submit for approval of the board of managers rules setting forth procedures for auditing and investigating employers, including employer premium audits and including auditing and investigating programs of self-insured employers and third-party administrators, employees, health care providers and medical and vocational rehabilitation service providers;

(21) Regularly audit and monitor programs established by self-insured or third-party administrators under this chapter to ensure compliance with the Commission’s rules and the law;

(22) Facilitate the transfer of the fraud investigation and prosecution unit, along with the assets necessary to support the functions being performed, to the Insurance Commissioner. This transfer shall be completed by the first day of July, two thousand five. This unit has the responsibility and authority for investigating and controlling fraud of the Workers’ Compensation system of the State of West Virginia and shall perform such other duties as may be assigned to it by the Insurance Commissioner. The fraud unit shall be under the supervision of an inspector general, who shall be appointed by the Insurance Commissioner. Nothing in this section shall preclude the Commission or, when applicable, the company created in article
two-c of this chapter and other private carriers, from independ-
ently investigating and controlling abuse and exercising the
powers granted to the Commission to address and eliminate
abuse under this chapter. The Executive Director may select
persons that are assigned to the fraud and abuse unit on the
effective date of the enactment of this section to be assigned
and remain employees of the Workers’ Compensation Commiss-
ion. The Commission shall determine its fiscal year two
thousand six budget for the fraud investigation and prosecution
unit and shall make advanced quarterly payments to the
Insurance Commissioner during fiscal year two thousand six for
the actual operational expenses incurred as a direct result of this
transfer: Provided, That the payments and expenses shall be
reconciled prior to the final fiscal year transfer and any unex-
pended amount shall be deducted from the final quarter’s
payment. This reimbursement methodology shall repeat for
fiscal year two thousand seven. Any amounts transferred under
this section to the Insurance Commissioner shall be appropri-
ated by the Legislature. The Commission’s inspector general
shall serve as the initial inspector general for the insurance
commissioner;

(A) The inspector general shall, with the consent and advice
of the Executive Director, employ all personnel as necessary for
the institution, development and finalization of procedures and
investigations which serve to ensure that only necessary and
proper workers’ compensation benefits and expenses are paid
to or on behalf of injured employees and to insure employers
subscribe to and pay the proper premium to the West Virginia
Workers’ Compensation Commission. Qualification, compensa-
tion and personnel practice relating to the employees of the
fraud and abuse unit, including that of the position of inspector
general, shall be governed by the provisions of the statutes and
rules of the classified service pursuant to article six, chapter
twenty-nine of this code. The inspector general shall supervise
all personnel, which collectively shall be referred to in this chapter as the fraud and abuse unit;

(B) The fraud and abuse unit shall have the following powers and duties:

(i) The fraud and abuse unit shall propose for promulgation by the board of managers rules for determining the existence of fraud and abuse as it relates to the Workers' Compensation System in West Virginia;

(ii) The fraud and abuse unit will be responsible for the initiation, development, review and proposal for promulgation by the board of managers of rules regarding the existence of fraud and abuse as it relates to the Workers' Compensation System in West Virginia;

(iii) The fraud and abuse unit will take action to identify and prevent and discourage any and all fraud and abuse;

(iv) The fraud and abuse unit, in cases of criminal fraud, has the authority to review and prosecute those cases for violations of sections twenty-four-e, twenty-four-f, twenty-four-g and twenty-four-h, article three, chapter sixty-one of this code, as well as any other criminal statutes that may be applicable. In addition the fraud and abuse unit not only has the authority to prosecute and refer cases involving criminal fraud to appropriate state authorities for prosecution, but it also has the authority, and is encouraged, to cooperate with the appropriate federal authorities for review and possible prosecution, by either state or federal agencies, of cases involving criminal fraud concerning the Workers' Compensation System in West Virginia;

(v) The fraud and abuse unit, in cases which do not meet the definition of criminal fraud, but would meet a reasonable person's definition of an abuse of the Workers' Compensation
System, shall take the appropriate action to discourage and prevent such abuse. Furthermore, the fraud and abuse unit shall assist the Commission to develop evidence of fraud or abuse which can be used pursuant to the provisions of this chapter to suspend, and where appropriate, terminate, a claimant’s benefits. In addition, evidence developed pursuant to these provisions can be used in hearings before the office of judges on protests to Commission decisions terminating, or not terminating, temporary total disability benefits; and

(vi) The fraud and abuse unit is expressly authorized to initiate investigations and participate in the development of, and if necessary, the prosecution of any health care provider, including a provider of rehabilitation services, alleged to have violated the provisions of section three-c, article four of this chapter;

(C) Specific personnel, designated by the inspector general, shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates;

(D) Notwithstanding any provision of this code to the contrary, specific personnel designated by the inspector general may carry handguns in the course of their official duties after meeting specialized qualifications established by the Governor’s Committee on Crime, Delinquency and Correction, which qualifications shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: Provided, That nothing in this subsection shall be construed to include the personnel so designated by the inspector general to carry handguns within the meaning of the term law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(E) The fraud and abuse unit is not subject to any requirement of article nine-a, chapter six of this code and the investigations conducted by the fraud and abuse unit and the materials
placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of chapter twenty-nine-b of this code;

(F) In the event that a final judicial decision adjudges that the statewide prosecutorial powers vested by this subdivision in the fraud and abuse unit may only be exercised by a public official other than an employee of the fraud and abuse unit, then to that extent the provisions of this subdivision vesting statewide prosecutorial power shall thenceforth be of no force and effect, the remaining provisions of this subdivision shall continue in full force and effect and prosecutions hereunder may only be exercised by the prosecuting attorneys of this state and their assistants or special assistant prosecuting attorneys appointed as provided by law;

(23) Enter into interagency agreements to assist in exchanging information and fulfilling the default provisions of this chapter;

(24) Notwithstanding any provision of this code to the contrary, the Executive Director, under emergency authorization:

(A) May expend up to fifty thousand dollars for purchases of and may contract for goods and services without securing competitive bids. This emergency spending authority expires on the first day of July, two thousand five; and

(B) May expend such sums as the Executive Director determines are necessary for professional services, contracts for the purchase of an automated claims administration system and associated computer hardware and software in the administration of claims for benefits made under provisions of this chapter and contracts for technical services and related services necessary to develop, implement and maintain the system and associated computer hardware and software. The provisions of
article three, chapter five-a of this code relating to the purchasing division of the Department of Administration shall not apply to these contracts. The Director shall award the contract or contracts on a competitive basis. This emergency spending authority expires on the thirty-first day of December, two thousand six;

(25) Establish an employer violator system to identify individuals and employers who are in default or are delinquent on any premium, assessment, surcharge, tax or penalty owed to the Commission. The employer violator system shall prohibit violators who own, control or have a ten percent or more ownership interest, or other ownership interest as may be defined by the Commission, in any company from obtaining or maintaining any license, certificate or permit issued by the state until the violator has paid all moneys owed to the Commission or has entered into and remains in compliance with a repayment agreement;

(26) Propose the designation of health care providers to make decisions for the Commission regarding appropriateness of medical services;

(27) Study the correlation between premium tax merit rating for employers and the safety performance of employers. This study shall be completed prior to the first day of July, two thousand four, and the results thereof provided to the board of managers;

(28) Upon termination of the Commission, accomplish the transfer to the Insurance Commissioner established in article two-c of this chapter, the Insurance Commissioner, and any other applicable state agency or department, of the functions necessary for the regulation of the Workers' Compensation insurance industry, including, but not limited to, the following Commission functions: rate making, self-insurance, office of
judges and board of review. The Executive Director may select persons that are assigned to these functions on the effective date of the enactment of this section to be assigned and become employees of the company as established in article two-c of this chapter. The Executive Director may, in consultation with the Insurance Commissioner, select persons that are assigned to the Insurance Commissioner. The commission shall determine its fiscal year two thousand six budget for each of these functions, reduce the budget amount attributable to self-insured employers for these functions and shall make advanced quarterly payments to the Insurance Commissioner during fiscal year two thousand six for the actual operational expenses incurred as a direct result of this transfer. The amount shall include the funds necessary to operate the industrial council and the Insurance Commissioner shall be administratively responsible for the industrial council's budget: Provided, That the payments and expenses shall be reconciled prior to the final fiscal year transfer and any unexpended amount shall be deducted from the final quarter’s payment. This reimbursement methodology shall repeat for fiscal year two thousand seven. Any amounts transferred under this section to the Insurance Commissioner shall be appropriated by the Legislature. For the final calendar quarter of two thousand five and the first and second calendar quarters of the year two thousand six, all self-insured employers shall remit to the Insurance Commissioner on a quarterly basis the administrative component of their fiscal year two thousand six rate. For the fiscal year beginning the first day of July, two thousand six, self-insured employers shall remit an administrative charge to the Insurance Commissioner in an amount determined by the Commissioner. All self-insured employer advance deposits shall transfer from the Commission to the Insurance Commissioner upon termination of the Commission; and

(29) Perform all duties set forth in article two-c of this chapter.
ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

(a) There is established the West Virginia Insurance Fraud Unit within the office of the Insurance Commissioner of West Virginia. The Commissioner may employ full-time supervisory, legal and investigative personnel for the unit, who shall be qualified by training and experience in the areas of detection, investigation or prosecution of fraud within and against the insurance industry to perform the duties of their positions. The Director of the fraud unit is a full-time position and shall be appointed by the Commissioner and serve at his or her will and pleasure. The Commissioner shall provide office space, equipment, supplies, clerical and other staff that is necessary for the unit to carry out its duties and responsibilities under this article.

(b) The fraud unit may in its discretion:

(1) Initiate inquiries and conduct investigations when the unit has cause to believe violations of any of the following provisions of this code relating to the business of insurance have been or are being committed: Chapter twenty-three; chapter thirty-three; article three of chapter sixty-one; and section five, article four of chapter sixty-one.

(2) Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state and local law-enforcement and regulatory agencies, persons engaged in
the business of insurance and the general public to determine whether the reports require further investigation; and

(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts.

c) The insurance fraud unit may:

(1) Employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors and clerical support personnel and other personnel as the Commissioner determines necessary from time to time to accomplish the purposes of this article;

(2) Inspect, copy or collect records and evidence;

(3) Serve subpoenas issued by grand juries and trial courts in criminal matters;

(4) Share records and evidence with federal, state or local law-enforcement or regulatory agencies, and enter into inter-agency agreements. For purposes of carrying out investigations under this article, the unit shall be deemed a criminal justice agency under all federal and state laws and regulations and as such shall have access to any information that is available to other criminal justice agencies concerning violations of the insurance laws of West Virginia or related criminal laws;

(5) Make criminal referrals to the county prosecutors;

(6) Conduct investigations outside this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the insurance fraud unit to examine at the place where the information is located. The
insurance fraud unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to similar requests from officials of other states;

(7) The insurance fraud unit may initiate investigations and participate in the development of, and if necessary, the prosecution of any health care provider, including a provider of rehabilitation services, suspected of fraudulent activity related to the business of insurance;

(8) Specific personnel, designated by the Commissioner, shall be permitted to operate vehicles owned or leased for the state displaying Class A registration plates;

(9) Notwithstanding any provision of this code to the contrary, specific personnel designated by the Commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the Governor's committee on crime, delinquency and correction, which shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: Provided. That nothing in this subsection shall be construed to include any person designated by the Commissioner as a law-enforcement officer as that term is defined by the provisions of section one, article twenty-nine, chapter thirty of this code; and

(10) The insurance fraud unit shall not be subject to the provisions of article nine-a, chapter six of this code and the investigations conducted by the insurance fraud unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of chapter twenty-nine-b of this code.
(d) The insurance fraud unit shall perform other duties as may be assigned to it by the Commissioner.

§33-41-8a. Fingerprinting and background check for applicants for employment with fraud unit.

(a) The Commissioner shall require any applicant for employment with the fraud unit to be fingerprinted. The Commissioner is authorized to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the Federal Bureau of Investigation. The results of any criminal records or criminal history check shall be sent to the Commissioner. The West Virginia State Police may exchange this fingerprint data with the Federal Bureau of Investigation.

(b) The Director shall not disclose information obtained pursuant to subsection (a) of this section except for purposes directly related to the employment of the applicant.

CHAPTER 134

(H. B. 3152 — By Delegates Michael, Stalnaker, Frederick, Proudfoot, Ron Thompson and Ashley)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §29-12-5a of the Code of West Virginia, 1931, as amended, relating to liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the State Department of Corrections; and clarifying that the
Board of Risk and Insurance Management is not required to provide insurance for every property, activity or responsibility.

Be it enacted by the Legislature of West Virginia:

That § 29-12-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the State Department of Corrections.

(a) In accordance with the provisions of this article, the state Board of Risk and Insurance Management shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools and school board members and for all employees and officers of the State Department of Corrections: Provided, That the Board of Risk and Insurance Management is not required to provide insurance for every property, activity or responsibility of county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools and school board members and for all employees and officers of the State Department of Corrections.

(b) Insurance provided by the Board of Risk and Insurance Management pursuant to the provisions of subsection (a) of this section shall cover claims, demands, actions, suits or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service
personnel employee, county superintendent, school board member, or employee or officer of the Department of Corrections was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the Board of Education or Commissioner of Corrections or in an official capacity as a county superintendent or as a school board member or as Commissioner of Corrections.

(c) Insurance coverage provided by the Board of Risk and Insurance Management pursuant to subsection (a) of this section shall be in an amount to be determined by the state Board of Risk and Insurance Management, but in no event less than one million dollars for each occurrence. In addition, each county board of education shall purchase, through the Board of Risk and Insurance Management, excess coverage of at least five million dollars for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the Board of Risk and Insurance Management pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney’s fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

(e) The county superintendent and other school personnel shall be defended by the county board or an insurer in the case of suit, unless the act or omission shall not have been within the course or scope of employment or official responsibility or was motivated by malicious or criminal intent.
AN ACT to amend and reenact §33-2-9, §33-2-16 and §33-2-17 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-2-15d; to amend and reenact §33-3-33 of said code; to amend said code by adding thereto a new section, designated §33-6-15a; to amend said code by adding thereto two new sections, designated §33-11-4a and §33-11-4b; to amend and reenact §33-11-6 of said code; and to amend said code by adding thereto a new section, designated §33-20-4a, all relating generally to the regulation of insurance; increasing certain fees for property and casualty insurers; limiting these certain fees upon meeting special fund funding threshold; providing that Insurance Commissioner shall conduct a study and promulgate rules relating thereto; providing that the Director of Consumer Advocacy be appointed by the Governor; requiring that the Director of Consumer Advocacy be a licensed lawyer; expanding the authority of the Office of Consumer Advocacy; reducing a surcharge on fire and casualty insurance policies; modifying distribution of surcharge; providing for notice of savings in certain insurance policies; eliminating a cause of action for unfair claims settlement practices by third parties; establishing procedures for the filing, investigation and processing of administrative complaints by third-party claimants; defining certain terms; establishing special account to award restitution; providing for limited administrative restitution to third-party claimants in
certain circumstances; providing for penalties for engaging in unfair claims settlement practices or general business practices; providing an internal contingent voiding provision; providing for judicial review of administrative process; limiting applicability of Act; and establishing that certain insurers shall submit rate filings biannually.

Be it enacted by the Legislature of West Virginia:

That §33-2-9, §33-2-16 and §33-2-17 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 §33-2-15d; that §33-3-33 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-6-15a; that said code be amended by adding thereto two new sections, designated §33-11-4a and §33-11-4b; that §33-11-6 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-20-4a, all to read as follows:

Article

2. Insurance Commissioner.
3. Licensing, Fees & Taxation of Insurers.
6. The Insurance Policy.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-15d. Report to the Legislature.

§33-2-16. Office of Consumer Advocacy established; Director of Consumer Advocacy; promulgation of rules.


§33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

(a) The purpose of this section is to provide an effective and efficient system for examining the activities, operations,
financial condition and affairs of all persons transacting the
business of insurance in this state and all persons otherwise
subject to the jurisdiction of the Commissioner. The provisions
of this section are intended to enable the Commissioner to adopt
a flexible system of examinations which directs resources as
may be considered appropriate and necessary for the adminis-
tration of the insurance and insurance-related laws of this state.

(b) For purposes of this section, the following definitions
shall apply:

(1) “Commissioner” means the Commissioner of Insurance
of this state;

(2) “Company” or “insurance company” means any person
engaging in or proposing or attempting to engage in any
transaction or kind of insurance or surety business and any
person or group of persons who may otherwise be subject to the
administrative, regulatory or taxing authority of the Commis-
sioner, including, but not limited to, any domestic or foreign
stock company, mutual company, mutual protective association,
farmers mutual fire companies, fraternal benefit society,
reciprocal or interinsurance exchange, nonprofit medical care
corporation, nonprofit health care corporation, nonprofit
hospital service association, nonprofit dental care corporation,
health maintenance organization, captive insurance company,
risk retention group or other insurer regardless of the type of
coverage written, benefits provided or guarantees made by
each;

(3) “Department” means the Department of Insurance of
this state; and

(4) “Examiners” means the Commissioner of Insurance or
any individual or firm having been authorized by the Commis-
sioner to conduct an examination pursuant to this section,
including, but not limited to, the Commissioner’s deputies,
other employees, appointed examiners or other appointed
(c) The Commissioner or his or her examiners may conduct an examination under this section of any company as often as the Commissioner in his or her discretion considers appropriate. The Commissioner or his or her examiners shall at least once every five years visit each domestic insurer and thoroughly examine its financial condition and methods of doing business and ascertain whether it has complied with all the laws and regulations of this state. The Commissioner may also examine the affairs of any insurer applying for a license to transact any insurance business in this state.

(d) The Commissioner or his or her examiners shall, at a minimum, conduct an examination of every foreign or alien insurer licensed in this state not less frequently than once every five years. The examination of an alien insurer may be limited to its United States business: Provided, That in lieu of an examination under this section of any foreign or alien insurer licensed in this state, the Commissioner may accept an examination report on the company as prepared by the insurance department for the company's state of domicile or port-of-entry state until the first day of January, one thousand nine hundred ninety-four. Thereafter, the reports may only be accepted if:

1. The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or

2. The examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.
(e) In scheduling and determining the nature, scope and frequency of examinations conducted pursuant to this section, the Commissioner may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants and other criteria as set forth in the examiners’ handbook adopted by the National Association of Insurance Commissioners and in effect when the Commissioner exercises discretion under this section.

(f) For purposes of completing an examination of any company under this section, the Commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the company.

(g) The Commissioner may also cause to be examined, at the times as he or she considers necessary, the books, records, papers, documents, correspondence and methods of doing business of any agent, broker, excess lines broker or solicitor licensed by this state. For these purposes, the Commissioner or his or her examiners shall have free access to all books, records, papers, documents and correspondence of all the agents, brokers, excess lines brokers and solicitors wherever the books, records, papers, documents and records are situate. The Commissioner may revoke the license of any agent, broker, excess lines broker or solicitor who refuses to submit to the examination.

(h) In addition to conducting an examination, the Commissioner or his or her examiners may, as the Commissioner considers necessary, analyze or review any phase of the operations or methods of doing business of an insurer, agent, broker, excess lines broker, solicitor or other individual or corporation transacting or attempting to transact an insurance business in the State of West Virginia. The Commissioner may use the full resources provided by this section in carrying out these responsibilities, including any personnel and equipment.
(i) Examinations made pursuant to this section shall be conducted in the following manner:

(1) Upon determining that an examination should be conducted, the Commissioner or his or her designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. The appointment of any examiners pursuant to this section by the Commissioner shall not be subject to the requirements of article three, chapter five-a of this code, except that the contracts and agreements shall be approved as to form and conformity with applicable law by the Attorney General. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners’ handbook adopted by the National Association of Insurance Commissioners. The Commissioner may also employ any other guidelines or procedures as the Commissioner may consider appropriate;

(2) Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subdivision (1) of this subsection timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so;

(3) The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension, revocation, refusal or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the Commissioner’s jurisdiction. Any proceedings for suspension, revocation,
refusal or nonrenewal of any license or authority shall be conducted pursuant to section eleven of this article;

(4) The Commissioner or his or her examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination, analysis or review. The subpoenas shall be enforced pursuant to the provisions of section six of this article;

(5) When making an examination, analysis or review under this section, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, professionals or specialists with training or experience in reinsurance, investments or information systems or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination, analysis or review or, in the Commissioner’s discretion, paid from the Commissioner’s Examination Revolving Fund. The Commissioner may recover costs paid from the Commissioner’s Examination Revolving Fund pursuant to this subdivision from the company upon which the examination, analysis or review is conducted unless the subject of the examination, analysis or review is an individual described in subdivision (2), subsection (q) of this section;

(6) Nothing contained in this section may be construed to limit the Commissioner’s authority to terminate or suspend any examination, analysis or review in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. The Commissioner or his or her examiners may at any time testify and offer other proper evidence as to information secured during the course of an examination, analysis or review whether or not a written report of the examination has at that time either been made, served or filed in the Commissioner’s Office;

(7) Nothing contained in this section may be construed to limit the Commissioner’s authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents or any
other information discovered or developed during the course of any examination, analysis or review in the furtherance of any legal or regulatory action which the Commissioner may, in his or her sole discretion, consider appropriate. An examination report, when filed, shall be admissible in evidence in any action or proceeding brought by the Commissioner against an insurance company, its officers or agents and shall be prima facie evidence of the facts stated therein.

(j) Examination reports prepared pursuant to the provisions of this section shall comply with the following requirements:

(1) All examination reports shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and any conclusions and recommendations the examiners find reasonably warranted from the facts;

(2) No later than sixty days following completion of the examination the examiner in charge shall file with the Commissioner a verified written report of examination under oath. Upon receipt of the verified report, the Commissioner shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than ten days to make a written submission or rebuttal with respect to any matters contained in the examination report;

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals the Commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner’s workpapers and enter an order:

(A) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule or prior order of the Commissioner, the Commissioner may order
the company to take any action the Commissioner considers necessary and appropriate to cure the violation; or

(B) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refiling pursuant to subdivision (2) of this subsection; or

(C) Calling for an investigatory hearing with no less than twenty days’ notice to the company for purposes of obtaining additional documentation, data, information and testimony;

(4) All orders entered pursuant to this subsection shall be accompanied by findings and conclusions resulting from the Commissioner’s consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any order issued pursuant to paragraph (A), subdivision (3) of this subsection shall be considered a final administrative decision and may be appealed pursuant to section fourteen of this article and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty days of the issuance of the adopted report the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(k) Hearings conducted pursuant to this section shall be subject to the following requirements:

(1) Any hearing conducted pursuant to this section by the Commissioner or the Commissioner’s authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the Commissioner’s review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty days of the conclusion of any hearing, the Commissioner shall enter an order pursuant to paragraph (A), subdivision (3), subsection (j) of this section;
(2) The Commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner’s workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The Commissioner or the Commissioner’s representative may issue subpoenas for the attendance of any witnesses or the production of any documents considered relevant to the investigation whether under the control of the Commissioner, the company or other persons. The documents produced shall be included in the record and testimony taken by the Commissioner or the Commissioner’s representative shall be under oath and preserved for the record. Nothing contained in this section shall require the Commissioner to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency;

(3) The hearing shall proceed with the Commissioner or the Commissioner’s representative posing questions to the persons subpoenaed. Thereafter, the company and the department may present testimony relevant to the investigation. Cross-examination may be conducted only by the Commissioner or the Commissioner’s representative. The company and the Commissioner shall be permitted to make closing statements and may be represented by counsel of their choice.

(1) Adoption of the examination report shall be subject to the following requirements:

(1) Upon the adoption of the examination report under paragraph (A), subdivision (3), subsection (j) of this section, the Commissioner may continue to hold the content of the examination report as private and confidential information for a period of ninety days except to the extent provided in subdivision (6), subsection (i) of this section. Thereafter, the Commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication;

(2) Nothing contained in this section may prevent or be construed as prohibiting the Commissioner from disclosing the
content of an examination report, preliminary examination report or results or any matter relating thereto or the results of any analysis or review to the insurance department of this or any other state or country or to law-enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this section;

(3) In the event the Commissioner determines that regulatory action is appropriate as a result of any examination, analysis or review, he or she may initiate any proceedings or actions as provided by law;

(4) All 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, analysis or review made under this section must be given confidential treatment and are not subject to subpoena and may not be made public by the Commissioner or any other person, except to the extent provided in subdivision (5), subsection (i) of this section. Access may also be granted in accordance with section nineteen of this article. The parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section unless the prior written consent of the company to which it pertains has been obtained.

(m) The Commissioner may require any examiner to furnish a bond in such amount as Commissioner may determine to be appropriate and the bond shall be approved, filed and premium paid, with suitable proof submitted to the Commissioner, prior to commencement of employment by the Commissioner. No examiner may be appointed by the Commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this section. This section shall not be construed to automatically preclude an examiner from being:
(1) A policyholder or claimant under an insurance policy;

(2) A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(3) An investment owner in shares of regulated diversified investment companies; or

(4) A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed;

(5) Notwithstanding the requirements of this subsection, the Commissioner may retain, from time to time, on an individual basis qualified actuaries, certified public accountants or other similar individuals who are independently practicing their professions even though these persons may, from time to time, be similarly employed or retained by persons subject to examination under this section.

(n) Personnel conducting examinations, analyses or reviews of either a domestic, foreign or alien insurer shall be compensated for each day worked at a rate set by the Commissioner. The personnel shall also be reimbursed for their travel and living expenses at the rate set by the Commissioner. Other individuals who are not employees of the Department of Insurance shall all be compensated for their work, travel and living expenses at rates approved by the Commissioner or as otherwise provided by law. As used in this section, the costs of an examination, analysis or review means:

(1) The entire compensation for each day worked by all personnel, including those who are not employees of the Department of Insurance, the conduct of the examination, analysis or review calculated as hereinbefore provided;

(2) Travel and living expenses of all personnel, including those who are not employees of the Department of Insurance, directly engaged in the conduct of the examination, analysis or review calculated at the rates as hereinbefore provided for;
(3) All other incidental expenses incurred by or on behalf of the personnel in the conduct of any authorized examination, analysis or review.

(o) (1) All property and casualty insurers subject to the provisions of this section shall annually pay to the commissioner on or before the first day of July, one thousand nine hundred ninety-one, and every first day of July thereafter an examination assessment fee of up to five thousand dollars. Four hundred fifty dollars of this fee shall be paid to the Treasurer of the state to the credit of a special revolving fund to be known as the commissioner’s Examination Revolving Fund which is hereby established; up to four thousand two hundred dollars shall be paid to the Treasurer of the state to the credit of the Unfair claims Settlement Practice Trust fund established in section four-b, article eleven of this chapter and three hundred fifty dollars shall be paid to the Treasurer of the state. If the Trust Fund has moneys in excess of one million dollars, the examination assessment fee shall be eight hundred dollars and the five thousand-dollar fee shall only be reinstated at whatever amount the commissioner deems necessary to maintain the Fund, if the Fund value goes below one million dollars. The Commissioner may at his or her discretion, upon notice to the insurers subject to this subsection, increase this examination assessment fee or levy an additional examination assessment fee of two hundred fifty dollars. In no event may the total examination assessment fee, including any additional examination assessment fee levied, exceed one thousand five hundred dollars per insurer in any calendar year.

(2) All insurers other than property and casualty insurers subject to the provisions of this section shall annually pay to the Commissioner on or before the first day of July, one thousand nine hundred ninety-one, and every first day of July thereafter an examination assessment fee of eight hundred dollars. Four hundred fifty dollars of this fee shall be paid to the Treasurer of the state to the credit of the Commissioner’s Examination Revolving Fund and three hundred fifty dollars shall be paid to the treasurer of the state. The Commissioner may at his or her
discretion, upon notice to the insurers subject to this subsection, increase this examination assessment fee of two hundred fifty dollars. In no event may the total examination assessment fee, including any additional examination assessment fee levied, exceed one thousand five hundred dollars per insurer in any calendar year.

(p) The moneys collected by the Commissioner from an increase or additional examination assessment fee shall be paid to the Treasurer of the State to be credited to the Commissioner's Examination Revolving Fund. Any funds expended or obligated by the Commissioner from the Commissioner's Examination Revolving Fund may be expended or obligated solely for defrayment of the costs of examinations, analyses or reviews of the financial affairs and business practices of insurance companies, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state made by the Commissioner pursuant to this section or for the purchase of equipment and supplies, travel, education and training for the Commissioner's deputies, other employees and appointed examiners necessary for the Commissioner to fulfill the statutory obligations created by this section.

(q) The Commissioner may require other individuals who are not employees of the Department of Insurance who have been appointed by the Commissioner to conduct or participate in the examination, analysis or review of insurers, agents, brokers, excess lines brokers, solicitors or other individuals or corporations transacting or attempting to transact an insurance business in this state to:

(1) Bill and receive payments directly from the insurance company being examined, analyzed or reviewed for their work, travel and living expenses as previously provided in this section; or

(2) If an individual agent, broker or solicitor is being examined, analyzed or reviewed, bill and receive payments directly from the Commissioner's Examination Revolving Fund
for their work, travel and living expenses as previously pro-
vided in this section. The Commissioner may recover costs
paid from the Commissioner's Examination Revolving Fund
pursuant to this subdivision from the person upon whom the
examination, analysis or review is conducted.

(r) The Commissioner and his or her examiners shall be
entitled to immunity to the following extent:

(1) No cause of action shall arise nor shall any liability be
imposed against the Commissioner or his or her examiners for
any statements made or conduct performed in good faith while
carrying out the provisions of this section;

(2) No cause of action shall arise, nor shall any liability be
imposed, against any person for the act of communicating or
delivering information or data to the Commissioner or his or
her examiners pursuant to an examination, analysis or review
made under this section if the act of communication or delivery
was performed in good faith and without fraudulent intent or
the intent to deceive;

(3) The Commissioner or any examiner shall be entitled to
an award of attorney's fees and costs if he or she is the prevail-
ing party in a civil cause of action for libel, slander or any other
relevant tort arising out of activities in carrying out the provi-
sions of this section and the party bringing the action was not
substantially justified in doing so. For purposes of this section,
a proceeding is "substantially justified" if it had a reasonable
basis in law or fact at the time that it was initiated;

(4) This subsection does not abrogate or modify in any way
any constitutional immunity or common law or statutory
privilege or immunity heretofore enjoyed by any person
identified in subdivision (1) of this subsection.

§33-2-15d. Report to the Legislature.

(a) By the first day of January, two thousand seven, the
Commissioner shall submit a report to the Legislature. The
report shall contain analysis of the impact of legislation enacted
during the two thousand five regular legislative session upon
rates and insurance availability in the state.

(b) The Insurance Commissioner shall by proposal of
legislative or procedural rules, pursuant to article three, chapter
twenty-nine-a of this code, put forth analytical criteria and
methodology of all factors to be considered in the report. This
purpose of this section is to assure that all relevant factors of
concern to the Legislature regarding the effect of the reforms
enacted in this article, any savings to consumers, the promotion
of insurance availability and impacts on insurance industry
services and performance are fully reviewed and addressed.

§33-2-16. Office of Consumer Advocacy established; Director of
Consumer Advocacy; promulgation of rules.

(a) There is hereby created within the agency of the
Insurance Commissioner the Office of Consumer Advocacy.
The position of Director of the Office of Consumer Advocacy
is a full-time position. The Director shall be an attorney
licensed in the State of West Virginia. The Director shall be
appointed by the Governor for a term of four years to coincide
with the term of the Governor and may be discharged only for
failure to carry out the duties of the office or for other good and
sufficient cause: Provided, That the current Director of the
Office of Consumer Advocacy or other appointee of the
Commissioner shall continue in the position until the Governor
appoints a new Director.

(b) The Insurance Commissioner shall provide office space,
equipment and supplies for the office.

(c) The Director may promulgate rules pursuant to article
three, chapter twenty-nine-a of this code in order to effect the
purposes of this section and sections seventeen and eighteen of
this article.
(d) On or before the first day of each regular session of the Legislature, the Director shall file with the Governor, the Clerk of the Senate and the Clerk of the House of Delegates a report detailing the actions taken by the division in the preceding calendar year.


(a) In addition to the authority established under the rules promulgated by the Director, the Office of Consumer Advocacy is authorized to:

(1) Institute, intervene in, or otherwise participate in, as an advocate for the public interest and the interests of insurance consumers, proceedings in state and federal courts, before administrative agencies or before the Health Care Authority, concerning applications or proceedings before the Health Care Authority or the review of any act, failure to act or order of the Health Care Authority;

(2) At the request of one or more policyholders, or whenever the public interest is served, to advocate the interests of those policyholders in proceedings arising out of any filing made with the Insurance Commissioner by any insurance company or relating to any complaint alleging an unfair or deceptive act or practice in the business of insurance;

(3) At the request of one or more third-party claimant who does not have legal representation at a hearing on his or her claim, or whenever the public interest is served, to advocate the interests of those third-party claimants in proceedings arising out of any filing made with the Insurance Commissioner by any insurance company or relating to any third-party complaint alleging an unfair claims settlement practice;

(4) Institute, intervene in or otherwise participate in, as an advocate for the public interest and the interests of insurance consumers, proceedings in state and federal courts, before administrative agencies, or before the Insurance Commissioner, concerning applications or proceedings before the Commis-
(5) Review and compile information, data and studies of the reasonable and customary rate schedules of health care providers and health insurers for the purposes of reviewing, establishing, investigating, or supporting any policy regarding health care insurance rates;

(6) Exercise all the same rights and powers regarding examination and cross-examination of witnesses, presentation of evidence, rights of appeal and other matters as any party in interest appearing before the Insurance Commissioner or the Health Care Authority;

(7) Hire consultants, experts, lawyers, actuaries, economists, statisticians, accountants, clerks, stenographers, support staff, assistants and other personnel necessary to carry out the provisions of this section and sections sixteen and eighteen of this article, which personnel shall be paid from special revenue funds appropriated for the use of the office;

(8) Contract for the services of technically qualified persons in the area of insurance matters to assist in the preparation and presentation of matters before the courts, the Insurance Commissioner, administrative agencies or the Health Care Authority, which persons shall be paid from special revenue funds appropriated for the use of the office;

(9) Make recommendations to the Legislature concerning legislation to assist the Office in the performance of its duties;

(10) Communicate and exchange data and information with other federal or state agencies, divisions, departments or officers and with other interested parties, including, but not limited to, health care providers, insurance companies, consumers or other interested parties; and

(11) Perform other duties to effect the purposes of the Office.
(b) The provisions of this section do not apply to any filing made by an insurance company, or act or order performed or issued by the Commissioner, or complaint filed by a policyholder with the Commissioner prior to the thirtieth day of June, one thousand nine hundred ninety-one. All proceedings and orders in connection with these prior matters shall be governed by the law in effect at the time of the filing, or performance or issuance of the act or order.

(c) Nothing in this section may be construed to authorize the Director to participate in the review and consideration of any rate filing made pursuant to this chapter.

ARTICLE 3. LICENSING, FEES & TAXATION OF INSURERS.

§33-3-33. Surcharge on fire and casualty insurance policies to benefit volunteer and part-volunteer fire departments; Public Employees Insurance Agency and municipal pension plans; special fund created; allocation of proceeds; effective date.

(a)(1) For the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and 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. After the thirtieth day of June, two thousand five, the surcharge shall be imposed as specified in subdivisions (2) and (3) of this subsection.

(2) After the thirtieth day of June, two thousand five, through the thirty-first day of December, two thousand five, for the purpose of providing additional revenue for volunteer fire departments, part-volunteer fire departments and to provide
additional revenue to the Public Employees Insurance Agency
and municipal pension plans, there is hereby authorized and
imposed on and after the first day of July, two thousand five, on
the policyholder of any fire insurance policy or casualty
insurance policy issued by any insurer, authorized or unautho-
rized, or by any risk retention group, a policy surcharge equal
to one percent of the taxable premium for each such policy.

(3) After the thirty-first day of December, two thousand
five, for the purpose of providing additional revenue for
volunteer fire departments and part-volunteer fire departments,
there is hereby authorized and imposed 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 fifty-five one hundredths of
one percent of the taxable premium for each such policy.

(4) 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 commis-
sions 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 Commissioner. 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)(1) 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. After the thirtieth day of June, two thousand five, the money received from the surcharge shall be distributed as specified in subdivisions (2) and (3) of this subsection.

(2)(A) After the thirtieth day of June, two thousand five, through the thirty-first day of December, two thousand five, all money from the policy surcharge shall be collected by the Commissioner who shall disburse one half of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(B) The remaining portion of moneys collected shall be transferred into the fund in the State Treasury of the Public Employees Insurance Agency into which are deposited the proportionate shares made by agencies of this state of the Public Employees Insurance Agency costs of those agencies, until the first day of November, two thousand five. After the thirty-first day of October, two thousand five, through the thirty-first day
of December, two thousand five, the remain portion shall be transferred to the special account in the State Treasury, known as the Municipal Pensions and Protection Fund.

(3) After the thirty-first day of December, two thousand five, all money from the policy surcharge shall be collected by the Commissioner who shall disburse all of the money received from the surcharge into the Fire Protection Fund for distribution as provided in subdivision (1) of this subsection.

(4) Before each distribution date to volunteer fire companies or departments, 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.

(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 6. THE INSURANCE POLICY.

§33-6-15a. Notation of consumer cost savings.

Each policy issued following enactment of this provision during the two thousand five regular session, during the year following the effective date, shall display in a prominent location on the policy itself or on an insert included with each policy and provided to each policyholder, statements as following:

(1) "YOUR COSTS FOR THIS POLICY (HAVE/HAVE NOT) BEEN REDUCED BY (insert savings amount here) BECAUSE OF CIVIL JUSTICE REFORMS ENACTED BY
(2) "YOUR COST FOR THIS POLICY HAS BEEN REDUCED BY (insert savings amount here) BECAUSE OF PREMIUM SURCHARGE REDUCTIONS ENACTED BY THE WEST VIRGINIA LEGISLATURE IN 2005 AND SIGNED INTO LAW BY THE GOVERNOR".

If the insurer did not offer the type of insurance provided by the policy in two thousand four, the requirement for these statements do not apply.

ARTICLE 11. UNFAIR TRADE PRACTICES.


§33-11-4b. Unfair Claims Settlement Practice Trust Fund.


(a) A third-party claimant may not bring a private cause of action or any other action against any person for an unfair claims settlement practice. A third-party claimant’s sole remedy against a person for an unfair claims settlement practice or the bad faith settlement of a claim is the filing of an administrative complaint with the Commissioner in accordance with subsection (b) of this section. A third-party claimant may not include allegations of unfair claims settlement practices in any underlying litigation against an insured.

(b) A third-party claimant may file an administrative complaint against a person for an alleged unfair claims settlement practice with the Commissioner. The administrative complaint shall be filed as soon as practicable but in no event later than one year following the actual or implied discovery of the alleged unfair claims settlement practice.
(1) The administrative complaint shall be on a form provided by the Commissioner and shall state with specificity the following information and such other information as the Commissioner may require:

(A) The statutory provision, if known, which the person allegedly violated;

(B) The facts and circumstances giving rise to the violation;

(C) The name of any individual or other entity involved in the violation; and

(D) Reference to specific policy language that is relevant to the violation, if known.

(2) If the administrative complaint is deficient, the Commissioner shall contact the third-party claimant within fifteen days of receipt of the complaint to obtain the necessary information.

(3) Upon receipt of a sufficiently complete administrative complaint, the Commissioner must provide the person against whom the administrative complaint is filed written notice of the alleged violation.

(4) If the person against whom the administrative complaint was filed substantially corrects the circumstances that gave rise to the violation or offers to resolve the complaint in a manner found reasonable by the Commissioner within sixty days after receiving the notice from the Commissioner pursuant to subdivision (3) of this subsection, the Commissioner shall close the complaint and no further action shall lie on the matter, either by the Commissioner or by the third party.

(5) The person that is the recipient of a notice from the Commissioner pursuant to subdivision (3) of this subsection
shall report to the Commissioner on the disposition of the alleged violation within fifteen days of the disposition but no later than sixty days from receipt of notice of the complaint from the Commissioner.

(c) If the third-party claim is not resolved within the sixty-day period described in subdivision (4), subsection (b) of this section through either the person’s substantial correction of the circumstances giving rise to the alleged violation or an offer from the person to resolve the administrative complaint that is found to be reasonable by the Commissioner, the Commissioner shall conduct any investigation he or she considers necessary to determine whether the allegations contained in the administrative complaint are meritorious.

(d) Following the time period and investigation provided in subsection (c) of this section, if the Commissioner finds that merit exists for a complaint and the complaint has not been resolved, the Commissioner shall forward a complete copy of the complaint to the Office of Consumer Advocacy and, if at his or her discretion, may order further investigation and hearing to determine if the person has committed an unfair claims settlement practice with such frequency as to constitute a general business practice. Notice of any hearing shall be provided to all parties. The Commissioner shall assign a time and place for a hearing and shall notify the parties of the hearing by written notice at least ten days in advance thereof. The hearing shall be held within ninety days from the date of filing the complaint unless the complaint has been successfully resolved pursuant to subdivision (4), subsection (b) of this section or continued by agreement of all parties or by the Commissioner for good cause. The Commissioner shall cause hearings to be conducted in the geographical region of the state where the complainant resides. The Commissioner may promulgate rules pursuant to article three, chapter twenty-nine-a of this code necessary, pursuant to
the authority of this chapter, to establish procedures to conduct
hearings pursuant to this section and chapter.

(e) If the Commissioner finds that the person has committed
the unfair claim settlement practice with such frequency as to
constitute a general business practice, the Commissioner may
proceed to take administrative action he or she considers
appropriate in accordance with section six of this article or as
otherwise provided in this chapter. If the Commissioner finds
that the person engaged in any method of competition, act or
practice that involves an intentional violation of subdivision (9),
section four of this article, and even though it has not been
established that the person engaged in a general business
practice, the Commissioner may proceed to take administrative
action he or she considers appropriate in accordance with
subsection (b), section six of this article. The person is entitled
to notice and hearing in connection with the administrative
proceeding.

(f) A finding by the Commissioner that the actions of a
person constitute a general business practice may only be based
on the existence of substantially similar violations in a number
of separate claims or causes of action.

(g) A good faith disagreement over the value of an action
or claim or the liability of any party to any action or claim is
not an unfair claims settlement practice.

(h) The Commissioner, pursuant to article three, chapter
twenty-nine-a of this code, may promulgate by emergency rule
standards for subsection (9), section four of this article.

(i) Nothing in this section in any way limits the rights of the
Commissioner to investigate and take action against a person
which the Commissioner has reason to believe has committed
an unfair claims settlement practice or has consistently resolved
administrative complaints by third-party claimants within the
sixty-day period set forth in subdivision (4), subsection (b) of this section.

(j) Definitions:

(1) "Third-party claimant" means any individual, corporation, association, partnership or any other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract for the claim in question.

(2) "Unfair claims settlement practice" means a violation of subsection (9), section four of this article.

(3) "Underlying litigation" means a third-party claimant's lawsuit involving a claim against an insured.

(4) "Underlying claim" means the claim by a third-party claimant against an insured.

§33-11-4b. Unfair Claims Settlement Practice Trust Fund.

(a) There is hereby created a special account in the State Treasury designated the Unfair Claims Settlement Practice Trust Fund, which shall be an interest-bearing account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, with the interest income or other refund earned thereon a proper credit to the fund. Funds paid into the account may also be derived from the following sources:

(1) Payments received pursuant to section nine, article two of this chapter; and

(2) Any appropriations by the Legislature which may be made for this purpose.
(b) The moneys from the principal in the fund shall be expended by the Commissioner to compensate claimants as provided in sections four-a and six of this article.

§33-11-6. Violations, cease and desist and penalty orders and modifications thereof.

If, after notice and hearing, the Commissioner determines that any person has engaged in or is engaging in any method of competition, act or practice in violation of the provisions of this article or any rules or regulations promulgated by the Commissioner thereunder, the Commissioner shall issue an order directing the person to cease and desist from engaging in the method of competition, act or practice and, in addition thereto, the Commissioner may at his or her discretion order any one or more of the following:

(a) Require the payment to the State of West Virginia of a penalty in a sum not exceeding one thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of ten thousand dollars, unless the person knew or reasonably should have known he or she was in violation of this article, in which case the penalty shall not exceed five thousand dollars for each and every act or violation, but not to exceed an aggregate penalty of one hundred thousand dollars in any six-month period.

(b) In the event the act involves an intentional violation of subdivision (9), section four of this article, and even though it has not been established that the person engaged in a general business practice, require the payment to the State of West Virginia of a penalty in a sum not to exceed ten thousand dollars.

(c) Require the payment to the State of West Virginia of a penalty in a sum not exceeding two hundred fifty thousand dollars if the Commissioner finds that the insurer committed or
28 performed unfair claims settlement practices with such fre-
29 quency as to indicate a general business practice.

30 (d) Revoke or suspend the license of any person if he or she
31 knew, or reasonably should have known, that he or she was in
32 violation of this article.

33 (e)(1) Provide restitution from the Unfair Claims Settle-
34 ment Practice Trust Fund to a claimant who has suffered
35 damages as a result of a general business practice or from an
36 egregious act by a person whether or not the act constituted a
37 pattern corresponding to an unfair claim settlement practice
38 committed with such frequency as to constitute a general
39 business practice.

40 (2) Restitution provided herein may include: (A) Actual
41 economic damages; and (B) noneconomic damages not to
42 exceed ten thousand dollars. Restitution may not be given for
43 attorney fees and punitive damages.

44 (f) It is expressly understood and intended that the provi-
45 sions of paragraph (1), subdivision (e) of this section do not
46 create a private cause of action against the person that has
47 committed an unfair claims settlement practice. In the event
48 that any provision of said paragraph is found to be unconstitu-
49 tional or is deemed by any court of competent jurisdiction to
50 create a private cause of action, then subdivision (e) shall be
51 void.

52 (g) Any person aggrieved by an order of the Commissioner
53 under this article may seek judicial review of the order as
54 provided in section fourteen, article two of this chapter.

55 (h) No order of the Commissioner pursuant to this article or
56 order of any court to enforce it, or holding of a hearing, shall in
57 any manner relieve or absolve any person affected by the order
58 or hearing from any other liability, penalty or forfeiture under
59 law.
(i) The provisions of section four-a of this article and subdivision (e) of this section do not apply to medical professional liability insurance claims pursuant to article seven-b, chapter fifty-five of this code and workers compensation insurance policies governed by article two-c, chapter twenty-three of this code.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-4a. Biannual rate filings for certain insurance lines.

On or before the first day of July, two thousand five, the Commissioner shall promulgate legislative rules pursuant to article three, chapter twenty-nine-a of this code establishing procedures whereby each insurer providing five percent or more of insurance coverage in this state for private passenger automobile insurance and property insurance obtained for personal or family needs shall biannually submit rate filings required under this section: Provided, That the requirements under this subsection shall terminate on the first day of July, two thousand nine.

CHAPTER 136

(Com. Sub. for S. B. 30 — By Senator Minard)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §33-2-20 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-2-21; to amend and reenact §33-6-
8 of said code; to amend said code by adding thereto a new section, designated §33-6-15a; to amend and reenact §33-16-2 of said code; to amend and reenact §33-16B-1 and §33-16B-3 of said code; to amend and reenact §33-17-8 and §33-17-9 of said code; to amend said code by adding thereto three new sections, designated §33-17A-4a, §33-17A-4b and §33-17A-4c; and to amend and reenact §33-20-4 of said code, all relating to insurance law reforms and modifications generally; allowing the Commissioner to permit automobile insurers to withdraw from doing business in this state; requiring insurer to submit a plan; permitting promulgation of rules; redesignating a section of the insurance code enacted as part of the bill assigning workers' compensation duties to the Insurance Commissioner; clarifying that certain rules remain in effect; exempting commercial insurance lines from the requirement of prior approval of rates and forms; establishing requirements for prior approval; providing for suspension of review period when additional information is requested; providing definitions; clarifying that certain health insurance forms marketed to associations must be filed with the Commissioner; providing that commercial and certain health insurance forms marketed to associations are effective upon first use after filing; providing certain requirements for association policies; providing for a notation of savings on policies; clarifying that prior rate approval applies to health insurance certificates and endorsements; providing for filing of fire and marine insurance rider or endorsement review; adding a ground for nonrenewal of property insurance policies; providing an alternative method for nonrenewal of property insurance; providing a manner of electing an alternative method; requiring report to the Legislature; and making certain technical changes.

Be it enacted by the Legislature of West Virginia:

That §33-2-20 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 §33-2-21; that §33-6-8 of said code
be amended and reenacted; that said code be amended by adding thereto a new section, designated §33-6-15a; that §33-16-2 of said code be amended and reenacted; that §33-16B-1 and §33-16B-3 of said code be amended and reenacted; that §33-17-8 and §33-17-9 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §33-17A-4a, §33-17A-4b and §33-17A-4c; and that §33-20-4 of said code be amended and reenacted, all to read as follows:

Article
2. Insurance Commissioner.
6. The Insurance Policy.
16B. Accident and sickness rates.
17. Fire and marine insurance.
17A. Property Insurance Declination, Termination and Disclosure.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-20. Authority of Commissioner to allow withdrawal of insurance carriers from doing business in the state.


§33-2-20. Authority of Commissioner to allow withdrawal of insurance carriers from doing business in the state.

(a) Notwithstanding any provision of the code to the contrary, the Commissioner may, consistent with the provisions of this section, authorize an insurer to withdraw from the line of automobile liability insurance for personal, private passenger automobiles covered by article six-a of this chapter or from doing business entirely in this state if:

1. The insurer has submitted and received approval from the Commissioner of a withdrawal plan; and

2. The insurer demonstrates to the satisfaction of the Commissioner that allowing the insurer to withdraw would be
in the best interest of the insurer, its policyholders and the citizens of this state.

(b) Any insurer that elects to nonrenew or cancel the particular type or line of insurance coverage provided by section five, article seventeen-a of this chapter shall submit to the Insurance Commissioner a withdrawal plan for informational purposes only prior to cancellation or nonrenewal of all its business in this state.

c) The Commissioner shall promulgate rules pursuant to chapter twenty-nine-a of this code setting forth the criteria for withdrawal plans: Provided, That the procedural rules previously promulgated setting forth the criteria for withdrawal plans, which rules were made effective the twenty-fifth day of September, two thousand four, shall continue in effect in the same manner as if this section had not been amended during the first extraordinary session of the Legislature in two thousand five.


(a) Upon the termination of the Workers' Compensation Commission pursuant to chapter twenty-three of this code, the powers and duties heretofore imposed upon the Workers' Compensation Commission as they relate to general administration of the provisions of said chapter are hereby transferred to and imposed upon the Insurance Commissioner.

(b) Unless otherwise specified in chapter twenty-three of this code, upon termination of the Workers' Compensation Commission, the duties imposed upon the Workers' Compensation Commission as they relate to the award and payment of disability and death benefits and the review of claims in articles
four and five of said chapter will be imposed upon the Employ-
ers Mutual Insurance Company established pursuant to article
two-c of said chapter, a private carrier offering workers' 
compensation insurance in this state and self-insured employ-
ers. Whenever reference is made to the Workers' Compensation 
Commissioner in those articles, the duty prescribed shall apply 
to the Employers Mutual Insurance Company, a private carrier 
or self-insured employer, as applicable.

(c) From the effective date of this enactment, the Insurance 
Commissioner shall regulate all insurers licensed to transact 
workers' compensation insurance in this state and all of the 
provisions of this chapter shall apply to such insurers, unless 
otherwise exempted by statute.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-8. Filing of forms.
§33-6-15a. Notation of consumer cost savings.

§33-6-8. Filing of forms.

(a) No insurance policy form, no group certificate form, no 
insurance application form where a written application is 
required and is to be made a part of the policy and no rider, 
endorsement or other form to be attached to any policy shall be 
delivered or issued for delivery in this state by an insurer unless 
it has been filed with the Commissioner and, to the extent 
required by subdivision (1), subsection (b) of this section, 
approved by the Commissioner, except that as to group insur-
ance policies delivered outside this state, only the group 
certificates to be delivered or issued for delivery in this state 
shall be filed for approval with the Commissioner. This section 
does not apply to policies, riders, endorsements or forms of 
unique character designed for and used with relation to insur-
ance upon a particular subject, or which relate to the manner of 
distribution of benefits or to the reservation of rights and
benefits under life or accident and sickness insurance policies, and are used at the request of the individual policyholder, contract holder or certificate holder, nor to the surety bond forms.

(b)(1) Forms for noncommercial lines shall be filed by an insurer no less than sixty days in advance of any delivery. At the expiration of the sixty day period, unless the period was extended by the commissioner to obtain additional information from the insurer, the form is deemed to be approved unless prior thereto it was affirmatively approved or disapproved by the commissioner. Approval of any form by the commissioner constitutes a waiver of any unexpired portion of the sixty day period.

(2) Forms for: (A) Commercial lines property and casualty risks; and (B) any mass-marketed life and/or health insurance policy offered to members of any association by the association shall be filed with the Commissioner and need not be approved by the Commissioner prior to use. The Commissioner may, within the first thirty days after receipt of the form, request information to ensure compliance with applicable statutory provisions and may disapprove forms not in compliance with the provisions of this chapter. If the Commissioner does not disapprove the form within the thirty-day period, the form is effective upon its first use after filing.

(c) When an insurer does not submit supporting information with the form filing that allows the Commissioner to determine whether the form meets all applicable statutory requirements, the Commissioner shall require the insurer to furnish supporting information. The sixty-day period for personal lines risks shall be suspended on the date the Commissioner requests additional information and shall recommence on the date the Commissioner receives the supporting information: Provided, That the Commissioner shall have no less than fifteen days from receipt
of the supporting information to act. The Commissioner may request additional information after the initial sixty-day period with respect to noncommercial lines, or thirty-day period with respect to commercial lines and mass-marketed life and/or health insurance to associations, to ensure continuing compliance with applicable statutory provisions and may at any time, after notice and for cause shown, withdraw any approval or disapprove any form: Provided, however, That any disapproval by the Commissioner of any form or withdrawal of a previous approval shall state the grounds therefor and shall include a notice that the insurer may request a hearing on the denial or withdrawal of approval.

(d) The Commissioner may, by order, exempt from the requirements of this section for so long as he or she considers proper any insurance document or form or type specified in the order, to which, in his or her opinion, this section may not practicably be applied, or the filing and approval of which are, in his or her opinion, not desirable or necessary for the protection of the public.

(e) For purposes of this section:

(1) An association must have a minimum of sixty-one members at the outset of the issuance of the mass-marketed life and/or health insurance policy and shall have been organized and maintained in good faith for purposes other than that of obtaining or providing insurance. The association shall also have been in active existence for at least two years and shall have a constitution and bylaws which provide that: (A) The association holds annual meetings to further purposes of its members; (B) except in the case of credit unions, the association collects dues or solicits contributions from members; and C) the members have voting privileges and representation on the governing board and committees that exist under the authority of the association: Provided, That upon written
application by an association and for good cause shown, the
Commissioner may grant an exemption to the association from
the minimum member requirements of this section.

(2) “Commercial lines” means insurance for business and
professional interests, except that it does not include medical
malpractice insurance.

(3) “Noncommercial lines” means all insurance other than
commercial lines and includes medical malpractice and
insurance for personal, family and household needs.

(f) This section also applies to any form used by domestic
insurers for delivery in a jurisdiction outside West Virginia if
the insurance supervisory official of the jurisdiction informs the
Commissioner that the form is not subject to approval or
disapproval by the official and upon the Commissioner's order
requiring the form to be submitted to him or her for that
purpose. The same standards applicable to forms for domestic
use apply to forms used by domestic insurers for delivery in a
jurisdiction outside West Virginia.

§33-6-15a. Notation of consumer cost savings.

Each policy issued following enactment of this provision
during the two thousand five regular session, during the year
following the effective date, shall display in a prominent
location on the policy itself or on an insert included with each
policy and provided to each policyholder, statements as
follows:

(1) “YOUR COSTS FOR THIS POLICY (HAVE/HAVE
NOT) BEEN REDUCED BY (insert savings amount here)
BECAUSE OF INSURANCE LAW REFORMS ENACTED
BY THE WEST VIRGINIA LEGISLATURE IN 2005 AND
SIGNED INTO LAW BY THE GOVERNOR”.

If the insurer did not offer the type of insurance provided by the policy in two thousand four, the requirement for these statements do not apply.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS.

§33-16-2. Eligible groups.

Any insurer licensed to transact accident and sickness insurance in this state may issue group accident and sickness policies coming within any of the following classifications:

(1) A policy issued to an employer, who shall be considered the policyholder, insuring at least ten employees of the employer, for the benefit of persons other than the employer, and conforming to the following requirements:

(A) If the premium is paid by the employer the group shall comprise all employees or all of any class or classes thereof determined by conditions pertaining to the employment; or

(B) If the premium is paid by the employer and employees jointly, or by the employees, the group shall comprise not less than seventy percent of all employees of the employer or not less than seventy-five percent of all employees of any class or classes determined by conditions pertaining to the employment;

(C) The term "employee" as used herein is considered to include the officers, managers and employees of the employer, the partners, if the employer is a partnership, the officers, managers and employees of subsidiary or affiliated corporations of a corporate employer, and the individual proprietors, partners and employees of individuals and firms, the business of which is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer" as used herein may include any municipal or governmental corporation, unit, agency or department and the proper officers of any unincorpo-
rated municipality or department, as well as private individuals, partnerships and corporations.

(2) A policy issued to an association or to a trust or to the trustees of a fund established, created or maintained for the benefit of members of one or more associations. The association or associations shall have at the issuance of the policy a minimum of one hundred persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; shall have been in active existence for at least one year; and shall have a constitution and bylaws that provide that: The association or associations hold regular meetings not less than annually to further the purposes of the members; except for credit unions, the association or associations collect dues or solicit contributions from members; and the members have voting privileges and representation on the governing board and committees. The policy is subject to the following requirements:

(A) The policy may insure members of the association or associations, employees thereof or employees of members, or one or more of the preceding or all of any class or classes for the benefit of persons other than the employee's employer.

(B) The premium for the policy shall be paid from:

(i) Funds contributed by the association or associations;

(ii) Funds contributed by covered employer members;

(iii) Funds contributed by both covered employer members and the association or associations;

(iv) Funds contributed by the covered persons; or

(v) Funds contributed by both the covered persons and the association, associations or employer members.
(C) Except as provided in paragraph (D), a policy on which no part of the premium is to be derived from funds contributed by the covered persons specifically for their insurance must insure all eligible persons, except those who reject coverage in writing.

(D) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer.

(E) A small employer, as defined in subdivision (r), section two, article sixteen-d of this chapter, insured under an eligible group policy provided in this subdivision shall also be subject to the marketing and rate practices provisions in article sixteen-d of this chapter.

(3) A policy issued to a bona fide association;

(4) A policy issued to a college, school or other institution of learning or to the head or principal thereof, insuring at least ten students, or students and employees, of the institution;

(5) A policy issued to or in the name of any volunteer fire department, insuring all of the members of the department or all of any class or classes thereof against any one or more of the hazards to which they are exposed by reason of the membership but in each case not less than ten members;

(6) A policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state, to insure any class or classes of individuals that could be insured under the group life policy; and

(7) A policy issued to cover any other substantially similar group which in the discretion of the Commissioner may be subject to the issuance of a group accident and sickness policy or contract.
ARTICLE 16B. ACCIDENT AND SICKNESS RATES.

§33-16B-1. Filing and approval of accident and sickness rates.
§33-16B-3. Exceptions.

§33-16B-1. Filing and approval of accident and sickness rates.

Premium rate charges for any individual or group accident and sickness insurance policy, certificate or other evidence of insurance issued, endorsed or delivered in this state shall be filed with the Commissioner for a waiting period of sixty days before the charges become effective. At the expiration of sixty days the premium rate charges filed are deemed approved unless prior thereto the charges have been affirmatively approved or disapproved by the Commissioner.

The Commissioner shall disapprove accident and health insurance premium rates which are not in compliance with the requirements of this chapter or any rule promulgated by the Commissioner pursuant to section two of this article. The Commissioner shall send written notice of the disapproval to the insurer. The Commissioner may approve the premium rates before the sixty-day period expires by giving written notice of approval.

§33-16B-3. Exceptions.

This article does not apply to policies issued to group accident and health insurance plans upon which premiums are negotiated with the group policyholder and are experienced rated.

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-8. Filing of forms.
§33-17-9. Total or partial fire loss.

§33-17-8. Filing of forms.
(a) No fire or marine policy, rider or endorsement to be attached to any policy covering any risk located or to be performed in West Virginia shall be delivered or issued for delivery in this state unless that form is: (1) Filed with and approved by the Commissioner; (2) conforms to applicable legislative rules of the Commissioner; (3) is identical as to language to a policy, rider or endorsement approved by the Commissioner; or (4) qualifies under subsection (c) of this section. If the use of any form under the provisions of subdivision (2) of this section by any insurer or by the members and subscribers of any rating organization is so extensive that in the opinion of the Commissioner the public interest requires, the Commissioner may require that the form be filed with him or her by the insurer or by the rating organization on behalf of its members and subscribers.

(b) The procedure for filing and approval or disapproval of forms under this section is provided in section eight, article six of this chapter. Grounds for disapproval are those set forth in section nine of said article. Filings may be made on behalf of any insurer by a rating organization licensed under the provisions of article twenty of this chapter. This section does not apply to ocean marine policies, riders or endorsements, or to forms on specially rated inland marine risks.

(c) For commercial lines risks, a fire or marine policy, rider or endorsement is subject to the provisions of section six, article eight of this chapter governing other commercial lines form filings as defined in section eight, article six of this chapter.

§33-17-9. Total or partial fire loss.

All insurers providing fire insurance on real property in West Virginia shall be liable, in case of total loss by fire or otherwise, as stated in the policy, for the whole amount of insurance stated in the policy, upon such real property; and in
case of partial loss by fire or otherwise, as aforesaid, of the real
property insured, the liability shall be for the total amount of
the partial loss, not to exceed the whole amount of insurance
upon the real property as stated in the policy. This section
does not apply where such insurance has been procured from
two or more insurers covering the same interest in such real
property.

ARTICLE 17A. PROPERTY INSURANCE DECLINATION, TERMINATION
AND DISCLOSURE.

§33-17A-4a. Alternative method for nonrenewal for property insurance.
§33-17A-4b. Manner of making election relating to nonrenewals.
§33-17A-4c. Report to the Legislature.

§33-17A-4a. Alternative method for nonrenewal for property
insurance.

(a) On or after the first day of July, two thousand five, an
insurer may nonrenew a property insurance policy for any
reason that is consistent with its underwriting standards.

(b) Notwithstanding any other provisions in this section,
race, religion, nationality, ethnic group, age, sex, marital status
or other reason prohibited by the provisions of this chapter may
not be considered as a reason for nonrenewal.

(c) Notwithstanding the provisions of subsection (c),
section four of this article, a nonrenewal may only be issued
pursuant to the provisions of this section upon notice to the
named insured at least thirty days before the end of the policy
period of the insurer's election not to renew the policy.

(d) Commencing the first day of July, two thousand five,
the total number of nonrenewal notices issued by the insurer
each year pursuant to this section that result in nonrenewals
may not exceed one percent per year of the total number of the
policies of the insurer in force at the end of the previous
calendar year in this state: *Provided,* That the total number of such nonrenewal notices issued each year to insureds within any given county in this state that result in nonrenewals may not exceed one percent per year of the total number of policies in force in that county at the end of the previous calendar year: *Provided, however,* That an insurer may nonrenew one policy per year in any county if the applicable percentage limitation results in less than one policy.

(e) A notice issued pursuant to this section shall state the specific reason or reasons for refusal to renew and shall advise the named insured that nonrenewal of the policy for any reason is subject to a hearing and review as provided in section seven of this article: *Provided,* That the hearing shall relate to whether the nonrenewal of the policy was issued for a discriminatory reason, was based upon inadequate notice, was based on an underwriting standard found by the Commissioner to be in violation of this chapter or causes the insurer to exceed the percentage limitations, or percentage limitations by county, of nonrenewal notices set forth in this section. The notice shall also advise the insured of possible eligibility for coverage through the West Virginia Essential Property Insurance Association.

(f) Each insurer licensed to write property insurance policies in this state shall file with the Commissioner a copy of its underwriting standards, including any amendments or supplements. The Commissioner shall review and examine the underwriting standards to ensure that they are consistent with generally accepted underwriting principles. The underwriting standards filed with the Commissioner shall be considered confidential by law and privileged, are exempt from disclosure pursuant to chapter twenty-nine-b of this code, are not open to public inspection, are not subject to subpoena, are not subject to discovery or admissible in evidence in any criminal, civil or administrative action and are not subject to production pursuant
(g) Each insurer that has elected to issue nonrenewal notices pursuant to the percentage limitations provided in this section shall report to the Commissioner, on or before the thirtieth day of September of each year, the total number of nonrenewal notices issued in this state and in each county of this state for the preceding year and the specific reason or reasons for the nonrenewals by county.

§33-17A-4b. Manner of making election relating to nonrenewals.

(a) Each insurer licensed to write property insurance policies in this state as of the first day of July, two thousand five, may elect to issue all nonrenewal notices either pursuant to subsection (c), section four of this article or section four-a of this article. Each insurer must notify the Commissioner of its election on or before the first day of July, two thousand five, and shall remain bound by the election for a period of five years. For each subsequent five-year period, each insurer shall notify the Commissioner of its election to issue all nonrenewal notices either pursuant to subsection (c), section four of this article or section four-a of this article. The failure of an insurer to notify the Commissioner of its election by the first day of July, two thousand five, will be considered to be an election by the insurer to issue all nonrenewal notices pursuant to subsection (c), section four of this article and the insurer will be bound by the election for a period of five years.

(b) An insurer that is not licensed to write property insurance policies in this state as of the first day of July, two thousand five, but which becomes licensed to write property insurance policies after that date shall, no later than four years after the date the insurer becomes licensed to write the policies,
make an election to issue all nonrenewal notices either pursuant to subsection (c), section four of this article or section four-a of this article and shall notify the Commissioner of its election. If the insurer elects to issue all nonrenewal notices pursuant to section four-a of this article, the total number of nonrenewals may not exceed the percentage limitations set forth in that section. An insurer first becoming licensed to issue property insurance policies in this state after the first day of July, two thousand five, shall be bound by its election for a period of five years and for each subsequent five-year period shall notify the Commissioner of its election to issue all nonrenewal notices either pursuant to subsection (c), section four of this article or section four-a of this article.

(c) An insurer that elects to issue nonrenewals pursuant to subsection (c), section four of this article may include as a permitted reason for nonrenewal of a policy, in addition to the reasons enumerated in section five of this article, two or more paid claims under a policy within a period of thirty-six months, each of which occurs after the first day of July, two thousand five.

§33-17A-4c. Report to the Legislature.

By the first day of January, two thousand ten, the Commissioner shall submit a report to the Legislature. The report shall contain the following:

(1) An analysis of the impact of legislation enacted during the two thousand five legislative session upon rates and insurance availability in the state; and

(2) Statistics reflecting the rate history of insurers conducting business in West Virginia from the first day of July, two thousand five, until the first day of July, two thousand nine.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.
§33-20-4. Rate filings.

(a) (1) Every insurer shall file with the Commissioner every manual of classifications, territorial rate areas established pursuant to subdivision (2), subsection (c), section three of this article, rules and rates, every rating plan and every modification of any of the foregoing which it proposes to use for casualty insurance to which this article applies.

(2) Every insurer shall file with the Commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum, class rate, rating schedule or rating plan and every other rating rule and every modification of any of the foregoing which it proposes to use for fire and marine insurance to which this article applies. Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the Commissioner.

(b) Every filing shall state the proposed effective date and shall indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing and the Commissioner does not have sufficient information to determine whether the filing meets the requirements of this article, he or she shall require the insurer to furnish the information upon which it supports the filing and in that event the waiting period shall commence as of the date the information is furnished. The information furnished in support of a filing may include: (1) The experience or judgment of the insurer or rating organization making the filing; (2) the experience or judgment of the insurer or rating organization in the territorial rate areas established by subdivision (2), subsection (c), section three of this article; (3) its interpretation of any statistical data it relies upon; (4) the experience of other insurers or rating organizations; or (5) any other relevant factors. A filing and any
supporting information is open to public inspection as soon as
the filing is received by the Commissioner. Any interested
party may file a brief with the Commissioner supporting his or
her position concerning the filing. Any person or organization
may file with the Commissioner a signed statement declaring
and supporting his or her or its position concerning the filing.
Upon receipt of the statement prior to the effective date of the
filing, the Commissioner shall mail or deliver a copy of the
statement to the filer, which may file a reply as it may desire to
make. This section is not applicable to any memorandum or
statement of any kind by any employee of the Commissioner.

(c) An insurer may satisfy its obligation to make a filing by
becoming a member of, or a subscriber to, a licensed rating
organization which makes filings and by authorizing the
Commissioner to accept filings on its behalf: Provided, That
nothing contained in this article shall be construed as requiring
any insurer to become a member of or a subscriber to any rating
organization.

(d) The Commissioner shall review filings as soon as
reasonably possible after they have been made in order to
determine whether they meet the requirements of this article.

(e) Subject to the exceptions specified in subsections (f), (g)
and (h) of this section, each filing shall be on file for a waiting
period of sixty days before it becomes effective. Upon written
application by an insurer or rating organization, the Commis-
ioner may authorize a filing which he or she has reviewed to
become effective before the expiration of the waiting period.
A filing shall be deemed to meet the requirements of this article
unless disapproved by the Commissioner within the waiting
period.

(f) Any special filing with respect to a surety bond required
by law or by court or executive order or by order, rule or
65 regulation of a public body, not covered by a previous filing, 66 shall become effective when filed and shall be deemed to meet 67 the requirements of this article until the Commissioner reviews 68 the filing and so long thereafter as the filing remains in effect.

69 (g) Specific inland marine rates on risks specially rated by 70 a rating organization shall become effective when filed and 71 shall be deemed to meet the requirements of this article until the 72 Commissioner reviews the filing and so long thereafter as the 73 filing remains in effect.

74 (h) Rates for commercial lines property and casualty risks 75 must be filed with the Commissioner and the filings need not be 76 approved by the Commissioner. The Commissioner may 77 request additional information to ensure compliance with 78 applicable statutory standards, but if the Commissioner does not 79 disapprove the filing within the initial thirty-day period after 80 receipt, the rate filing will become effective upon first usage 81 after filing: Provided, That the Commissioner may at any time 82 thereafter, after notice and for cause shown, disapprove any rate 83 filing.

84 (i) Under legislative rules the Commissioner may, by 85 written order, suspend or modify the requirement of filing as to 86 any kind of insurance, subdivision or combination thereof, or as 87 to classes of risks, the rates for which cannot practicably be 88 filed before they are used. These orders and rules shall be made 89 known to insurers and rating organizations affected thereby. 90 The Commissioner may make any examination he or she may 91 consider advisable to ascertain whether any rates affected by an 92 order meet the standards set forth in subsection (b), section 93 three of this article.

94 (j) Upon the written application of the insured, stating his 95 or her reasons therefor, filed with and approved by the Com- 96 missioner, a rate in excess of that provided by a filing otherwise 97 applicable may be used on any specific risks.
(k) No insurer shall make or issue a contract or policy except in accordance with the filings which are in effect for that insurer as provided in this article. This subsection does not apply to contracts or policies for inland marine risks as to which filings are not required.

(l) In instances when an insurer files a request for an increase of automobile liability insurance rates in the amount of fifteen percent or more, the Insurance Commissioner shall provide notice of the increase with the office of the Secretary of State to be filed in the State Register and shall provide interested persons the opportunity to comment on the request up to the time the Commissioner approves or disapproves the rate increase.

(m) For purposes of this section, “commercial” means commercial lines as defined in subdivision (2), subsection (e), section eight, article six of this chapter.

CHAPTER 137
(S. B. 459 — By Senator Minard)

[Passed April 7, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §33-4-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-10-41, all relating to reinsurance; and a reinsurer’s liability in an insolvency.

Be it enacted by the Legislature of West Virginia:
That §33-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-10-41, all to read as follows:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15. Reinsurance.

(a) For purposes of this section, an “assumption reinsurance agreement” means any contract which:

(1) Transfers insurance obligations and/or risks of existing or in-force contracts of insurance from a transferring insurer to an assuming insurer; and

(2) Is intended to effect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer and the transferring insurer’s insurance obligations and/or risks under the contracts are extinguished.

(b) An insurer shall reinsure its risks, or any part thereof, only in solvent insurers complying with the capital and surplus requirements of section five-b, article three of this chapter.

(c) Credit for reinsurance shall be governed by the provisions of sections fifteen-a and fifteen-b of this article.

(1) No credit shall be allowed, as an admitted asset or deduction from liability, to any ceding insurer for reinsurance, unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency
of the ceding insurer. Payments shall be made directly to the
ceding insurer or to its domiciliary liquidator except: (A) Where
the contract or other written agreement specifically provides
another payee of the reinsurance in the event of the insolvency
of the ceding insurer; or (B) where the assuming insurer, with
the consent of the direct insured, has assumed the policy
obligations of the ceding insurer as direct obligations of the
assuming insurer to the payees under the policies and in
substitution for the obligations of the ceding insurer to payees.

(2) The reinsurance agreement may provide that the
domiciliary liquidator of an insolvent ceding insurer shall give
written notice to the assuming insurer of the pendency of a
claim against the ceding insurer on the contract reinsured within
a reasonable time after the claim is filed in the liquidation
proceeding. During the pendency of the claim, any assuming
insurer may investigate the claim and interpose, at its own
expense, in the proceeding where the claim is to be adjudicated
any defenses which it deems available to the ceding insurer or
its liquidator. The expense may be filed as a claim against the
insolvent ceding insurer to the extent of a proportionate share
of the benefit which may accrue to the ceding insurer solely as
a result of the defense undertaken by the assuming insurer.
Where two or more assuming insurers are involved in the same
claim and a majority in interest elect to interpose a defense to
the claim, the expense shall be apportioned in accordance with
the terms of the reinsurance agreement as though the expense
had been incurred by the ceding insurer.

(d) Any licensed insurer may accept reinsurance for the
same kinds of insurance and within the same limits as it is
authorized to transact direct insurance.

(e) A licensed insurer may reinsure all or substantially all
of its risks on property or lives located in West Virginia, or
substantially all of a major class thereof, with another insurer
by an assumption reinsurance agreement: Provided, That the
assumption reinsurance agreement shall not become effective unless filed in advance with and approved in writing by the Commissioner: Provided, however, That if a licensed insurer is deemed by the Commissioner to be in hazardous financial condition, as defined in article thirty-four-a of this chapter, or an administrative or judicial proceeding has been instituted against it for the purpose of liquidating, reorganizing or conserving the insurer, and the transfer of the contracts of insurance is determined by the Commissioner to be in the best interest of the policyholders, the Commissioner may by written order waive the advance filing and approval required by this section, which waiver may include a form of implied consent and adequate notification to the policyholder of the circumstances requiring the transfer.

(f) The Commissioner shall approve a reinsurance agreement within one hundred twenty days after the filing of same unless he or she finds that it is inequitable to the licensed insurer, its owners or its policyholders or would substantially reduce the protection or service to its policyholders. If the Commissioner does not approve the agreement, he or she shall notify the insurer in writing specifying his or her reasons therefor. If the Commissioner does not disapprove the agreement within one hundred twenty days, the agreement shall be deemed approved.

(g) A filing may not be made pursuant to this section unless the reinsurance agreement is certified under oath by responsible officers of the reinsurer and the reinsured to contain the entire agreement between the parties to the reinsurance agreement.

(h) The Commissioner shall promulgate rules pursuant to chapter twenty-nine-a of this code for the implementation and administration of the provisions of this section to include, but not be limited to, the type of assumption agreements subject to the provisions of this section, their content and the standards the Commissioner may utilize in reviewing the agreements.
(i) Any insurer subject to this section is also subject to the provisions of article thirty-eight of this chapter.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-41. Reinsurer’s liability.

The amount recoverable by the liquidator from reinsurers may not be reduced as a result of delinquency proceedings unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. The payments shall be made directly to the ceding insurer or to its domiciliary liquidator except: (1) Where the contract or other written agreement specifically provides another payee of the reinsurance in the event of the insolvency of the ceding insurer; or (2) where the assuming insurer, with the consent of the direct insured, has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under the policies and in substitution for the obligations of the ceding insurer to the payees.

CHAPTER 138

(Com. Sub. for H. B. 2973 — By Delegates H. White, Hrutkay and Ron Thompson)

[Passed April 5, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2005.]
AN ACT to repeal §33-8A-8 of the Code of West Virginia, 1931, as amended; and to amend and reenact §33-8A-2 and §33-8A-3 of said code, all relating to the use of clearing corporations and federal reserve book-entry system by insurance companies; defining terms; allowing broker-dealers to act as custodian of insurance company assets; establishing eligibility standards for broker-dealers to act as custodians; eliminating references to foreign deposit requirements; and repealing the internal effective date.

Be it enacted by the Legislature of West Virginia:

That §33-8A-8 of the Code of West Virginia, 1931, as amended, be repealed; and that §33-8A-2 and §33-8A-3 of said code be amended and reenacted, all to read as follows:

ARTICLE 8A. USE OF CLEARING CORPORATIONS AND FEDERAL RESERVE BOOK-ENTRY SYSTEM.


1 As used in this article, the term:

2 (1) "Agent" means a national bank, state bank, trust company or broker-dealer that maintains an account in its name in a clearing corporation or that is a member of the federal reserve system and through which a custodian participates in a clearing corporation or the federal reserve book-entry system, including the Treasury/Reserve Automated Debt Entry Securities System (TRADES) or Treasury Direct Systems, except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, "agent" may include a corporation that is organized or existing under the
laws of a foreign country and that is legally qualified under
those laws to accept custody of securities;

(2) "Clearing corporation" has the same meaning set forth
in subdivision (5), subsection (a), section one hundred two,
article eight, chapter forty-six of this code, except that with
respect to securities issued by institutions organized or existing
under the laws of any foreign country, clearing corporation may
include a corporation which is organized or existing under the
laws of any foreign country and is legally qualified under such
laws to effect the transactions in securities by computerized
book entry. Clearing corporation also includes the Treas-
ury/Reserve Automated Debt Entry Securities System
(TRADES) or Treasury Direct Book-Entry Systems established
pursuant to 31 C.F.R., Part 357;

(3) "Custodian" means:

(A) A national bank, state bank or trust company that shall
at all times during which it acts as a custodian pursuant to this
article be no less than adequately capitalized as determined by
the standards adopted by United States banking regulators and
that is regulated by either state banking laws or is a member of
the Federal Reserve System and that is legally qualified to
accept custody of securities in accordance with the standards set
forth below, except that with respect to securities issued by
institutions organized or existing under the laws of a foreign
country, "custodian" may include a bank or trust company
incorporated or organized under the laws of a country other
than the United States that is regulated as such by that country's
government or an agency thereof that shall at all times during
which it acts as a custodian pursuant to this article be no less
than adequately capitalized as determined by the standards
adopted by international banking authorities and that is legally
qualified to accept custody of securities; or
(B) A broker-dealer that is registered with and subject to the jurisdiction of the Securities and Exchange Commission, maintains membership in the Securities Investor Protection Corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars. For the purposes of this subdivision, “tangible net worth” means shareholders’ equity, less intangible assets, as reported in the broker-dealer’s most recent annual or transition report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 filed with the Securities and Exchange Commission (15 U.S.C. §78m or §78o(d));

(4) “Custodied securities” means securities held by the custodian or its agent or in a clearing corporation, including the Treasury/Reserve Automated Debt Entry Securities Systems (TRADES) or Treasury Direct Systems;

(5) “Direct participant” means a bank, trust company or other institution or other custodian which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation;

(6) “Federal reserve book-entry system” means the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks and through banks which are members of the Federal Reserve System or which otherwise have access to such computerized systems;

(7) “Member bank” means a national bank, state bank or trust company which is a member of the Federal Reserve System and through which an insurance company participates in the federal reserve book-entry system;

(8) “Securities” means certificated securities as defined in subdivision (4), subsection (a), section one hundred two, article
eight, chapter forty-six of this code and uncertificated securities
as defined in subdivision (18) of subsection (a), section one
hundred two, article eight, chapter forty-six; and

(9) "Security certificate" has the same meaning set forth in
subdivision (16), subsection (a), section one hundred two,
article eight, chapter forty-six of this code.


(a) Notwithstanding any other provision of law, a domestic
insurance company may deposit or arrange for the deposit of
securities held in or purchased for its general account and its
separate accounts in a clearing corporation or the federal
reserve book-entry system. When securities are deposited with
a clearing corporation, certificates representing securities of the
same class of the same issuer may be merged and held in bulk
in the name of the nominee of the clearing corporation with any
other securities deposited with the clearing corporation by any
person, regardless of the ownership of the securities, and
certificates representing securities of small denominations may
be merged into one or more certificates of larger denomina-
tions. The records of any custodian through which an insurance
company holds securities in the federal reserve book-entry
system or a clearing corporation shall at all times show that the
securities are held for the insurance company and for which
accounts. Ownership of, and other interests in, the securities
may be transferred by bookkeeping entry on the books of such
clearing corporation or in the federal reserve book-entry system
without, in either case, physical delivery of certificates repre-
senting the securities.

(b) The Commissioner is authorized to promulgate rules
governing the deposit of securities by insurance companies and
custodians with clearing corporations and in the federal reserve
book-entry system.
AN ACT to amend and reenact §33-11-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-13-48, all relating to replacement of life insurance and annuities; unfair trade practices; and promulgation of emergency and legislative rules.

Be it enacted by the Legislature of West Virginia:

That §33-11-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-13-48, all to read as follows:

Article
13. Life Insurance.

ARTICLE 11. UNFAIR TRADE PRACTICES.

§33-11-5a. Replacement of life insurance.

1 (a) As used in this section:

2 (1) “Replacement” means any transaction in which new life insurance is to be purchased and by reason of such transaction existing life insurance has been or is to be:
(A) Lapsed, forfeited, surrendered or otherwise terminated;

(B) Converted to reduced paid-up insurance, continued as extended term insurance or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(C) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(D) Reissued with any reduction in cash value; or

(E) Pledged as collateral or subjected to borrowing, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding twenty-five percent (25%) of the loan value set forth in the policy;

(2) "Existing insurer" means the insurance company whose existing life insurance policy is or will be terminated or otherwise affected in a replacement transaction;

(3) "Replacing insurer" means the insurance company, including the same insurer or an insurer in the same group of affiliated insurers, that issues new life insurance in a replacement transaction; and

(4) "Existing life insurance" means any life insurance in force including life insurance under a binding or conditional receipt or a life insurance policy that is within an unconditional refund period, but excluding life insurance obtained through the exercise of a dividend option.

(b) No replacing insurer shall issue any life insurance in a replacement transaction to replace existing life insurance unless the replacing insurer shall agree in writing with the insured that:

(1) The new life insurance issued by the replacing insurer will not be contestable by it in the event of such insured’s death
to any greater extent than the existing life insurance would have been contestable by the existing insurer had such replacement not taken place provided, however, that this paragraph shall not apply to that amount of insurance written and issued which exceeds the amount of the existing life insurance; and

(2) The new life insurance issued by the replacing insurer may be voluntarily surrendered by the insured at any time within thirty (30) days after its delivery to the insured in exchange for a full refund of premiums paid by the replacing insurer to the insured.

(c) Unless otherwise specifically included, subsection (b) of this section shall not apply to:

(1) Annuities;

(2) Individual credit life insurance;

(3) Group life insurance, group credit life insurance and life insurance policies issued in connection with a pension, profit-sharing or other benefit plan qualifying for tax deductibility of premiums, provided, however, that as to any plan described in this subsection, full and complete disclosure of all material facts shall be given to the administrator of any plan to be replaced;

(4) Variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account;

(5) An application to the existing insurer that issued the existing life insurance and a contractual policy change or conversion privilege or a privilege of policy change granted by the insurer is being exercised;
(6) Existing life insurance that is a nonconvertible term life insurance policy which will expire in five (5) years or less and cannot be renewed; or

(7) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company.

(d) For purposes of inducing or attempting to induce a policyholder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert, or otherwise alter or dispose of any insurance policy or coverage, no person shall:

(1) Prepare, make or issue, or cause to be prepared, made or issued, any written or oral misrepresentation of a material fact regarding the terms, conditions or benefits of either existing insurance coverage or proposed replacement insurance coverage; or

(2) Omit information concerning a material fact regarding the terms, conditions or benefits of either existing insurance coverage or proposed replacement insurance coverage.

(e) The provisions of this section shall have no further force and effect as of the effective date of the emergency rule authorized by the provisions of section forty-eight, article thirteen of this chapter.

ARTICLE 13. LIFE INSURANCE.


The Commissioner shall propose and file with the Secretary of State an emergency rule pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code that is based on the model regulation regarding the replacement of life insurance and annuities approved by the National Association of Insurance Commissioners in nineteen ninety-eight and
amended in two thousand. This emergency rule will be effective upon approval by the Secretary of State and will replace the legislative rule previously filed by the Commissioner on the sixteenth day of May, nineteen ninety-seven as Title 114, Series 8 of the Code of State Rules: Provided, That the rule filed as an emergency rule pursuant to this section shall be refiled at the earliest opportunity as a legislative rule for review and promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 140

(H. B. 3014 — By Delegates H. White, Hrutkay, G. White Ron Thompson, Webster, Cann and Hamilton)

[Passed April 9, 2005; in effect ninety days from passage.] [Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §33-15-2g of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-16-1b, all relating to required coverage for specific conditions or treatments in individual and group accident and sickness policies of insurance; and providing limitations on applicability of these requirements.

Be it enacted by the Legislature of West Virginia:

That §33-15-2g of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-16-1b, all to read as follows:

Article
15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.
ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-2g. Applicability.

(a) The requirements of sections two-b, two-d, two-e and two-f of this article and the provisions of this article which generally require policies of accident and sickness insurance to cover specific conditions or treatments, but which are not expressly made applicable to the following types of policies, do not apply to:

(1) Coverage only for accident, or disability income insurance or any combination thereof;

(2) Coverage issued as a supplement to liability insurance;

(3) Liability insurance, including general liability insurance and automobile liability insurance;

(4) Workers’ Compensation or similar insurance;

(5) Automobile medical payment insurance;

(6) Credit-only insurance;

(7) Coverage for on-site medical clinics; and

(8) Other similar insurance coverage, which may be specified by rule, under which benefits for medical care are secondary or incidental to other insurance benefits.

(b) The requirements of sections two-b, two-d, two-e and two-f of this article and the provisions of this article which generally require policies of accident and sickness insurance to cover specific conditions or treatments, but which are not expressly made applicable to the following types of policies, do not apply to the following if provided under a separate policy, certificate, or contract of insurance:
Limited scope dental or vision benefits;

(2) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

(3) Coverage for only a specified disease or illness;

(4) Hospital indemnity or other fixed indemnity insurance;

(5) Medicare supplement insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under group accident and sickness insurance; and

(6) Any other benefits as may be specified by rule.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1b. Applicability.

(a) The provisions of this article which generally require policies of group accident and sickness insurance to cover specific conditions or treatments, but which are not expressly made applicable to the following types of policies, do not apply to:

(1) Coverage only for accident, or disability income insurance or any combination thereof;

(2) Coverage issued as a supplement to liability insurance;

(3) Liability insurance, including general liability insurance and automobile liability insurance;

(4) Workers’ Compensation or similar insurance;
(5) Automobile medical payment insurance;

(6) Credit-only insurance;

(7) Coverage for on-site medical clinics; and

(8) Other similar insurance coverage, which may be specified by rule, under which benefits for medical care are secondary or incidental to other insurance benefits.

(b) The requirements of sections two-b, two-d, two-e and two-f, article fifteen of this chapter and the provisions of this article which generally require policies of group accident and sickness insurance to cover specific conditions or treatments, but which are not expressly made applicable to the following types of policies, do not apply to the following if provided under a separate policy, certificate, or contract of insurance:

(1) Limited scope dental or vision benefits;

(2) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;

(3) Coverage for only a specified disease or illness;

(4) Hospital indemnity or other fixed indemnity insurance;

(5) Medicare supplement insurance (as defined under section 1882(g)(1) of the Social Security Act), coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, and similar supplemental coverage provided to coverage under group accident and sickness insurance; and

(6) Any other benefits as may be specified by rule.
CHAPTER 141

(Com. Sub. for H. B. 3138 — By Delegates Amores, Trump, Caputo, Brown, Webster, Palumbo, Schadler, Campbell, Browning, Marshall and Mahan)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-16E-1, §33-16E-2, §33-16E-3, §33-16E-4, §33-16E-5, §33-16E-6 and §33-16E-7, all relating to insurance and contraceptive coverage; providing definitions; specifying application of article; requiring health insurance plans provide parity for contraceptive drugs, devices and outpatient services; and providing exemptions and prohibitions.

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 §33-16E-1, §33-16E-2, §33-16E-3, §33-16E-4, §33-16E-5, §33-16E-6 and §33-16E-7, all to read as follows:

ARTICLE 16E. CONTRACEPTIVE COVERAGE.

§33-16E-1. Findings; short title.
§33-16E-2. Definitions.
§33-16E-3. Applicability.
§33-16E-4. Parity for contraceptive drugs, devices and outpatient services.
§33-16E-5. Extraordinary surcharges prohibited.
§33-16E-6. Additional prohibitions.
§33-16E-1. Findings; short title.

(a) This article may be referred to as the “Prescription Fairness Act of 2005.”

(b) The Legislature hereby finds and declares that:

1. Contraceptives prevent unintended pregnancy;
2. Planned pregnancies lead to healthier pregnancies, children and families; and
3. Contraceptive coverage provides West Virginians with critical access to birth control.

(4) Therefore, the Legislature finds that prescription contraceptives are basic health-care for West Virginia’s women and families and that health insurance plans which include a prescription drug plan should be required to cover contraceptives.

§33-16E-2. Definitions.

For the purposes of this article, these definitions are applicable unless a different meaning clearly appears from the context.

1. “Contraceptives” means drugs or devices approved by the food and drug administration to prevent pregnancy.

2. “Covered person” means the policyholder, subscriber, certificate holder, enrollee or other individual who is participating in, or receiving coverage under a health insurance plan. For the purposes of this article, covered person does not include a dependent child.

3. “Health insurance plan” means benefits consisting of medical care provided directly, through insurance or reimburse-
ment, or indirectly, including items and services paid for as medical care, under any hospital or medical expense incurred policy or certificate; hospital, medical or health service corpora-
tion contract; health maintenance organization contract; fraternal benefit society contract; plan provided by a multiple-
employer trust or a multiple-employer welfare arrangement; or plan provided by the West Virginia Public Employees Insur-
ance Agency pursuant to article sixteen, chapter five of this code.

(4) “Outpatient contraceptive services” means consulta-
tions, examinations, procedures and medical services, provided on an outpatient basis and related to the use of prescription contraceptive drugs and devices to prevent pregnancy issued under a health insurance plan that provides benefits for pre-
scription drugs or prescription devices in a prescription drug plan.

(5) “Religious employer” is an entity whose sincerely held religious beliefs or sincerely held moral convictions are central to the employer’s operating principles, and the entity is an organization listed under 26 U.S.C. 501 (c)(3), 26 U.S.C. 3121, or listed in the Official Catholic Directory published by P. J. Kennedy and Sons.

§33-16E-3. Applicability.

(a) The provisions of this article apply to individual and group health insurance plans issued by accident and sickness insurers; health maintenance organizations; fraternal benefit societies; hospital service corporations; the West Virginia Public Employees Insurance Agency; health-care service corporations; health service corporations; multiple employee trusts; and multiple employer welfare arrangements. The provisions of this section shall not apply to persons eligible for coverage under Title XIX of the Social Security Act, known as
Medicaid (42 U.S.C. § 1396a et seq.), or for any other similar coverage under state or federal governmental plans.

(b) The provisions of this article do not apply to:

(1) Any policy of liability insurance or contract supplemental thereto; coverage only for accident or disability income insurance or any combination thereof; automobile medical payment insurance; credit-only insurance; coverage for on-site medical clinics; workers’ compensation insurance; or other similar insurance under which benefits for medical care are secondary or incidental to other insurance benefits;

(2) If offered separately, a policy providing benefits for long-term care, nursing home care, home health care, community-based care or any combination thereof, dental or vision benefits, or other similar, limited benefits;

(3) If offered as independent, noncoordinated benefits under separate policies or certificates, specified disease or illness coverage, hospital indemnity or other fixed indemnity insurance, or coverage, such as medicare supplement insurance, supplemental to a group health plan; or

(4) A policy of accident and sickness insurance covering a period of less than one year.

§33-16E-4. Parity for contraceptive drugs, devices and outpatient services.

(a) Health insurance plans that provide benefits for prescription drugs or prescription devices in prescription drug plans may not exclude or restrict benefits to covered persons for any prescription contraceptive drug or prescription contraceptive device approved by the federal Food and Drug Administration. All customary benefit management rules, including, but
not limited to, drug formularies and coverage criteria may be
applied by the health insurance plan.

(b) Health insurance plans that provide benefits for
prescription drugs or prescription devices in a prescription drug
plan and that provide benefits for outpatient services provided
by a health care professional may not exclude or restrict
outpatient contraceptive services for covered persons for
prescription contraceptives or prescription devices.

§33-16E-5. Extraordinary surcharges prohibited.

A health insurance plan is prohibited from:

(1) Imposing deductibles, copayments, other cost-sharing
mechanisms, or waiting periods for prescription contraceptive
drugs or devices greater than deductibles, copayments, other
cost-sharing mechanisms or waiting periods for other covered
prescription drugs or devices.

(2) Imposing deductibles, copayments, other cost-sharing
mechanisms or waiting periods for outpatient contraceptive
services greater than such deductibles, copayments, other cost-
sharing mechanisms or waiting periods for other covered
outpatient services.

§33-16E-6. Additional prohibitions.

A health insurance plan is prohibited from:

(1) Denying eligibility, enrollment or renewal of coverage
to any individual because of their use or potential use of
contraceptives.

(2) Providing monetary payments or rebates to covered
persons to encourage them to accept less than the minimum
protections available under this section.
(3) Penalizing, or otherwise reducing or limiting the reimbursement of a health care professional because such professional prescribed contraceptive drugs or devices, or provided contraceptive services.

(4) Providing incentives, monetary or otherwise, to a health-care professional to induce such professional to withhold contraceptive drugs, devices or services from covered persons.


(a) Notwithstanding any other provision of this article, a religious employer may exclude or restrict from any health-care insurance plan contract benefits for any prescription contraceptive drugs and devices that are contrary to the religious employer's religious tenets.

(b) Nothing in this article shall be construed to exclude coverage for prescription contraceptive supplies ordered by a health-care provider with prescriptive authority for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for prescription contraception that is necessary to preserve the life or health of an enrollee.

(c) The health insurer for every religious employer that invokes the exemption provided under this section shall provide written notice to prospective enrollees prior to enrollment with the plan, listing the contraceptive health-care services the employer refuses to cover for religious reasons. The health insurer shall make available for purchase at the prevailing group rate a rider that provides prescription contraceptive drugs and devices.
AN ACT to repeal §33-22-2a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §33-17-6a; and to amend and reenact §33-22-2 of said code, all relating to flood insurance; requiring that certain insurance documents include a notice regarding the absence of flood insurance and the possible availability of flood insurance from other sources; requiring that farmers' mutual insurance companies include the notice; and making technical corrections to citations.

Be it enacted by the Legislature of West Virginia:

That §33-22-2a of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new section, designated §33-17-6a; and that §33-22-2 of said code be amended and reenacted, all to read as follows:

Article

17. Fire and Marine Insurance.

22. Farmers' Mutual Fire Insurance Companies.

ARTICLE 17. FIRE AND MARINE INSURANCE.

§33-17-6a. Notice of noncoverage of flood damages and the availability of flood insurance.

Every insurer issuing or renewing a policy that provides fire insurance, as that term is defined in subsection (c), section ten,
article one of this chapter, but which does not cover damages
from flood, shall provide to the policyholder of every policy
delivered in this state a notice that provides as follows: THIS
POLICY DOES NOT COVER DAMAGE FROM FLOOD. FOR INFORMATION ABOUT FLOOD INSURANCE,
CONTACT THE NATIONAL FLOOD INSURANCE PRO-
GRAM OR YOUR INSURANCE AGENT.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.


Each company to the same extent that provisions are
applicable to domestic mutual insurers shall be governed by and
be subject to the following provisions of this chapter, but only
to the extent these provisions are not inconsistent with the
provisions of this article: Article one (definitions); article two
(insurance commissioner); article four (general provisions),
except that section sixteen of said article may not be applicable
thereto; article seven (assets and liabilities); article eight-a (use
of clearing corporations and federal reserve book-entry system);
article ten (rehabilitation and liquidation), except that under the
provisions of section thirty-two of said article assessments may
not be levied against any former member of a farmers’ mutual
fire insurance company who is no longer a member of the
company at the time the order to show cause was issued; article
eleven (unfair trade practices); article twelve (insurance
producers and solicitors), except that the agent’s license fee
shall be five dollars; section six-a, article seventeen (notice of
noncoverage of flood damages and the availability of flood
insurance); article twenty-six (West Virginia Insurance Guar-
anty Association Act); article twenty-seven (insurance holding
company systems); article thirty (mine subsidence insurance),
except that under the provisions of section six of said article a
farmers’ mutual insurance company shall have the option of
offering mine subsidence coverage to all of its policyholders,
but may not be required to do so; article thirty-three (annual
CHAPTER 143

(Com. Sub. for S. B. 427 — By Senator Minard)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to repeal §33-25A-24a, §33-25A-24b, §33-25A-29 and §33-25A-30 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-25A-3a, §33-25A-12, §33-25A-14, §33-25A-17, §33-25A-22, §33-25A-23 and §33-25A-24 of said code; to amend said code by adding thereto a new section, designated §33-25A-14a; and to amend and reenact §33-40-1, §33-40-2, §33-40-3, §33-40-6 and §33-40-7 of said code, all relating to health maintenance organizations; eliminating the requirement that a health maintenance organization be incorporated in this state in order to obtain a certificate of authority; eliminating the requirement of annual application for renewal of certificates of authority; increasing the time copies of grievances must be retained; permitting health status to be a basis for underwriting individual policies; changing the period in which...
examinations must be performed by the Commissioner from three
to five years; increasing the filing fee for annual reports; correct-
ing a reference; clarifying scope of Commissioner's powers in
performing examinations; clarifying that Insurance Fraud
Prevention Act applies to health maintenance organizations;
defining terms; and subjecting health maintenance organizations
to risk-based capital requirements.

Be it enacted by the Legislature of West Virginia:

of the Code of West Virginia, 1931, as amended, be repealed; that
§33-25A-3a, §33-25A-12, §33-25A-14, §33-25A-17, §33-25A-22,
§33-25A-23 and §33-25A-24 of said code be amended and reenacted;
that said code be amended by adding thereto a new section, designated
§33-25A-14a; and that §33-40-1, §33-40-2, §33-40-3, §33-40-6 and
§33-40-7 of said code be amended and reenacted, all to read as
follows:

Article
40. Risk-Based Capital (RBC) for Insurers.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-3a. Conditions precedent to issuance or maintenance of a certificate of
authority; renewal of certificate of authority; effect of bankruptcy
proceedings.


§33-25A-14a. Other prohibited practices.

§33-25A-17. Examinations.


§33-25A-23. Penalties and enforcement.


§33-25A-3a. Conditions precedent to issuance or maintenance of
a certificate of authority; renewal of certificate of
authority; effect of bankruptcy proceedings.
(a) As a condition precedent to the issuance or maintenance of a certificate of authority, a health maintenance organization shall file or have on file with the Commissioner:

1. An acknowledgment that a delinquency proceeding pursuant to article ten of this chapter, or supervision by the Commissioner pursuant to article thirty-four of this chapter, constitute the exclusive methods for the liquidation, rehabilitation, reorganization or conservation of a health maintenance organization;

2. A waiver of any right to file or be subject to a bankruptcy proceeding;

3. Within thirty days of any change in the membership of the governing body of the organization or in the officers or persons holding five percent or more of the common stock of the organization, or as otherwise required by the Commissioner:

   A. An amended list of the names, addresses and official positions of each member of the governing body and a full disclosure of any financial interest by a member of the governing body or any provider or any organization or corporation owned or controlled by that person and the health maintenance organization and the extent and nature of any contract or financial arrangements between that person and the health maintenance organization; and

   B. A complete biographical statement on forms prescribed by the Commissioner and an independent investigation report on each person for whom a biographical statement and independent investigation report have not previously been submitted; and

4. For health maintenance organizations that have been operating in this state for at least three years, a copy of the current quality assurance report submitted to the health mainte-
32 insurance organization by a nationally recognized accreditation and
33 review organization approved by the Commissioner, or in the
34 case of the issuance of an initial certificate of authority to a
35 health maintenance organization, a determination by the
36 Commissioner as to the feasibility of the health maintenance
37 organization’s proposed quality assurance program: Provided,
38 That if a health maintenance organization files proof found in
39 the Commissioner’s discretion to be sufficient to demonstrate
40 that the health maintenance organization has timely applied for
41 and reasonably pursued a review of its quality assurance
42 program, but a quality report has not been issued by the
43 accreditation and review organization, the health maintenance
44 organization shall be considered to have complied with this
45 subdivision.

(b) All certificates of authority issued to health maintenance
47 organizations expire at midnight on the thirty-first day of May
48 of each year. The Commissioner shall renew annually the
49 certificates of authority of all health maintenance organizations
50 that continue to meet all requirements of this section and
51 subsection (2), section four of this article: Provided, That a
52 health maintenance organization shall not qualify for renewal
53 of its certificate of authority if the organization has no subscrib-
54 ers in this state within twelve months after issuance of the
55 certificate of authority: Provided, however, That an organiza-
56 tion not qualifying for renewal may apply for a new certificate
57 of authority under section three of this article.

(c) The commencement of a bankruptcy proceeding either
59 by or against a health maintenance organization shall, by
60 operation of law;

Terminate the health maintenance organization’s certificate
62 of authority; and

Vest in the Commissioner for the use and benefit of the
64 subscribers of the health maintenance organization the title to
Provided, That if the bankruptcy proceeding is initiated by a party other than the health maintenance organization, the operation of this subsection shall be stayed for a period of sixty days following the date of commencement of the proceeding.


(a) A health maintenance organization shall establish and maintain a grievance procedure, which has been approved by the Commissioner, to provide adequate and reasonable procedures for the expeditious resolution of written grievances initiated by enrollees concerning any matter relating to any provisions of the organization’s health maintenance contracts, including, but not limited to, claims regarding the scope of coverage for health care services; denials, cancellations or nonrenewals of enrollee coverage; observance of an enrollee’s rights as a patient; and the quality of the health care services rendered.

(b) A detailed description of the HMO’s subscriber grievance procedure shall be included in all group and individual contracts as well as any certificate or member handbook provided to subscribers. This procedure shall be administered at no cost to the subscriber. An HMO subscriber grievance procedure shall include the following:

(1) Both informal and formal steps shall be available to resolve the grievance. A grievance is not considered formal until a written grievance is executed by the subscriber or completed on forms prescribed and received by the HMO;

(2) Each HMO shall designate at least one grievance coordinator who is responsible for the implementation of the HMO’s grievance procedure;
(3) Phone numbers shall be specified by the HMO for the subscriber to call to present an informal grievance or to contact the grievance coordinator. Each phone number shall be toll free within the subscriber's geographic area and provide reasonable access to the HMO without undue delays. There must be an adequate number of phone lines to handle incoming grievances;

(4) An address shall be included for written grievances;

(5) Each level of the grievance procedure shall have some person with problem-solving authority to participate in each step of the grievance procedure;

(6) The HMO shall process the formal written subscriber grievance through all phases of the grievance procedure in a reasonable length of time not to exceed sixty days, unless the subscriber and HMO mutually agree to extend the time frame. If the complaint involves the collection of information outside the service area, the HMO has thirty additional days to process the subscriber complaint through all phases of the grievance procedure. The time limitations prescribed in this subdivision requiring completion of the grievance process within sixty days shall be tolled after the HMO has notified the subscriber, in writing, that additional information is required in order to properly complete review of the grievance. Upon receipt by the HMO of the additional information requested, the time for completion of the grievance process set forth in this subdivision shall resume;

(7) The subscriber grievance procedure shall state that the subscriber has the right to appeal to the Commissioner. There shall be the additional requirement that subscribers under a group contract between the HMO and a department or division of the state shall first appeal to the state agency responsible for administering the relevant program, and if either of the two parties are not satisfied with the outcome of the appeal, they
may then appeal to the Commissioner. The HMO shall provide
to the subscriber written notice of the right to appeal upon
completion of the full grievance procedure and supply the
Commissioner with a copy of the final decision letter;

(8) The HMO shall have physician involvement in reviewing medically related grievances. Physician involvement in the grievance process should not be limited to the subscriber’s primary care physician, but may include at least one other physician;

(9) The HMO shall offer to meet with the subscriber during the formal grievance process. The location of the meeting shall be at the administrative offices of the HMO within the service area or at a location within the service area which is convenient to the subscriber;

(10) The HMO may not establish time limits of less than one year from the date of occurrence for the subscriber to file a formal grievance;

(11) Each HMO shall maintain an accurate record of each formal grievance. Each record shall include the following: A complete description of the grievance, the subscriber’s name and address, the provider’s name and address and the HMO’s name and address; a complete description of the HMO’s factual findings and conclusions after completion of the full formal grievance procedure; a complete description of the HMO’s conclusions pertaining to the grievance as well as the HMO’s final disposition of the grievance; and a statement as to which levels of the grievance procedure the grievance has been processed and how many more levels of the grievance procedure are remaining before the grievance has been processed through the HMO’s entire grievance procedure.

(c) Copies of the grievances and the responses to the grievances shall be available to the Commissioner and, subject
to state and federal privacy laws, to the public for inspection for five years.

(d) Any subscriber grievance in which time is of the essence shall be handled on an expedited basis, such that a reasonable person would believe that a prevailing subscriber would be able to realize the full benefit of a decision in his or her favor.

(e) Each health maintenance organization shall submit to the Commissioner an annual report in a form prescribed by the Commissioner which describes the grievance procedure and contains a compilation and analysis of the grievances filed, their disposition, and their underlying causes.


(a) No health maintenance organization, or representative of a health maintenance organization, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. No advertising may be used until it has been approved by the Commissioner. Advertising which has not been disapproved by the Commissioner within sixty days of filing shall be considered approved. For purposes of this article:

(1) A statement or item of information shall be considered to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health maintenance organization;

(2) A statement or item of information shall be considered to be misleading, whether or not it may be literally untrue if, in the total context in which the statement is made or the item of information is communicated, the statement or item of information may be reasonably understood by a reasonable person, not
possessing special knowledge regarding health care coverage, as indicating any benefit or advantage or the absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of, or person considering enrollment in, a health maintenance organization, if the benefit or advantage or absence of limitation, exclusion or disadvantage does not in fact exist;

(3) An evidence of coverage shall be considered to be deceptive if the evidence of coverage taken as a whole, and with consideration given to typography and format, as well as language, is such as to cause a reasonable person, not possessing special knowledge regarding health maintenance organizations, and evidences of coverage therefor, to expect benefits, services or other advantages which the evidence of coverage does not provide or which the health maintenance organization issuing the evidence of coverage does not regularly make available for enrollees covered under the evidence of coverage; and

(4) The Commissioner may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code to further define practices which are untrue, misleading or deceptive.

(b) (1) No health maintenance organization may use in its name, contracts, logo or literature any of the words “insurance”, “casualty”, “surety”, “mutual” or any other words which are descriptive of the insurance, casualty or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state: Provided, That when a health maintenance organization has contracted with an insurance company for any coverage permitted by this article, it may so state; and

(2) Only a person that has been issued a certificate of authority under this article may use the words “health mainte-
nance organization” or the initials “HMO” in its name, contracts, logo or literature to imply, directly or indirectly, that it is a health maintenance organization or hold itself out to be a health maintenance organization.

(c) (1) No agent of a health maintenance organization or person selling enrollments in a health maintenance organization shall sell an enrollment in a health maintenance organization unless the agent or person shall first disclose in writing to the prospective purchaser the following information using the following exact terms in bold print: “Services offered”, including any exclusions or limitations; “full cost”, including copayments; “facilities available”; “transportation services”; “disenrollment rate”; and “staff”, including the names of all full-time staff physicians, consulting specialists, hospitals and pharmacies associated with the health maintenance organization. In any home solicitation, any three-day cooling-off period applicable to consumer transactions generally applies in the same manner as consumer transactions.

(2) The form disclosure statement shall not be used in sales until it has been approved by the Commissioner or submitted to the Commissioner for sixty days without disapproval.

(d) No contract with an enrollee shall prohibit an enrollee from canceling his or her enrollment at any time for any reason except that the contract may require thirty days’ notice to the health maintenance organization.

(e) Any person who, in connection with an enrollment, violates any provision of this section may be held liable for an amount equivalent to one year’s subscription rate, plus costs and a reasonable attorney’s fee.

§33-25A-14a. Other prohibited practices.

(a) No health maintenance organization may cancel or fail to renew the coverage of an enrollee except for: (1) Failure to
pay the charge for health care coverage; (2) termination of the
health maintenance organization; (3) termination of the group
plan; (4) enrollee moving out of the area served; (5) enrollee
moving out of an eligible group; or (6) other reasons established
in rules promulgated by the Commissioner. No health mainte-
nance organization shall use any technique of rating or group-
ing to cancel or fail to renew the coverage of an enrollee. An
enrollee shall be given thirty days’ notice of any cancellation or
nonrenewal and the notice shall include the reasons for the
cancellation or nonrenewal: Provided, That each enrollee
moving out of an eligible group shall be granted the opportunity
to enroll in the health maintenance organization on an individ-
ual basis. A health maintenance organization may not disenroll
an enrollee for nonpayment of copayments unless the enrollee
has failed to make payment in at least three instances over any
twelve-month period: Provided, however, That the enrollee may
not be disenrolled if the disenrollment would constitute
abandonment of a patient. Any enrollee wrongfully disenrolled
shall be reenrolled.

(b) The providers of a health maintenance organization who
provide health care services and the health maintenance
organization shall not have recourse against enrollees for
amounts above those specified in the evidence of coverage as
the periodic prepayment or copayment for health care services.

(c) No health maintenance organization shall enroll more
than three hundred thousand persons in this state: Provided,
That a health maintenance organization may petition the
Commissioner to exceed an enrollment of three hundred
thousand persons and, upon notice and hearing, good cause
being shown and a determination made that an increase would
be beneficial to the subscribers, creditors and stockholders of
the organization or would otherwise increase the availability of
coverage to consumers within the state, the Commissioner may,
by written order only, allow the petitioning organization to
exceed an enrollment of three hundred thousand persons.
(d) No health maintenance organization shall discriminate in enrollment policies or quality of services against any person on the basis of race, sex, age, religion, place of residence, source of payment or, with respect to enrollment in group policies, health status: *Provided*, That differences in rates based on valid actuarial distinctions, including distinctions relating to age and sex, shall not be considered discrimination in enrollment policies.

(e) Any person who, in connection with an enrollment, violates any provision of this section may be held liable for an amount equivalent to one year’s subscription rate, plus costs and a reasonable attorney’s fee.

§33-25A-17. Examinations.

(a) The Commissioner may make an examination of the affairs of any health maintenance organization and providers with whom the organization has contracts, agreements or other arrangements as often as he or she considers it necessary for the protection of the interests of the people of this state but not less frequently than once every five years.

(b) The Commissioner may contract with the Department of Health and Human Resources, any entity which has been accredited by a nationally recognized accrediting organization and has been approved by the Commissioner to make examinations concerning the quality of health care services of any health maintenance organization and providers with whom the organization has contracts, agreements or other arrangements, or any entity contracted with by the Department of Health and Human Resources, as often as it considers necessary for the protection of the interests of the people of this state, but not less frequently than once every three years: *Provided*, That in making the examination, the Department of Health and Human Resources or the accredited entity shall use the services of
persons or organizations with demonstrable expertise in assessing quality of health care.

(c) Every health maintenance organization and affiliated provider shall submit its books and records to the examinations and in every way facilitate them. For the purpose of examinations, the Commissioner and the Department of Health and Human Resources have all powers necessary to conduct the examinations, including, but not limited to, the power to issue subpoenas, the power to administer oaths to and examine the officers and agents of the health maintenance organization and the principals of the providers concerning their business.

(d) The health maintenance organization and any other entity subject to examination pursuant to this article are subject to the provisions of sections four, five, six, seven, eight and nine, article two of this chapter in regard to the expense and conduct of examinations.

(e) In lieu of the examination, the Commissioner may accept the report of an examination made by other states.

(f) The expenses of an examination assessing quality of health care under subsection (b) of this section and section seventeen-a of this article shall be reimbursed pursuant to subsection (n), section nine, article two of this chapter.


Every health maintenance organization subject to this article shall pay to the Commissioner the following fees: For filing an application for a certificate of authority or amendment to the application, two hundred dollars; for each renewal of a certificate of authority, the annual fee as provided in section thirteen, article three of this chapter; for each form filing and for each rate filing, the fee, as provided in section thirty-four, article six of this chapter; and for filing each annual report, one
hundred dollars. Fees charged under this section shall be for the purposes set forth in section thirteen, article three of this chapter.

§33-25A-23. Penalties and enforcement.

1 (1) The Commissioner may, in lieu of suspension or revocation of a certificate of authority under section eighteen of this article, levy an administrative penalty in an amount not less than one hundred dollars nor more than five thousand dollars, if reasonable notice in writing is given of the intent to levy the penalty and the health maintenance organization has a reasonable time within which to remedy the defect in its operations which gave rise to the penalty citation. The Commissioner may augment this penalty by an amount equal to the sum that he or she calculates to be the damages suffered by enrollees or other members of the public.

2 (2) Any person who violates any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one thousand dollars nor more than ten thousand dollars, or imprisoned in jail not more than one year, or both fined and imprisoned.

3 (3) (a) If the Commissioner has cause to believe that any violation of this article or rules promulgated pursuant to this article has occurred or is threatened, prior to the levy of a penalty or suspension or revocation of a certificate of authority, the Commissioner shall give notice to the health maintenance organization and to the representatives, or other persons who appear to be involved in the suspected violation, to arrange a conference with the alleged violators or their authorized representatives for the purpose of attempting to ascertain the facts relating to the suspected violation and, in the event it appears that any violation has occurred or is threatened, to arrive at an adequate and effective means of correcting or preventing the violation.
Proceedings under this subsection shall not be governed by any formal procedural requirements and may be conducted in a manner the Commissioner determines appropriate under the circumstances. Enrollees shall be afforded notice by publication of proceedings under this subsection and shall be afforded the opportunity to intervene.

(4) (a) The Commissioner may issue an order directing a health maintenance organization or a representative of a health maintenance organization to cease and desist from engaging in any act or practice in violation of the provisions of this article or regulations promulgated pursuant to this article.

(b) Within ten days after service of the order of cease and desist, the respondent may request a hearing on the question of whether acts or practices in violation of this article have occurred. The hearings shall be conducted pursuant to chapter twenty-nine-a of this code and judicial review shall be available as provided by chapter twenty-nine-a of this code.

(5) In the case of any violation of the provisions of this article or rules promulgated pursuant to this article, if the Commissioner elects not to issue a cease and desist order, or in the event of noncompliance with a cease and desist order issued pursuant to subsection (4) of this section, the Commissioner may institute a proceeding to obtain injunctive relief, or seek other appropriate relief, in the circuit court of the county of the principal place of business of the health maintenance organization.

(6) Any enrollee of or resident of the service area of the health maintenance organization may bring an action to enforce any provision, standard or rule enforceable by the Commissioner. In the case of any successful action to enforce this article, or accompanying standards or rules the individual shall be awarded the costs of the action together with a reasonable attorney's fee as determined by the court.

1 (a) Except as otherwise provided in this article, provisions
2 of the insurance laws and provisions of hospital or medical
3 service corporation laws are not applicable to any health
4 maintenance organization granted a certificate of authority
5 under this article. The provisions of this article shall not apply
6 to an insurer or hospital or medical service corporation licensed
7 and regulated pursuant to the insurance laws or the hospital or
8 medical service corporation laws of this state except with
9 respect to its health maintenance corporation activities autho-
10 rized and regulated pursuant to this article. The provisions of
11 this article may not apply to an entity properly licensed by a
12 reciprocal state to provide health care services to employer
13 groups, where residents of West Virginia are members of an
14 employer group, and the employer group contract is entered
15 into in the reciprocal state. For purposes of this subsection, a
16 “reciprocal state” means a state which physically borders West
17 Virginia and which has subscriber or enrollee hold harmless
18 requirements substantially similar to those set out in section
19 seven-a of this article.

20 (b) Factually accurate advertising or solicitation regarding
21 the range of services provided, the premiums and copayments
22 charged, the sites of services and hours of operation and any
23 other quantifiable, nonprofessional aspects of its operation by
24 a health maintenance organization granted a certificate of
25 authority or its representative may not be construed to violate
26 any provision of law relating to solicitation or advertising by
27 health professions: Provided, That nothing contained in this
28 subsection shall be construed as authorizing any solicitation or
29 advertising which identifies or refers to any individual provider
30 or makes any qualitative judgment concerning any provider.

31 (c) Any health maintenance organization authorized under
32 this article may not be considered to be practicing medicine and
is exempt from the provisions of chapter thirty of this code relating to the practice of medicine.

(d) The following provisions of this chapter shall be applicable to any health maintenance organization granted a certificate of authority under this article or which is otherwise subject to the provisions of this article: The provisions of sections four, five, six, seven, eight, nine and nine-a, article two (Insurance Commissioner); sections fifteen and twenty, article four (general provisions); section twenty, article five (borrowing by insurers); section seventeen, article six (validity of noncomplying forms); article six-c (guaranteed loss ratios as applied to individual sickness and accident insurance policies); article seven (assets and liabilities); article eight (investments); article eight-a (use of clearing corporations and federal reserve book-entry system); article nine (administration of deposits); article ten (rehabilitation and liquidation); article twelve (insurance producers and solicitors); section fourteen, article fifteen (policies discriminating among health care providers); section sixteen, article fifteen (policies not to exclude insured's children from coverage; required services; coordination with other insurance); section eighteen, article fifteen (equal treatment of state agency); section nineteen, article fifteen (coordination of benefits with Medicaid); article fifteen-b (Uniform Health Care Administration Act); section three, article sixteen (required policy provisions); section three-f, article sixteen (required policy provisions – treatment of temporomandibular joint disorder and craniomandibular disorder); section eleven, article sixteen (group policies not to exclude insured’s children from coverage; required services; coordination with other insurance); section thirteen, article sixteen (equal treatment of state agency); section fourteen, article sixteen (coordination of benefits with Medicaid); article sixteen-a (group health insurance conversion); article sixteen-d (marketing and rate practices for small employer accident and sickness insurance policies); article twenty-five-c (Health
Maintenance Organization Patient Bill of Rights); article twenty-five-f (coverage for patient cost of clinical trials); article twenty-seven (insurance holding company systems); article thirty-three (annual audited financial report); article thirty-four (administrative supervision); article thirty-four-a (standards and Commissioner's authority for companies considered to be in hazardous financial condition); article thirty-five (criminal sanctions for failure to report impairment); article thirty-seven (managing general agents); article thirty-nine (disclosure of material transactions); article forty (risk-based capital for insurers); article forty-one (Insurance Fraud Prevention Act); and article forty-two (Women's Access to Health Care Act). In circumstances where the code provisions made applicable to health maintenance organizations by this subsection refer to the "insurer", the "corporation" or words of similar import, the language shall be construed to include health maintenance organizations.

(e) Any long-term care insurance policy delivered or issued for delivery in this state by a health maintenance organization shall comply with the provisions of article fifteen-a of this chapter.

ARTICLE 40. RISK-BASED CAPITAL (RBC) FOR INSURERS.

§33-40-1. Definitions.
§33-40-2. RBC reports.
§33-40-3. Company action level event.
§33-40-6. Mandatory control level event.

§33-40-1. Definitions.

As used in this article, these terms have the following meanings:

(a) "Adjusted RBC report" means an RBC report which has been adjusted by the Commissioner in accordance with subsection (e), section two of this article.
(b) "Corrective order" means an order issued by the Commissioner specifying corrective actions which the Commissioner has determined are required.

(c) "HMO" means the same as defined in subsection (11), section two, article twenty-five-a of this chapter; as used in sections one, three, four, five, seven, eight and twelve of this article, the term "insurer" includes HMO.

(d) "Domestic insurer" means any insurance company, farmers' mutual fire insurance company or HMO domiciled in this state.

(e) "Foreign insurer" means any insurance company which is licensed to do business in this state under article three of this chapter but is not domiciled in this state or any HMO that has been issued a certificate of authority under article twenty-five-a of this chapter but that is not domiciled in this state.

(f) "NAIC" means the National Association of Insurance Commissioners.

(g) "Life and/or health insurer" means any insurance company licensed under article three of this chapter or a licensed property and casualty insurer writing only accident and health insurance.

(h) "Property and casualty insurer" means any insurance company licensed under article three of this chapter or any farmers' mutual fire insurance company licensed under article twenty-two of this chapter, but shall not include monoline mortgage guaranty insurers, financial guaranty insurers and title insurers.

(i) "Negative trend" means, with respect to a life and/or health insurer, negative trend over a period of time, as deter-
mined in accordance with the trend test calculation included in
the RBC instructions.

(j) "RBC instructions" means the RBC report, including
risk-based capital instructions adopted by the NAIC, as the
RBC instructions may be amended by the NAIC, from time to
time, in accordance with the procedures adopted by the NAIC.

(k) "RBC level" means an insurer's or HMO's company
action level RBC, regulatory action level RBC, authorized
control level RBC, or mandatory control level RBC where:

(1) "Company action level RBC" means, with respect to
any insurer, the product of two and its authorized control level
RBC;

(2) "Regulatory action level RBC" means the product of
one and one-half and its authorized control level RBC;

(3) "Authorized control level RBC" means the number
determined under the risk-based capital formula in accordance
with the RBC instructions;

(4) "Mandatory control level RBC" means the product of
seven-tenths and the authorized control level RBC.

(l) "RBC plan" means a comprehensive financial plan
containing the elements specified in subsection (b), section
three of this article. If the Commissioner rejects the RBC plan
and it is revised by the insurer or HMO, with or without the
Commissioner's recommendation, the plan shall be called the
revised RBC plan.

(m) "RBC report" means the report required in section two
of this article.

(n) "Total adjusted capital" means the sum of:
(1) An insurer's or HMO's statutory capital and surplus as determined in accordance with the statutory accounting applicable to the financial statements required to be filed under section fourteen, article four of this chapter; and

(2) Any other items required by the RBC instructions.

§33-40-2. RBC reports.

(a) Every domestic insurer shall, on or prior to each first day of March (the "filing date"), prepare and submit to the Commissioner a report of its RBC levels as of the end of the calendar year just ended, in a form and containing the information required by the RBC instructions. In addition, every domestic insurer shall file its RBC report:

(1) With the NAIC in accordance with the RBC instructions; and

(2) With the Insurance Commissioner in any state in which the insurer is authorized to do business, if the Insurance Commissioner has notified the insurer of its request in writing, in which case the insurer shall file its RBC report not later than the later of:

(A) Fifteen days from the receipt of notice to file its RBC report with that state; or

(B) The filing date.

(b) A life and health insurer's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take into account (and may adjust for the covariance between):

(1) The risk with respect to the insurer's assets;
(2) The risk of adverse insurance experience with respect to the insurer's liabilities and obligations;

(3) The interest rate risk with respect to the insurer's business; and

(4) All other business risks and any other relevant risks set forth in the RBC instructions determined in each case by applying the factors in the manner set forth in the RBC instructions.

c) A property and casualty insurer's RBC and an HMO's RBC shall be determined in accordance with the applicable formula set forth in the RBC instructions. The formula shall take into account (and may adjust for the covariance between), determined in each case by applying the factors in the manner set forth in the RBC instructions:

(1) Asset risk;

(2) Credit risk;

(3) Underwriting risk; and

(4) All other business risks and any other relevant risks as are set forth in the RBC instructions.

d) An excess of capital over the amount produced by the risk-based capital requirements contained in this article and the formulas, schedules and instructions referenced in this article is desirable in the business of insurance. Accordingly, insurers and HMOs should seek to maintain capital above the RBC levels required by this article. Additional capital is used and useful in the insurance business and helps to secure insurers and HMOs against various risks inherent in, or affecting, the business of insurance and not accounted for or only partially measured by the risk-based capital requirements contained in this article.
If a domestic insurer files an RBC report which, in the judgment of the Commissioner is inaccurate, then the Commissioner shall adjust the RBC report to correct the inaccuracy and shall notify the insurer of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report that is adjusted is referred to as an "Adjusted RBC Report".

§33-40-3. Company action level event.

(a) "Company action level event" means any of the following events:

(1) The filing of an RBC report by an insurer which indicates that:

(A) The insurer's total adjusted capital is greater than or equal to its regulatory action level RBC, but less than its company action level RBC; or

(B) If a life and/or health insurer, the insurer has total adjusted capital which is greater than or equal to its company action level RBC, but less than the product of its authorized control level RBC and two and one-half and has a negative trend;

(2) The notification by the Commissioner to the insurer of an adjusted RBC report that indicates an event in subdivision (1) of this subsection, provided the insurer does not challenge the adjusted RBC report under section seven of this article; or

(3) If, pursuant to section seven of this article, an insurer challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, the notification by the Commissioner to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.
(b) In the event of a company action level event, the insurer shall prepare and submit to the Commissioner an RBC plan which shall:

1. Identify the conditions which contribute to the company action level event;

2. Contain proposals of corrective actions which the insurer intends to take and would be expected to result in the elimination of the company action level event;

3. Provide projections of the insurer’s financial results in the current year and at least the four succeeding years or, in the case of an HMO, in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory operating income, net income, capital and/or surplus. (The projections for both new and renewal business may include separate projections for each major line of business and separately identify each significant income, expense and benefit component);

4. Identify the key assumptions impacting the insurer’s projections and the sensitivity of the projections to the assumptions; and

5. Identify the quality of, and problems associated with, the insurer’s business, including, but not limited to, its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(c) The RBC plan shall be submitted:

1. Within forty-five days of the company action level event; or
(2) If the insurer challenges an adjusted RBC report pursuant to section seven of this article, within forty-five days after notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(d) Within sixty days after the submission by an insurer of an RBC plan to the Commissioner, the Commissioner shall notify the insurer whether the RBC plan may be implemented or is, in the judgment of the Commissioner, unsatisfactory. If the Commissioner determines the RBC plan is unsatisfactory, the notification to the insurer shall set forth the reasons for the determination and may set forth proposed revisions which will render the RBC plan satisfactory in the judgment of the Commissioner. Upon notification from the Commissioner, the insurer shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by the Commissioner, and shall submit the revised RBC plan to the Commissioner:

(1) Within forty-five days after the notification from the Commissioner; or

(2) If the insurer challenges the notification from the Commissioner under section seven of this article, within forty-five days after a notification to the insurer that the Commissioner has, after a hearing, rejected the insurer's challenge.

(e) In the event of a notification by the Commissioner to an insurer that the insurer's RBC plan or revised RBC plan is unsatisfactory, the Commissioner may, at the Commissioner's discretion, subject to the insurer's right to a hearing under section seven of this article, specify in the notification that the notification constitutes a regulatory action level event.

(f) Every domestic insurer that files an RBC plan or revised RBC plan with the Commissioner shall file a copy of the RBC
plan or revised RBC plan with the Insurance Commissioner in any state in which the insurer is authorized to do business if:

(1) The state has an RBC provision substantially similar to subsection (a), section eight of this article; and

(2) The Insurance Commissioner of that state has notified the insurer of its request for the filing in writing, in which case the insurer shall file a copy of the RBC plan or revised RBC plan in that state no later than the later of:

(i) Fifteen days after the receipt of notice to file a copy of its RBC plan or revised RBC plan with the state; or

(ii) The date on which the RBC plan or revised RBC plan is filed under subsections (c) and (d) of this section.

§33-40-6. Mandatory control level event.

(a) “Mandatory control level event” means any of the following events:

(1) The filing of an RBC report which indicates that the insurer’s or HMO’s total adjusted capital is less than its mandatory control level RBC;

(2) Notification by the Commissioner to the insurer or HMO of an adjusted RBC report that indicates the event in subdivision (1) of this subsection, provided the insurer or HMO does not challenge the adjusted RBC report under section seven of this article; or

(3) If, pursuant to section seven of this article, the insurer or HMO challenges an adjusted RBC report that indicates the event in subdivision (1) of this subsection, notification by the Commissioner to the insurer or HMO that the Commissioner has, after a hearing, rejected the insurer’s or HMO’s challenge.
(b) In the event of a mandatory control level event:

(1) With respect to a life insurer, the Commissioner shall take any actions that are necessary to place the insurer under regulatory control under article ten of this chapter. In that event, the mandatory control level event shall be considered sufficient grounds for the Commissioner to take action under said article, and the Commissioner has the rights, powers and duties with respect to the insurer that are set forth in said article. If the Commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of said article pertaining to summary proceedings. Notwithstanding any of the provisions of this subdivision, the Commissioner may forego action for up to ninety days after the mandatory control level event if the Commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.

(2) With respect to a property and casualty insurer, the Commissioner shall take any actions that are necessary to place the insurer under regulatory control under article ten of this chapter or, in the case of an insurer which is writing no business and which is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the Commissioner. In either event, the mandatory control level event shall be considered sufficient grounds for the Commissioner to take action under said article and the Commissioner has the rights, powers and duties with respect to the insurer that are set forth in said article. If the Commissioner takes actions pursuant to an adjusted RBC report, the insurer is entitled to the protections of said article pertaining to summary proceedings. Notwithstanding any of the provisions of this subdivision, the Commissioner may forego action for up to ninety days after the mandatory control level event if the Commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.
With respect to HMOs, the Commissioner shall take any actions that are necessary to place the HMO under regulatory control in accordance with the provisions of article ten and section nineteen, article twenty-five of this chapter. In that event, the mandatory control level event shall be considered sufficient grounds for the Commissioner to take action under said section and the Commissioner has the rights, powers and duties with respect to the HMO as are set forth in said section. If the Commissioner takes actions pursuant to an adjusted RBC report, the HMO is entitled to the protections of said article pertaining to summary proceedings. Notwithstanding any of the provisions of this subdivision, the Commissioner may forego action for up to ninety days after the mandatory control level event if the Commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.


Insurers have the right to a confidential departmental hearing, on the record, at which the insurer may challenge any determination or action by the Commissioner made pursuant to the provisions of this article. The insurer shall notify the Commissioner of its request for a hearing within ten days after receiving notification from the Commissioner.

(a) Notification to an insurer by the Commissioner of an adjusted RBC report; or

(b) Notification to an insurer by the Commissioner that:

(1) The insurer's RBC plan or revised RBC plan is unsatisfactory; and

(2) The notification constitutes a regulatory action level event with respect to the insurer; or
(c) Notification to any insurer by the Commissioner that the insurer has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the insurer to eliminate the company action level event with respect to the insurer in accordance with its RBC plan or revised RBC plan; or

(d) Notification to an insurer by the Commissioner of a corrective order with respect to the insurer.

(e) Upon receipt of the insurer's request for a hearing, the Commissioner shall set a date for the hearing, which shall be no less than fifteen nor more than forty-five days after the date of the insurer's request.

(f) To the extent that the provisions of this section conflict with any other provisions applicable to HMOs, the provisions of this section apply.

CHAPTER 144

(S. B. 254—By Senator Minard)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §33-38-2, §33-38-3 and §33-38-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §33-38-3a and §33-38-14, all relating to reinsurance intermediaries; defining terms; establishing licensing requirements and procedures; setting fees; providing for service of process; and providing for reciprocity in certain instances.
Be it enacted by the Legislature of West Virginia:

That §33-38-2, §33-38-3 and §33-38-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §33-38-3a and §33-38-14, all to read as follows:

ARTICLE 38. REINSURANCE INTERMEDIARY ACT.


§33-38-3. Licensure.

§33-38-3a. License applications, issuance, refusal and renewal.


The definitions set forth in section two, article twelve of this chapter apply to this article. In addition, as used in this article:

(a) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(b) "Controlling person" means any person, firm, association or corporation who directly or indirectly has the power to direct or cause to be directed, the management, control or activities of the reinsurance intermediary.

(c) "Commissioner" means the Insurance Commissioner of West Virginia.

(d) "Insurer" means any person, firm, association or corporation duly licensed in this state pursuant to the applicable provisions of this chapter as an insurer.

(e) "Firm" means an individual doing business as a sole proprietor, a partnership, limited liability company, limited liability partnership or other legal entity.
(f) "Licensed producer" means an insurance producer or reinsurance intermediary licensed pursuant to the applicable provisions of this chapter.

(g) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in subdivisions (g) and (h) of this section.

(h) "Reinsurance intermediary-broker" means any person, other than an officer or employee of the ceding insurer, firm, association or corporation who solicits, negotiates or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of such insurer.

(i) "Reinsurance intermediary-manager" means any person, firm, association or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department or underwriting office, and acts as an agent for such reinsurer, whether known as a reinsurance intermediary-manager, manager or other similar term. Notwithstanding the above, the following persons are not considered a reinsurance intermediary-manager, with respect to such reinsurer, for the purposes of this article:

(1) An employee of the reinsurer;

(2) A United States manager of the United States branch of an alien reinsurer;

(3) An underwriting manager who, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to article twenty-seven of this chapter, and whose compensation is not based on the volume of premiums written.
(4) The manager of a group, association, pool or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the official charged with regulation of insurance in the state in which the manager's principal business office is located.

(j) "Reinsurer" means any person, firm, association or corporation duly licensed or accredited in this state pursuant to the applicable provisions of this chapter as an insurer with the authority to assume reinsurance.

(k) "To be in violation" means that the reinsurance intermediary, insurer or reinsurer for whom the reinsurance intermediary was acting failed to substantially comply with the provisions of this article.

(l) A "qualified United States financial institution" means an institution that:

(1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(2) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(3) Has been determined by either the Commissioner or the securities valuation office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the Commissioner.

§33-38-3. Licensure.

(a) No person, firm, association or corporation may act as a reinsurance intermediary-broker in this state if the reinsurance
intermediary-broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(1) In this state, unless such reinsurance intermediary-broker is a licensed insurance producer or reinsurance intermediary in this state; or

(2) In another state, unless such reinsurance intermediary-broker is a licensed insurance producer or reinsurance intermediary in this state or another state having a law substantially similar to this article or such reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(b) No person, firm, association or corporation may act as a reinsurance intermediary-manager:

(1) For a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed insurance producer or reinsurance intermediary in this state;

(2) In this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance intermediary-manager is a licensed insurance producer or reinsurance intermediary in this state;

(3) In another state for a nondomestic insurer, unless such reinsurance intermediary-manager is a licensed insurance producer in this state or another state having a law substantially similar to this article or such person is licensed in this state as a nonresident reinsurance intermediary.

(c) The Commissioner may require a reinsurance intermediary-manager subject to the provisions of subsection (b) of this section to:
(1) File a bond in an amount from an insurer acceptable to the Commissioner for the protection of the reinsurer; and

(2) Maintain an errors and omissions policy in an amount acceptable to the Commissioner.

(d) Licensed attorneys at law of this state when acting in their professional capacity are exempt from this section.

§33-38-3a. License applications, issuance, refusal and renewal.

(a) An applicant for a reinsurance intermediary license shall file with the Commissioner an application on the form prescribed by the Commissioner and pay a nonrefundable application fee of five hundred dollars.

(b) The application shall include: (1) For a firm or association, the name of each member of the firm or association and of each employee of the firm or association who will act as a reinsurance intermediary under the license; and (2) for a corporation, the name of each officer of the corporation and of each employee and director of the corporation who will act as a reinsurance intermediary under the license.

(c) The Commissioner shall issue a nonresident reinsurance intermediary license if: (1) The applicant is currently licensed as a resident reinsurance intermediary or insurance producer and is in good standing in his or her home state, has submitted either the application for licensure that the person submitted to his or her home state or a completed application deemed appropriate by the Commissioner and has paid the fees required by this section; and (2) the applicant’s home state awards nonresident licenses to residents of this state on the same basis.

(d) Any license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license.
and all of these persons shall be named in the application and any supplements thereto. Any license issued to a corporation shall authorize all of the officers, and any designated employees and directors thereof, to act as reinsurance intermediaries on behalf of such corporation and all of these persons shall be named in the application and any supplements thereto. To add a name to or delete a name from a reinsurance intermediary license, the licensee shall submit to the Commissioner the change on a form prescribed by the Commissioner.

(e) The Commissioner may refuse to issue or renew a reinsurance intermediary license if the Commissioner finds that the applicant, any individual named on the application, a member, principal, officer or director of the applicant or a controlling person of the applicant is not trustworthy, as that term may be defined by the Commissioner in legislative rules promulgated pursuant to section twelve of this article, to act as a reinsurance intermediary, has given cause for revocation or suspension of a license or has failed to comply with a requirement for issuance of a license.

(f) Every nonresident firm, association or corporation licensed as a reinsurance intermediary in this state or acting as a reinsurance intermediary in this state but which is not licensed shall be subject to the provisions of section twelve, article four of this chapter to the same extent as licensed insurers with regard to the service of process and payment of fees.

(g) Upon written request, the Commissioner shall furnish a summary of the basis for refusal to issue or renew a license, which document shall be privileged and not subject to the provisions of article one, chapter twenty-nine-a of this code. Within ten days of receipt of the summary, if the applicant or licensee makes a written demand upon the Commissioner for a hearing to determine the reasonableness of the Commissioner’s action, a hearing shall be conducted in accordance with the provisions of section thirteen, article two of this chapter.
(h) Each license issued pursuant to this article expires on the thirtieth day of June next following the date of issuance. Between the first day of May and the first day of June of the renewal year, each licensed reinsurance intermediary shall submit to the Commissioner a renewal application and a nonrefundable annual renewal fee of two hundred dollars: Provided, That a reinsurance intermediary who allows the reinsurance intermediary license to lapse may, within eleven months from the expiration date, reinstate the same license upon payment of a renewal fee of four hundred dollars.

(i) All application and renewal fees collected by the Commissioner pursuant to the provisions of this section shall be paid into the State Treasury and credited to the special revenue account created in section thirteen, article three of this chapter.

(j) Within thirty days of a change in its legal name or mailing address, a licensee shall notify the Commissioner of such change on a form prescribed by the Commissioner, and failure to timely file such form may result in a penalty pursuant to section eleven of this article.


Except where it is otherwise specially provided, the Commissioner shall demand and receive the following fees from all reinsurance intermediaries: For receiving and filing annual reports, one hundred dollars; for filing certified copy of articles of incorporation, fifty dollars; for filing copy of its charter, fifty dollars; for filing statements preliminary to admission, one hundred dollars; for filing of designated contract, twenty-five dollars; for filing of notification of termination of a contract with a reinsurance intermediary-manager by the reinsurer, ten dollars; for filing to add or delete names on the reinsurance intermediary license, twenty-five dollars; for filing an address change, twenty-five dollars; for filing a legal name change, seventy-five dollars; for filing a
bond or an errors and omissions policy, twenty-five dollars; and
for filing any additional documents as required by law or
furnishing copies thereof, copies of reports or certificates of
condition of reinsurance intermediary to be filed in any other
state, twenty dollars. All such fees shall be paid into the State
Treasury and credited to the special revenue account created in
section thirteen, article three of this chapter.


(a) The Commissioner may waive any requirements for a
nonresident license applicant with a valid license from the
applicant’s home state, except the requirements imposed by
sections three and three-a of this article, if the applicant’s home
state awards nonresident licenses to residents of this state on the
same basis.

(b) A nonresident reinsurance intermediary’s satisfaction of
his or her home state’s continuing education requirements for
licensed insurance producers or reinsurance intermediaries shall
constitute satisfaction of this state’s continuing education
requirements if the nonresident’s home state recognizes the
satisfaction of its continuing education requirements imposed
upon insurance producers or reinsurance intermediaries from
this state on the same basis.

CHAPTER 145

(S. B. 253 —By Senators Minard and Sharpe)

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]
AN ACT to amend and reenact §33-43-7 of the Code of West Virginia, 1931, as amended, relating to late filings of tax returns to the Insurance Commissioner; permitting the Commissioner to waive or reduce the penalty; and establishing the standard for granting waiver or reduction.

Be it enacted by the Legislature of West Virginia:

That §33-43-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 43. INSURANCE TAX PROCEDURES ACT.

§33-43-7. Penalties.

(a) If any taxpayer fails to file a return by the applicable filing date, then for each day throughout which the taxpayer fails to file, the taxpayer is liable for a civil penalty of twenty-five dollars: Provided, That the Commissioner may waive or reduce this penalty if the Commissioner determines that the failure to timely file was caused by excusable neglect.

(b) If a taxpayer fails to pay a tax liability in full by the applicable payment date, then for each day throughout which a portion of the liability remains unpaid, the taxpayer is liable for a civil penalty in an amount equal to one percent of the unpaid portion: Provided, That the sum of the penalties imposed under this subsection may not exceed one hundred percent of the tax liability: Provided, however, That this penalty may be waived or reduced if the taxpayer establishes, to the satisfaction of the Commissioner, that the failure upon which the penalty is based was not, in whole or in part, willful or due to the neglect of the taxpayer.

(c) The assessment of a penalty under this section is automatic unless a waiver or reduction of the penalty is agreed to by the Commissioner in writing.
CHAPTER 146

(H. B. 2495 — By Delegate Pino)

[Passed March 11, 2005; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2005.]

AN ACT to repeal §7-8-3 of the Code of West Virginia, 1931, as amended, relating to inspection of jails.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. JAIL AND JAILER.

§1. Repeal of section relating to inspection of jails.

1 Section three, article eight, chapter seven of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 147

(H. B. 3105 — By Delegates Michael, Boggs, Cann, Kominar, Stalnaker, Proudfoot, Ron Thompson, Frederick, Palumbo, H. K. White, Susman)

[Passed April 5, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 14, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-3-21, relating to
creating a special revenue fund for the provision of occupational safety and health initiatives.

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 §21-3-21, to read as follows:

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

§21-3-21. Special Revenue Fund for the Division of Labor; authorized deposits; disbursements; purpose.

There is hereby created in the State Treasury a special revenue fund to be known as the “Occupational Safety and Health Fund” which shall consist of all gifts, grants, bequests, transfers, appropriations or other donations or payments which may be received by the Division of Labor from any governmental entity or unit or any person, firm, foundation, or corporation for the purposes of this section, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be made by the Commissioner of the Division of Labor to provide matching funds, or to reimburse the Division of Labor for providing matching funds, to obtain federal funds for the administration of an occupational safety and health consultation program under contract with the federal Division of Labor.

CHAPTER 148

(S. B. 347—By Senator Plymale)

[Passed April 7, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]
AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing rules; Higher Education Policy Commission; Council for Community and Technical College Education; Underwood-Smith Teacher Scholarship Program; West Virginia Engineering, Science and Technology Scholarship Program; Medical Education Fee and Medical Student Loan Program; and performance indicators.

Be it enacted by the Legislature of West Virginia:

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of higher education policy commission.
§18B-17-3. Authorizing rule of the council for community and technical college education.

§18B-17-2. Authorizing rules of higher education policy commission.

1 (a) The legislative rule filed in the State Register on the fifteenth day of October, two thousand four, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on the fifteenth day of October, two thousand four, relating to the Higher Education Policy Commission (West Virginia Engineering, Science and Technology Scholarship Program rule) is authorized.

10 (c) The legislative rule filed in the State Register on the fifteenth day of October, two thousand four, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule) is authorized.
§18B-17-3. Authorizing rule of the council for community and technical college education.

1 The legislative rule filed in the State Register on the twenty-ninth day of September, two thousand four, relating to the Council for Community and Technical College Education (performance indicators rule) is authorized.

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CHAPTER 149

(Com. Sub. for S. B. 341—By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

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 Health Care
Authority to promulgate a legislative rule relating to benchmarking and discount contracts; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to implementation of Omnibus Health Care Act; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to implementation of Omnibus Health Care Act payment provisions; authorizing Department of Health and Human Resources and Insurance Commissioner to promulgate a legislative rule relating to uniform credentialing of health care practitioners; authorizing Department of Health and Human Resources to promulgate a legislative rule relating to methods and standards for chemical test for intoxication; and authorizing Department of Health and Human Resources to promulgate a legislative rule relating to Grade "A" pasturized milk.

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. Health Care Authority.

§64-5-2. Department of Health and Human Resources.

§64-5-1. Health Care Authority.

1 The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, under the authority of section eight, article twenty-nine-b, chapter sixteen of this code modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the fourteenth day of February, two thousand five, relating to the Health Care Authority (benchmarking and discount contracts, 65 CSR 26) is authorized.
§64-5-2. Department of Health and Human Resources.

(a) The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, under the authority of section seven, article twenty-nine-d, 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 fifteenth day of December, two thousand four, relating to the Department of Health and Human Resources (implementation of the Omnibus Health Care Act, 69 CSR 2) is authorized, with the following amendment:

On page one, subsection 1.1., line six, by striking out the words “Division of Workers’ Compensation” and inserting in lieu thereof the words “Workers’ Compensation Commissioner”;

On page one, subsection 1.1., line ten, after the words “and the” by inserting the words “University of West Virginia”, and by striking out the words “which has responsibility for” and inserting in lieu thereof the word “and”;

And,

On page four, section 5, by striking out “5.1.” and the words “as a matter of law as set forth in the Act”, and, after the word “pursuant” by striking out the words “the Act” and inserting in lieu thereof the words “W. Va. Code §16-29D-4”.

(b) The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, under the authority of section seven, article twenty-nine-d, 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 fifteenth day of December, two thousand four,
relating to the Department of Health and Human Resources
(implementation of the Omnibus Health Care Act payment
provisions, 69 CSR 3) is authorized.

(c) The legislative rule filed in the State Register on the
twenty-seventh day of August, two thousand four, under the
authority of section two, article one-a, chapter sixteen of this
code modified by the Department of Health and Human
Resources and the Insurance Commissioner to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the State Register on the twenty-first day of
December, two thousand four, relating to the Department of
Health and Human Resources and the Insurance Commissioner
(uniform credentialing of health care practitioners, 64 CSR 89)
is authorized.

(d) The legislative rule filed in the State Register on the
twenty-third day of April, two thousand four, under the
authority of section four, article one, chapter sixteen of this
code modified by the Department of Health and Human
Resources to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on
the twenty-fifth day of January, two thousand five, relating to
the Department of Health and Human Resources (methods and
standards for chemical tests for intoxication, 64 CSR 10) is
authorized.

(e) The legislative rule filed in the State Register on the
twenty-seventh day of August, two thousand four, under the
authority of section five, article seven, chapter sixteen of this
code modified by the Department of Health and Human
Resources to meet the objections of the Legislative Rule-
Making Review Committee and refiled in the State Register on
the twenty-first day of December, two thousand four, relating
to the Department of Health and Human Resources (Grade “A”
pasturized milk, 64 CSR 34) is authorized.
CHAPTER 150

(Com. Sub. for S. B. 382—By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 2, 2005.]

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; authorizing Department of Administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing Department of Administration to promulgate a legislative rule relating to state-owned vehicles; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to general provisions; authorizing Consolidated Public Retirement Board to promulgate
a legislative rule relating to Deputy Sheriff Retirement System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeal; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Defined Contribution System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers Defined Benefit Plan; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to the Public Employees Retirement System; authorizing Consolidated Public Retirement Board to promulgate a legislative rule relating to West Virginia State Police disability determination and appeal process; authorizing Ethics Commission to promulgate a legislative rule relating to code of conduct for administrative law judges; authorizing Division of Information Services and Communications to promulgate a legislative rule relating to telecommunications payments by spending units; authorizing Division of Personnel to promulgate a legislative rule relating to administration of the Division; authorizing Division of Personnel to promulgate a legislative rule relating to preemployment references and inquiries; authorizing Board of Risk and Insurance Management to promulgate a legislative rule relating to the Public Entities Insurance Program; and authorizing Board of Risk and Insurance Management to promulgate a legislative rule relating to the Patient Injury Compensation Fund.

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.


§64-2-4. Division of Information Service and Communications.

§64-2-5. Division of Personnel.


§64-2-1. Department of Administration.

(a) The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, 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 sixteenth day of November, 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 amendment:
On page seven, by striking out all of subsection 12.6.

(b) The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, under the authority of section forty-eight, article three, chapter five-a of this code relating to the Department of Administration (state-owned vehicles, 148 CSR 3) is authorized.


(a) The legislative rule filed in the State Register on the twenty-fourth day of August, two thousand four, 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 seventeenth day of November, two thousand four, relating to the Consolidated Public Retirement Board (general provisions, 162 CSR 1) is authorized, with the following amendment:

On page three, subdivision 6.2.1., lines sixteen and seventeen, by striking out the words “Accrued Retirement Benefit” and inserting in lieu thereof the words “vested accrued retirement benefit”; On page three, paragraph 6.2.1.1., by striking out the paragraph in its entirety and inserting in lieu thereof the following:

6.2.1.1. “Vested accrued retirement benefit” means the benefit due to the member as of the date specified by the parties in the Qualified Domestic Relations Order set out in subdivision 6.2.2. of this rule.; On page three, subdivision 6.2.3., line nine, by striking out the words “Accrued Retirement Benefit” and inserting in lieu thereof the words “vested accrued retirement benefit”;
On page three, subdivision 6.2.4., line nine, by striking out the words "Accrued Retirement Benefit" and inserting in lieu thereof the words "vested accrued retirement benefit";

On page four, paragraph 6.2.5.3., lines three and four, by striking out the words "Accrued Retirement Benefit" and inserting in lieu thereof the words "vested accrued retirement benefit";

And,

On page four, subdivision 6.2.8., line six, by striking out the words "Moreover, no qualified domestic relations order will be honored by the board while a loan under the above two sections is outstanding" and inserting in lieu thereof the words "Provided, That, a member may borrow from that portion of his or her individual account not subject to the qualified domestic relations order.".

(b) The legislative rule filed in the State Register on the twenty-fourth day of August, two thousand four, 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 seventeenth day of November, two thousand four, relating to the Consolidated Public Retirement Board (Deputy Sheriff Retirement System, 162 CSR 10) is authorized, with the following amendment:

On page six, by striking out section fourteen in its entirety, and redesignating the remaining sections and their components accordingly.

(c) The legislative rule filed in the State Register on the twenty-fourth day of August, two thousand four, 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 Com-
mittee and refiled in the State Register on the seventeenth day
of November, two thousand four, relating to the Consolidated
Public Retirement Board (benefit determination and appeal,
162 CSR 2) is authorized.

(d) The legislative rule filed in the State Register on the
twenty-fourth day of August, two thousand four, 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 Com-
mittee and refiled in the State Register on the seventeenth day
of November, two thousand four, relating to the Consolidated
Public Retirement Board (Teachers Defined Contribution
System, 162 CSR 3) is authorized, with the following amend-
ment:

On page one, subsection 3.1, line four, after the words
“different meaning” by inserting a new subdivision to read as
follows: “3.1.1. ‘Accrued benefit’ is the amount credited to the
member’s annuity account.”, and by redesignating the remain-
ing subdivisions accordingly;

On page three, subsection 4.1, line thirteen, following the
words “fifteen (15) days of the end of the pay period.”, by
striking out the remainder of the subsection;

On page three, subsection 4.2, twenty-one, following the
words “fifteen (15) days of the end of the pay period.”, by
striking out the remainder of the subsection;

And,

On page eight, subsection 7.5, line fourteen, after the
words “default fund for distribution to the member”, by
inserting the words “or beneficiary”.
(e) The legislative rule filed in the State Register on the twenty-fourth day of August, two thousand four, 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 seventeenth day of November, two thousand four, relating to the Consolidated Public Retirement Board (Teachers Defined Benefit Plan, 162 CSR 4) is authorized, with the following amendment:

On page seven, by striking out section 10 in its entirety.

(f) The legislative rule filed in the State Register on the twenty-fourth day of August, two thousand four, 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 seventeenth day of November, two thousand four, relating to the Consolidated Public Retirement Board (Public Employees Retirement System, 162 CSR 5) is authorized with the following amendment:

On page three, by striking out section 10 in its entirety and redesignating the remaining sections and their components accordingly.

(g) The legislative rule filed in the State Register on the twenty-fourth day of August, two thousand four, under the authority of section one, article ten-d, chapter five of this code relating to the Consolidated Public Retirement Board (West Virginia State Police disability determination and appeal process, 162 CSR 9) is authorized.

1 The legislative rule filed in the State Register on the
twenty-sixth day of August, two thousand four, under the
authority of section five-a, article two, chapter six-b of this
code modified by the Ethics Commission to meet the objec-
tions of the Legislative Rule-Making Review Committee and
refiled in the State Register on the sixteenth day of February,
two thousand five, relating to the Ethics Commission (code of
conduct for administrative law judges, 158 CSR 13) is autho-
ized, with the following amendment:

On pages eleven and twelve, by striking out paragraph
4.7.a.2. in its entirety and inserting in lieu thereof the follow-
ing:

"4.7.a.2. Personally solicit funds for a political organiza-
tion or political candidate; Provided, That, the provisions of
this paragraph do not apply to part-time state administrative
law judges.

4.7.a.3. Be compelled to pay an assessment to a political
organization or candidate or purchase tickets for political
dinners or other similar functions."

§64-2-4. Division of Information Service and Communications.

The legislative rule filed in the State Register on the
twenty-seventh day of August, two thousand four, under the
authority of section four-a, article seven, chapter five-a of this
code modified by the Division of Information Services and
Communications to meet the objections of the Legislative
Rule-Making Review Committee and refiled in the State
Register on the thirteenth day of January, two thousand five,
relating to the Division of Information Services and Communi-
cations (telecommunications payments by spending units, 161
CSR 2) is authorized, with the following amendment:
On page one, section 2, subsection (g.), after the word “IS&C”, by inserting the words “or ‘the Division’”;

On page two, section 2, subsection “(k.) ‘Shared Account’”, after the words “in §5A-7-4a”, by striking “(l)” and inserting in lieu thereof “(k)”;

On page two, section 2, by striking all of subsection (l.) and inserting in lieu thereof the following:

2.15. ‘Spending Unit’ means a department, agency or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature: Provided, That spending unit does not include the Legislature or the judiciary.”;

On page three, section 3, following the words “spending units”, by striking out the remainder of the section and inserting in lieu thereof “that have their telecommunications services billed on the state’s shared account.”;

On page three, section 4, subsection (b.), line 12, by striking out the words “to ensure the legitimacy of the charges.”;

On page three, section 4, by striking out subdivision (g.) in its entirety and relettering the remaining subdivision;

On page three, section 5, by striking out the words “IS&C will insure all of its duties and rights are executed as defined below after the first billing period. This allows IS&C to implement the new policies and allow for transition by all parties (vendors, spending units, etc.”);

On page three, by striking out subdivisions 5.1.2. and 5.1.3. in their entirety and renumbering the remaining subdivision;
On page four, section 5.1.4., following the word “Charges” by striking out the words “not rejected during this preliminary review by IS&C”;

On page five, section 6, by striking out the words “Any spending unit that is utilizing the services and pricing of a telecommunications provider via a state-issued contract must agree to have its charges included in the shared account and all requests for telecommunications services must be obtained by submitting to IS&C a Telecommunications Change Request form for approval.”;

On page eight, section 8, line 3, after the word “via” by striking out the words “a state-issued contract” and inserting in lieu thereof the words “via a shared account”;

On page eight, by striking out subsection 8.1 in its entirety;

And,

On page eight, section 8, by striking out the words “8.2 Invoices submitted for payment.

8.2.1. Vendors are required to submit all invoices to IS&C that include more than one spending unit. If vendors are providing services to spending units governed by the pricing included in the applicable state-issued contract then the charges for these services must be included on the shared account.”.

§64-2-5. Division of Personnel.

(a) The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, under the authority of section ten, article six, chapter twenty-nine of this code modified by the Division of Personnel to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the twenty-third day of
November, two thousand four, relating to the Division of Personnel (administration, 143 CSR 1) is authorized.

(b) The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, under the authority of section ten, article six, chapter twenty-nine of this code modified by the Division of Personnel 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 five, relating to the Division of Personnel (preemployment reference and inquiries, 143 CSR 4) is authorized, with the following amendment:

On page one, subsection 1.1., by striking out the word ‘eligibility’ and inserting in lieu thereof the word ‘rejection’;

On page one, subsection 2.1., line one, after the word ‘employment’ by striking out the word ‘with’ and inserting in lieu thereof the words ‘in the classified service of’;

On page one, subsection 2.1., line two, by striking out the semi-colon and inserting a comma, and by striking out the word ‘includes’ and inserting in lieu thereof the word ‘including’;

On page one, subsection 2.2., line two, after the word ‘service.’, by striking out the remainder of the subsection;

On page one, by striking out subsection 2.6. in its entirety and inserting in lieu thereof the following:

‘2.5. Disqualifying event: Conviction of a crime of an infamous crime or other crime involving moral turpitude which has a reasonable connection to the position/class for which the applicant or employee is applying. For purposes of this rule, a plea of “guilty” or “no contest” is considered a conviction
unless the charge was subsequently invalidated by a court decision.’;

On page one, subsection 2.5., by striking out the entire subsection and inserting in lieu thereof the following:

‘2.6. Director: The Director of the Division of Personnel or his or her designee.’;

On page two, subsection 2.11., by striking out the words ‘actions by the individual that would cause’, and, after the word ‘damage’, by inserting the words ‘or injury’;

On page two, subsection 2.12., line one, after the word ‘to’ by inserting the words ‘a classified service position in’;

On page two, by striking out section 3 in its entirety and renumbering the succeeding sections accordingly;

On page two, section 4, by striking out the words ‘the Director shall prescribe information required to be submitted by applicants, including fingerprints and driver’s license number, that is needed by the State Police and other entities for processing or as is otherwise necessary to facilitate access to information.’;

On pages two and three, by striking out the subsections 4.1. and 4.2. in their entirety, and inserting in lieu thereof the following:

‘4.1. To establish the eligibility of an applicant or employee, the Director may verify information provided by the applicant, including, but not limited to:

a. Current and previous employment and/or volunteer and/or student activities;
b. Military service;

c. Formal education; and

d. Professional licensure and/or certification.

4.2. To the extent permitted by law and reasonably relevant to established eligibility standards or the nature of the position sought by the applicant, the Director may obtain and review:

a. The applicant’s state and/or federal criminal records history;

b. The central abuse registry established pursuant to W. Va. Code §15-2C-1, et seq.; and

c. The applicant’s driving records.

4.3. To the extent permitted by law, the Director may require an applicant to provide any information necessary to afford the Director access to records reasonably relevant to established eligibility standards or the nature of the position sought by the applicant.

4.4. The Director shall conduct investigations and/or secure reports necessary to assess the suitability of an applicant. The Director may delegate some or all of the responsibility to qualified appointing authorities in accordance with the provisions of this rule.

On page three, subsection 4.3, by renumbering the subsection as subsection ‘4.5.’;

On page three, section 5, by striking out the entire section and renumbering the succeeding sections accordingly;

On page four, subsection 7.1., after the words ‘separate file’, by striking out the remainder of the subsection;
On page four, subsection 7.2., after the word 'all', by striking out the words 'required and requested' and, after the word 'reports', by inserting the words 'requested by the Division of Personnel pursuant to this rule';

On page four, subsection 8.1., line one, by striking out the words 'shall be' and inserting in lieu thereof the word 'is';

On page four, subsection 8.1., lines three and four, after the word 'report', by striking out the word 'the' and inserting in lieu thereof the word 'a', and by striking out the word 'limit' and inserting in lieu thereof the word 'provided';

On page four, subsection 8.2., by striking out the words 'that is needed' and inserting in lieu thereof the word 'required', and by striking out the words 'as is otherwise necessary';

On page four, subsection 9.1., line two, after the words 'employee to a' by inserting the words 'classified service';

And,

On page four, by striking out section 10 in its entirety.


(a) The legislative rule filed in the State Register on the twenty-sixth day of August, two thousand four, under the authority of section five, 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 twentieth day of January, two thousand five, 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
twenty-sixth day of August, two thousand four, under the
authority of section five, article twelve, chapter twenty-nine of
this code modified by the Board of Risk and Insurance Man-
agement to meet the objections of the Legislative Rule-Making
Review Committee and refiled in the State Register on the
sixteenth day of February, two thousand five, relating to the
Board of Risk and Insurance Management (Patient Injury
Compensation Fund, 115 CSR 7) is authorized.

CHAPTER 151

(Com. Sub. for H. B. 2723 — By Delegates Mahan, Palumbo,
Cann, Pino, Armstead and Overington)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact article three, chapter sixty-four 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; authorizing the Department of
Environmental Protection to promulgate a legislative rule relating
to permits for the construction and major modification of major
stationary sources of air pollution for the prevention of significant
deterioration; authorizing the Department of Environmental
Protection to promulgate a legislative rule relating to 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; authorizing the Department of
Environmental Protection to promulgate a legislative rule relating
to permits for the construction and major modification of major
stationary sources of air pollution which cause or contribute to
nonattainment; authorizing the Department of Environmental
Protection to promulgate a legislative rule relating to the preven-
tion 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 Depart-
ment of Environmental Protection to promulgate a legislative rule
relating to West Virginia surface mining reclamation; authorizing
the Department of Environmental Protection to promulgate a
legislative rule relating to underground storage tank fee assess-
ments; authorizing the Department of Environmental Protection
to promulgate a legislative rule relating to surface mining
blasting; 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 national
pollutant discharge elimination system (NPDES) program; and
authorizing the Environmental Quality Board to promulgate a
legislative rule relating to requirements governing water quality
standards.
Be it enacted by the Legislature of West Virginia:

That article three, chapter sixty-four of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENT 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-fifth day of August, two thousand four, under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration, 45 CSR 14), is authorized.

(b) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand four, 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 twenty-fifth day of August, two thousand four, under the authority of section four, article five, chapter twenty-two, of this code, relating to the Department of Environmental Protection (standards of performance for new stationary sources, 45 CSR 16), is authorized.

(d) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand four, under the authority of section four, article five, chapter twenty-two, of
this code, relating to the Department of Environmental Prote-

tion (permits for the construction and major modification of

major stationary sources of air pollution which cause or

contribute to nonattainment, 45 CSR 19), is authorized.

(e) The legislative rule filed in the state register on the

twenty-fifth day of August, two thousand four, under the

authority of section four, article five, chapter twenty-two, of

this code, relating to the Department of Environmental Prote-

tion (to prevent and control air pollution from hazardous waste

treatment, storage or disposal facilities, 45 CSR 25), is autho-

rized.

(f) The legislative rule filed in the state register on the

twenty-fifth day of August, two thousand four, under the

authority of section four, article five, chapter twenty-two, of

this code, relating to the Department of Environmental Prote-

tion (emission standards for hazardous air pollutants for source

categories pursuant to 40 CFR Part 63, 45 CSR 34), is autho-

rized.

(g) The legislative rule filed in the state register on the

twenty-seventh day of August, two thousand four, under the

authority of section four, article three-a, chapter twenty-two, of

this code, relating to the Department of Environmental Prote-

tion (West Virginia surface mining reclamation, 38 CSR 2), is

authorized.

(h) The legislative rule filed in the state register on the

fifteenth day of June, two thousand four, under the authority of

section twenty, article seventeen, chapter twenty-two, of this

code, relating to the Department of Environmental Protection

(underground storage tank fee assessments, 33 CSR 31), is

authorized.

(i) The legislative rule filed in the state register on the

twenty-seventh day of August, two thousand four, under the
authority of section four, article three-a, 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 tenth day of December, two thousand four, relating to the Department of Environmental Protection (surface mining blasting, 199 CSR 1), is authorized.

(j) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, under the authority of section six, article eighteen, chapter twenty-two, of this code, modified by the Department of Environmental Protection to meet the objections of the legislative rule-making review committee and refiled in the state register on the twenty-ninth day of December, two thousand four, relating to the Department of Environmental Protection (hazardous waste management, 33 CSR 20), is authorized.

(k) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, 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 sixteenth day of February, two thousand five, relating to the Department of Environmental Protection (national pollutant discharge elimination system (NPDES) Program, 47 CSR 10), is authorized.

§64-3-2. Environmental Quality Board.

The legislative rule filed in the state register on the twenty-ninth day of September, two thousand four, under the authority of section four, article three, chapter twenty-two-b, of this code, modified by the Environmental Quality Board to meet the objections of the legislative rule-making review committee and
refiled in the state register on the ninth day of February, two
thousand five, relating to the Environmental Quality Board
(requirements governing water quality standards, 46 CSR 1), is
authorized with the following amendment:

"On page six of the rule by deleting subsection 4.1.c.2. in
its entirety."

CHAPTER 152

(Com. Sub. for S. B. 386 — By Senators Minard, Fanning,
Prezioso, Unger, Boley and Minear)

[Passed April 8, 2005; in effect from passage.] [Approved by the Governor on April 21, 2005.]

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 Legisla-
ture; authorizing certain of the agencies to promulgate certain
legislative rules with various modifications presented to and
recommended by the Legislative Rule-Making Review Commit-
tee and as amended by the Legislature; authorizing Division of Corrections to promulgate a legislative rule relating to parole supervision authorizing; authorizing State Fire Marshal to promulgate a legislative rule relating to fees for licenses, permits, inspections, plans review and other services rendered; authorizing State Police to promulgate a legislative rule relating to State Police professional standards investigations, employee rights, early identification system, psychological assessment and progressive discipline; authorizing State Police to promulgate a legislative rule relating to the career progression system; authorizing State Police to promulgate a legislative rule relating to carrying of handguns by retired or medically discharged members; and authorizing Division of Veterans' Affairs to promulgate a legislative rule relating to Veterans' Affairs' headstones or markers.

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. Division of Corrections.
§64-6-2. State Fire Marshal.
§64-6-3. State Police.
§64-6-4. Division of Veterans Affairs.

§64-6-1. Division of Corrections.

1 The legislative rule filed in the State Register on the twenty-third day of June, two thousand four, under the authority of section two, article thirteen, chapter sixty-two of this code modified by the Division of Corrections to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the thirty-first day of
January, two thousand five, relating to the Division of Corrections (parole supervision, 90 CSR 2) is authorized.

§64-6-2. State Fire Marshal.

The legislative rule filed in the State Register on the second day of June, two thousand four, authorized under the authority of section twenty-four, article three, chapter twenty-nine of this code relating to the Office of the Fire Marshal (fees for licenses, permits, inspections, plans review and other services rendered, 103 CSR 2) is authorized.

§64-6-3. State Police.

(a) The legislative rule filed in the State Register on the twenty-fourth day of August, two thousand four, under the authority of section twenty-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 twenty-eighth day of January, two thousand five, relating to the State Police (State Police professional standards investigations, employee rights, early identification system, psychological assessment and progressive discipline, 81 CSR 10) is authorized.

(b) The legislative rule filed in the State Register on the twelfth day of August, two thousand four, under the authority of section five, article two, chapter fifteen of this code relating to the State Police (career progression system, 81 CSR 3) is authorized.

(c) The legislative rule filed in the State Register on the twenty-third day of July, two thousand four, under the authority of section twenty-five, article two, chapter fifteen of this code relating to the State Police (carrying of handguns by retired or medically discharged members, 81 CSR 6) is authorized.
§64-6-4. Division of Veterans Affairs.

1 The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, under the authority of section ten, article twenty-two-a, chapter twenty-nine, of this code, modified by the Division of Veterans Affairs to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on the thirty-first day of January, two thousand five, relating to the Division of Veterans Affairs (VA headstones or markers, 86 CSR 4), is authorized.

CHAPTER 153

(Com. Sub. for S. B. 357 — By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

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 Alcohol Beverage Control Commissioner to promulgate a legislative rule relating to retail liquor operations; authorizing Alcohol Beverage Control Commissioner to promulgate a legislative rule relating to private club licensing; authorizing Alcohol Beverage Control Commissioner to promulgate a legislative rule relating to bailment policies and procedures; authorizing Insurance Commissioner to promulgate a legislative rule relating to examiners and examinations; authorizing Insurance Commissioner to promulgate a legislative rule relating to surplus lines insurance; authorizing Insurance Commissioner to promulgate a legislative rule relating to cancellation and nonrenewal of automobile liability policies; authorizing Insurance Commissioner to promulgate a legislative rule relating to continuing education for individual insurance producers; authorizing Insurance Commissioner to promulgate a legislative rule relating to valuation of life insurance policies; authorizing Insurance Commissioner to promulgate a legislative rule relating to recognition of 2001 CSO Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits; authorizing Insurance Commissioner to promulgate a legislative rule relating to insurance fraud prevention; authorizing Insurance Commissioner to promulgate a legislative rule relating to small employer eligibility requirements; authorizing Racing Commission to promulgate legislative rule relating to thoroughbred racing; authorizing Tax Department to promulgate a legislative rule relating to consumers sales and service tax and use tax - executive orders and certain declarations and exemptions; authorizing Tax Department to promulgate a legislative rule relating to valuation of active and reserve coal for ad valorem property tax purposes; and authorizing Tax Department to promulgate a legislative rule relating to valuation of producing and reserve oil and gas for ad valorem property tax purposes.
Be it enacted by the Legislature of West Virginia:

That article 7, chapter 64 of the Code of West Virginia, 1931, as
amended, be amended and reenacted to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO
PROMULGATE LEGISLATIVE RULES.

§64-7-1. Alcohol Beverage Control Commissioner.
§64-7-2. Insurance Commissioner.
§64-7-3. Racing Commission.
§64-7-4. Tax Commissioner.

§64-7-1. Alcohol Beverage Control Commissioner.

(a) The legislative rule filed in the State Register on the
twenty-seventh day of August, two thousand four, authorized
under the authority of section six, article three-a, chapter sixty
of this code relating to the Alcohol Beverage Control Commis-
sioner (retail liquor operations, 175 CSR 1) is authorized.

(b) The legislative rule filed in the State Register on the
twenty-seventh day of August, two thousand four, authorized
under the authority of section ten, article seven, chapter sixty of
this code relating to the Alcohol Beverage Control Commiss-
ioner (private club licensing, 175 CSR 2) is authorized, with
the following amendment:

On page six, subdivision 3.1.6.a, the first line, after the
word “shall”, by striking out the words “establish procedures
for conducting” and by inserting in lieu thereof the word
“conduct”.

(c) The legislative rule filed in the State Register on the
twenty-seventh day of August, two thousand four, authorized
under the authority of section sixteen, article two, chapter sixty
of this code relating to the Alcohol Beverage Control Commiss-
ioner (bailment policies and procedures, 175 CSR 6) is
authorized.
§64-7-2. Insurance Commissioner.

(a) The legislative rule filed in the State Register on the twenty-sixth day of August, two thousand four, under the authority of section ten, article two, chapter thirty-three of this code relating to the Insurance Commissioner (examiners and examinations, 114 CSR 15) is authorized.

(b) The legislative rule filed in the State Register on the twenty-sixth day of August, two thousand four, under the authority of section ten, article two, chapter thirty-three of this code relating to the Insurance Commissioner (surplus lines insurance, 114 CSR 20) is authorized.

(c) The legislative rule filed in the State Register on the twenty-sixth day of August, two thousand four, under the authority of section ten, article two, chapter thirty-three of this code relating to the Insurance Commissioner (cancellation and nonrenewal of automobile liability policies, 114 CSR 3) is authorized.

(d) The legislative rule filed in the State Register on the twenty-sixth day of August, two thousand four, under the authority of section ten, article two, chapter thirty-three of this code relating to the Insurance Commissioner (continuing education for individual insurance producers, 114 CSR 42) is authorized.

(e) The legislative rule filed in the State Register on the twenty-sixth day of August, two thousand four, under the authority of section ten, article two, chapter thirty-three of this code relating to the Insurance Commissioner (valuation of life insurance policies, 114 CSR 68) is authorized.

(f) The legislative rule filed in the State Register on the twenty-sixth day of August, two thousand four, under the authority of section ten, article two, chapter thirty-three of this
code relating to the Insurance Commissioner (recognition of the 2001 CSO Mortality Table for use in determining minimum reserve liabilities and nonforfeiture benefits, 114 CSR 69) is authorized, with the following amendment:

On page one, subsection 1.1., by striking out §§33-9-7(d)(1)(C)(iii) and by inserting in lieu thereof §§33-7-9(d)(1)(C)(iii);

On page two, subsection 3.1, by striking out the words “January 1, 2006”, and by inserting in lieu thereof the words “the effective date of this rule”;

On page two, subsection 3.1, by striking out §§33-9-7(d)(1)(C)(iii) and by inserting in lieu thereof §§33-7-9(d)(1)(C)(iii);

On page two, subsection 3.2, by striking out §§33-9-7(d)(1)(C)(iii) and inserting in lieu thereof §§33-7-9(d)(1)(C)(iii);

And,

On page four, subsection 6.1, by striking out the words “January 1, 2006”, and by inserting in lieu thereof the words “the effective date of this rule”.

(g) The legislative rule filed in the State Register on the twenty-sixth day of August, two thousand four, 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 twentieth day of December, two thousand four, relating to the Insurance Commissioner (insurance fraud prevention, 114 CSR 71) is authorized.
(h) The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, 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 twentieth day of December, two thousand four, relating to the Insurance Commissioner (small employer eligibility requirements, 114 CSR 73) is authorized.

§64-7-3. Racing Commission.

The legislative rule filed in the State Register on the twenty-seventh day of August, two thousand four, 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 twentieth day of December, two thousand four, relating to the Racing Commission (thoroughbred racing, 178 CSR 1) is authorized, with the following amendment:

On page twenty-eight, paragraph 39.41.3.a., by striking out the word “entry” and inserting in lieu thereof the word “start”;

And,

On page twenty-eight, paragraph 39.41.3.b., by striking out the word “entry” and inserting in lieu thereof the word “start”.

§64-7-4. Tax Commissioner.

(a) The legislative rule filed in the State Register on the sixteenth day of August, two thousand four, under the authority of section five, article ten, chapter eleven of this code modified by the Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State
Register on the twenty-ninth day of November, two thousand four, relating to the Tax Department (Consumers Sales and Service Tax and Use Tax - executive orders declaring emergency and exempting from tax mobile homes and similar units and building materials used and consumed in repair or replacement of residences and businesses damaged in a disaster, 110 CSR 151) is authorized.

(b) The legislative rule filed in the State Register on the twenty-twenty-fifth day of August, two thousand four, under the authority of section eleven, article one-a, chapter eleven of this code modified by the Tax Department to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on the twenty-first day of December, two thousand four, relating to the Tax Department (valuation of active and reserve coal for ad valorem property tax purposes, 110 CSR 1I) is authorized.

(c) The legislative rule filed in the State Register on the twenty-seventh day of July, two thousand four, under the authority of section eleven, article one-a, chapter eleven of this code and section five-a, article one-c, chapter eleven of this code modified by the Tax Department to meet the objections of the Legislative Rule-making Review Committee and refiled in the State Register on the twenty-ninth day of November, two thousand four, relating to the Tax Department (valuation of producing and reserve oil and gas for ad valorem property tax purposes, 110 CSR 1I) is authorized, with the following amendment:

On page ten, subsection 4.14., by striking out the word “July” and inserting in lieu thereof the word “August”; And,

On page ten, subsection 4.16., by striking out the entire subsection and inserting in lieu thereof the following:
"4.16. Valuation of the Producer’s Personal Property at Non-Producing or Shut-In Wells - The valuation of the producer’s personal property that is part of a non-producing or shut-in well’s appraisal will be assigned to the producer at the same value applied to home use only wells.’’

CHAPTER 154

(Com. Sub. for S. B. 353 — By Senators Minard, Fanning, Prezioso, Unger, Boley and Minear)

[Passed April 8, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

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
traffic and safety; authorizing Division of Highways to promul­
gate a legislative rule relating to use of state roads rights-of-way
and adjacent areas; authorizing Division of Highways to promul­
gate a legislative rule relating to transportation of hazardous
waste upon roads and highways; authorizing Division of Motor
Vehicles to promulgate a legislative rule relating to administra­
tive due process; and authorizing Division of Motor Vehicles to
promulgate a legislative rule relating to examination and issuance
of driver’s licenses.

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 TRANSPORTA­
TION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Highways.
§64-8-2. Division of Motor Vehicles.

§64-8-1. Division of Highways.

1 (a) The legislative rule filed in the State Register on the
twelfth day of January, two thousand four, under the authority
of section eight, article two-a, chapter seventeen of this code
relating to the Division of Highways (traffic and safety, 157
CSR 5) is authorized.

(b) The legislative rule filed in the State Register on the
eighteenth day of August, two thousand four, under the
authority of section eight, article two-a, 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 eighteenth day of
February, two thousand five, relating to the Division of
Highways (use of state roads rights-of-way and adjacent areas,
157 CSR 6) is authorized.
(c) The legislative rule filed in the State Register on the sixth day of August, two thousand four, 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.

§64-8-2. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on the twenty-fourth day of August, two thousand four, under the authority of section nine, article two, chapter seventeen-a of this code relating to the Division of Motor Vehicles (administrative due process, 91 CSR 1) is authorized.

(b) The legislative rule filed in the State Register on the thirteenth day of August, two thousand four, under the authority of section nine, article two, chapter seventeen-a of this code relating to the Division of Motor Vehicles (examination and issuance of driver’s licenses, 91 CSR 4) is authorized, with the following amendment:

On page twenty-one, subsection 14.4, line three, after the words “10,000 pounds”, by striking out the word “buy” and by inserting in lieu thereof the word “but”. 
AN ACT to amend and reenact article 9, 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; disapproving the promulgation of certain legislative rules; disapproving the promulgation of a legislative rule by the Board of Acupuncture relating to the dispensing of materia medica, formulary and legend drugs; authorizing the Department of Agriculture to promulgate a legislative rule relating to animal disease control; authorizing the Department of Agriculture to promulgate a legislative rule relating to the inspection of meat and poultry; authorizing the Department of Agriculture to promulgate a legislative rule relating to commercial feed; authorizing the Board of Chiropractic Examiners to promulgate a legislative rule relating to the chiropractic practice; authorizing the Contractor Licensing Board to promulgate a legislative rule relating to the West Virginia Contractor Licensing Act; relating to authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to the formation and approval of professional limited liability companies; authorizing the Board of Dental Examiners to promulgate a legislative rule relating to fees; authorizing the Board of Dental Examiners to
promulgate a legislative rule relating to the formation and approval of dental corporations; authorizing the Family Protection Services Board to promulgate a legislative rule relating to perpetrator intervention programs licensure for correctional institutions; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to law enforcement training standards; authorizing the Governor's Committee on Crime, Delinquency and Correction to promulgate a legislative rule relating to the protocol for law enforcement response to domestic violence; disapproving the promulgation of a legislative rule by the Governor's Committee on Crime, Delinquency and Correction relating to motor vehicle stop data collection standards for the study of racial profiling; authorizing the Hatfield-McCoy Regional Recreation Authority to promulgate a legislative rule relating to use of facilities; authorizing the Board of Professional Surveyors to promulgate a legislative rule relating to minimum standards for the practice of land surveying in West Virginia; authorizing the Board of Examiners for Licensed Practical Nurses to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Public Service Commission to promulgate a legislative rule relating to statewide telephone information and referral 211 service; authorizing the Radiologic Technology Board of Examiners to promulgate a legislative rule relating to the Board; authorizing the Board of Examiners for Registered Professional Nurses to promulgate a legislative rule relating to fees for services rendered by the Board; authorizing the Secretary of State to promulgate a legislative rule relating to agencies designated to provide voter registration services; authorizing the Board of Examiners for Speech-Language Pathology and Audiology to promulgate a legislative rule relating to speech-language pathology and audiology assistants; authorizing the State Treasurer to promulgate a legislative rule relating to procedures for fees in collections by charge, credit or debit card or by electronic payment; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to organization
and operation; authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to certified animal euthanasia technicians; and authorizing the Board of Veterinary Medicine to promulgate a legislative rule relating to a schedule of fees.

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, all to read as follows:

ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGENCIES AND BOARDS TO PROMULGATE LEGISLATIVE RULES.

§64-9-1. Board of Acupuncture.
§64-9-2. Department of Agriculture.
§64-9-4. Contractor Licensing Board.
§64-9-5. Board of Dental Examiners.
§64-9-6. Family Protection Services Board.
§64-9-7. Governor's Committee on Crime, Delinquency and Correction.
§64-9-12. Radiologic Technology Board of Examiners.
§64-9-14. Secretary of State.
§64-9-17. Board of Veterinary Medicine.

§64-9-1. Board of Acupuncture.

1 The legislative rule filed in the state register on the second day of September, two thousand three, under the authority of section seven, article thirty-six, chapter thirty, of this code, modified by the Board of Acupuncture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the fourteenth day of October, two thousand four, relating to the Board of Acupuncture (dispensing
§64-9-2. Department of Agriculture.

(a) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, under the authority of section two, article nine, chapter nineteen, of this code, modified by the Department of Agriculture to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the nineteenth day of November, two thousand four, relating to the Department of Agriculture (animal disease control, 61 CSR 1), is authorized, with the following amendments:

On page twelve, paragraph 6.19.b.C., after the words 'pullorum/typhoid' by changing the period to a semicolon and inserting the word 'and';

And,

On page twelve, paragraph 6.19.b.D. by striking out the entire paragraph and inserting in lieu thereof the following: ‘a United States Department of Agriculture Form 9-3 stating that a minimum of 20 birds per flock or the entire flock of 20 birds or less had a negative test for avian influenza within 10 days prior to import. The test shall be a NPIP approved procedure.’

(b) The legislative rule filed in the state register on the fourth day of August, two thousand four, under the authority of section three, article two-b, chapter nineteen, of this code, relating to the Department of Agriculture (inspection of meat and poultry, 61 CSR 16), is authorized.

(c) The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, under the authority of section three, article fourteen, chapter nineteen, of
this code, modified by the Department of Agriculture to meet
the objections of the Legislative Rule-Making Review Commit-
tee and refiled in the state register on the twenty-fourth day of
November, two thousand four, relating to the Department of
Agriculture (commercial feed, 61 CSR 5), is authorized.


The legislative rule filed in the state register on the twenty-
sixth day of August, two thousand four, under the authority of
section five, article sixteen, chapter thirty, of this code, modi-
fied by the Board of Chiropractic Examiners to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the state register on the first day of February, two
thousand five, relating to the Board of Chiropractic Examiners
(chiropractic practice, 4 CSR 1), is authorized, with the
following amendments:

On page two, paragraph 3.1.d.1, after the word "subdivi-
sion", by striking the reference "3.1.c.2" and inserting in lieu
thereof the reference "3.1.d.3";

On page two, paragraph 3.1.d.3, subparagraph 2, after the
words "set forth in", by striking the code reference "W. Va.
Code §30-16-6(a)(5)" and inserting in lieu thereof the code
reference "W. Va. Code §30-16-6(b)(5)";

On page seven, subsection 11.2, after the words "The
Board", by striking the word "my" and inserting in lieu thereof
the word "may";

And,

On page nine, subsection 15.5., by striking out the words
"That upon" and inserting in lieu thereof the word "Upon".

§64-9-4. Contractor Licensing Board.
The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, under the authority of section five, article eleven, chapter twenty-one, of this code, modified by the Contractor Licensing Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-fifth day of January, two thousand five, relating to the Contractor Licensing Board (West Virginia contractor licensing act, 28 CSR 2), is authorized, with the following amendments:

On page two, subdivision 3.9.a, after the word “five” by inserting the word “hundred”;

On page seven, subdivision 3.30., after the word “repair.” by inserting the words “A residential contractor is considered licensed for all crafts required in the construction, repair or improvement of a residential structure, as that term is defined in subsection 3.33 of this rule, except those crafts for which local ordinance or state law other than W. Va. Code § 21-11-1, et seq, require licensure, such as the electrician’s license required by the Office of the State Fire Marshal under the provisions of W. Va. Code §29-3b-1, et seq.”;

On page fifteen, subdivision 8.1, after the word “person.” by striking out the word “The” and inserting in lieu thereof the words “After an administrative hearing, as provided for in Section 9 of this rule, the”;

On page fifteen, subdivision 8.1, after the word “license.” by striking out the remainder of the subdivision;

And,

On page fifteen, after subdivision 8.3, by inserting a new subdivision, designated subdivision 8.4, to read as follows: “The Board shall, in accordance with Section 9 of this rule, provide for an administrative hearing before a penalty is assessed.”
§64-9-5. Board of Dental Examiners.

(a) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand four, under the authority of section six, article four, chapter thirty, of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the fifteenth day of February, two thousand five, relating to the Board of Dental Examiners (rule for the board of dental examiners, 5 CSR 1), is authorized.

(b) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand four, under the authority of section thirteen hundred four, article thirteen, chapter thirty-one-b, of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the fifteenth day of February, two thousand five, relating to the Board of Dental Examiners (formation and approval of professional limited liability companies, 5 CSR 2), is authorized, with the following amendment:

On page one, subsection 3.4., line four, after the words “filing fee” by inserting the words “of $200”, and after the words “renewal fee” by striking out the words “as set forth in the Board’s fee schedule 5 CSR 3” and inserting in lieu thereof the words “of $150”.

(c) The legislative rule filed in the state register on the twenty-fifth day of August, two thousand four, under the authority of section six, article four, chapter thirty, of this code, modified by the Board of Dental Examiners to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the fifteenth day of February, two thousand five, relating to the Board of Dental Examiners
The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, under the authority of section four hundred four, article twenty-six, chapter forty-eight, of this code, modified by the Family Protection Services Board to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the eighteenth day of February, two thousand five, relating to the Family Protection Services Board (perpetrator intervention programs licensure for correctional institutions, 191 CSR 5), is authorized, with the following amendments:

On page eight, subsection 4.6., by striking out the word “shall”, and inserting in lieu thereof the word “may” and after the word “subdivision” by striking out the letter “d” and inserting in lieu thereof the letter “c”.

(a) The legislative rule filed in the state register on the fifteenth day of June, two thousand four, under the authority of section three, article twenty-nine, chapter thirty, of this code, modified by the Governor’s Committee on Crime, Delinquency and Correction to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-sixth day of July, two thousand four, relating to the Governor’s Committee on Crime, Delinquency and Correction (law enforcement training standards, 149 CSR 2), is authorized.

(b) The legislative rule filed in the state register on the ninth day of August, two thousand four, under the authority of section one thousand one hundred two, article twenty-seven,
chapter forty-eight, of this code, relating to the Governor's Committee on Crime, Delinquency and Correction (protocol for law enforcement response to domestic violence, 149 CSR 3), is authorized.

(c) The legislative emergency rule filed in the state register on the twenty-third day of November, two thousand four, under the authority of section three, article two, chapter seventeen-g, of this code, relating to the Governor's Committee on Crime, Delinquency and Correction (motor vehicle stop data collection standards for the study of racial profiling, 149 CSR 5), is disapproved and not authorized.


The legislative rule filed in the state register on the eighth day of April, two thousand four, under the authority of section one, article fourteen, chapter twenty, of this code, modified by the Hatfield-McCoy Regional Recreation Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-fifth of January, two thousand five, relating to the Hatfield-McCoy Regional Recreation Authority (use of facilities, 204 CSR 1), is authorized, with the following amendments:

On page four, after subsection 3.5, by adding a new subsection, designated subsection 3.6, to read as follows:

"3.6. No person may operate an ATV on any road or highway with a center line or more than two lanes within the Hatfield-McCoy enforcement area except for the purpose of crossing the road or highway at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing. An ATV operator is permitted to crossing the road or highway if:
19 a. The vehicle is brought to a complete stop before crossing
20 the shoulder or main traveled way of the highway;

21 b. The operator yields his or her right-of-way to all oncom-
22 ing traffic that constitutes an immediate potential hazard; and

23 c. Both the headlight and taillight are illuminated when the
24 crossing is made if the vehicle is so equipped.”;

25 On page four, by redesignating subsection 3.6. as subsec-
26 tion 3.7. and by renumbering the remaining subsections
27 accordingly;

28 On page six, after subsection 4.1., by inserting a new
29 subsection, designated subsection 4.2., to read as follows:

30 “4.2. No person under the age of eighteen may operate an
31 ATV without a written statement, signed by the minor’s parent
32 or guardian certifying that:

33 a. Any machine operated by the minor will be of a model
34 that is recommended by the manufacturer as appropriate to the
35 minor’s age and size;

36 b. All rules governing the use of the Area have been
37 reviewed by the parent or guardian and explained to the minor
38 in sufficient detail to enable the minor to abide by the rules; and

39 c. Any minor under the age of sixteen will remain under the
40 supervision of and within the sight of the parent or guardian at
41 all times.”;

42 On page six, by redesignating subsection 4.2. as subsection
43 4.3.;

44 On page six, by redesignating subsection 4.3. as subsection
45 4.4., and at the end of the subsection, by inserting the follow-
46 ing: “No person may operate an ATV with a passenger under
the age of eighteen unless the operator has, at a minimum, a
level two intermediate driver's license or its equivalent or is
eighteen years of age or older."

On page six, by redesignating subsection 4.4. as subsection
4.6. and by renumbering the remaining subsections accordingly;

And,

On page seven, subsection 5.2., after the words "When
operated from", by striking out the words "one-half hour after"
and after the words "sunset to", by striking out the words "one-
half hour before".


The legislative rule filed in the state register on the seven-
teenth day of May, two thousand four, under the authority of
section four, article thirteen-a, chapter thirty, of this code,
modified by the Board of Examiners of Surveyors to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the state register on the fourth day of February,
two thousand five, relating to the Board of Examiners of Land
Surveyors (minimum standards for the practice of land survey-
ing in West Virginia, 23 CSR 1), is authorized, with the
following amendments:

On page four, by striking out subdivisions 5.3.1. and 5.3.2
and by inserting in lieu thereof two new subdivisions to read as
follows:

"5.3.a. To be eligible for 'retired' status, a licensee must
have an active or inactive license and certify that he or she is no
longer practicing surveying or supervising any employees who
perform surveying activities in West Virginia.

5.3.a.1. A licensee on retired status may not affix his or her
P.S. seal to any surveying documents."
5.3.a.2. A licensee on retired status is not required to pay an annual license renewal fee or to complete Professional Development Hours (PDHs).

5.3.a.3. The Board will issue to each licensee on retired status a certificate noting the honorific title of ‘Professional Surveyor, Retired.’

5.3.a.4. Before returning to the active practice of surveying a licensee on retired status must complete delinquent Professional Development Hours (PDHs) for each year on retired status up to a maximum of 16 PDHs and must pay the current license renewal fee.

5.3.b. Any licensee may apply for ‘inactive’ status.

5.3.b.1. A licensee on inactive status may not provide surveying services or receive any compensation for any type of surveying activities conducted in West Virginia.

5.3.b.2. A licensee on inactive status is not required to complete the required number of Professional Development Hours (PDHs).

5.3.b.3. A licensee on inactive status is required to pay the annual license renewal fee and any required late fees accrued for the license period unless the licensee applies to the Board and is granted an exemption. A licensee may request an exemption from the renewal fee if he or she can demonstrate with supporting documentation that during the license year he or she will be serving on active duty in the Armed Forces of the United States for a period of more than 120 consecutive days or experiencing physical disability, illness or other extenuating circumstances.

5.3.b.4. The Board will issue to each licensee who is granted inactive status an annual license card noting ‘Inactive Status’.
5.3.b.5. A licensee on inactive status who elects to return to
the active practice of surveying must complete Professional
Development Hours (PDHs) for each year on inactive status up
to a maximum of 16 PDHs.”


The legislative rule filed in the state register on the eight-
teenth day of August, two thousand four, under the authority of
section seven-a, article seven-a, chapter thirty, of this code,
relating to the Board of Examiners of Licensed Practical Nurses
(fees for services rendered by the Board, 10 CSR 4), is autho-


The legislative rule filed in the state register on the fourth
day of March, two thousand four, under the authority of section
two, article eight, chapter twenty-four, 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-first day of January, two thousand
five, relating to the Public Service Commission (statewide
telephone information and referral 211 service, 150 CSR 29),
is authorized.

§64-9-12. Radiologic Technology Board of Examiners.

The legislative rule filed in the state register on the tenth
day of June, two thousand four, under the authority of section
five, article twenty-three, chapter thirty, of this code, modified
by the Radiologic Technology Board of Examiners to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the state register on the twenty-sixth day of July,
two thousand four, relating to the Radiologic Technology Board
of Examiners (Board rule, 18 CSR 1), is authorized.
§64-9-13. **Board of Examiners for Registered Professional Nurses.**

1 The legislative rule filed in the state register on the seventeenth day of August, two thousand four, under the authority of section eight-a, article seven, chapter thirty, of this code, modified by the Board of Examiners for Registered Professional Nurses to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the twenty-ninth day of September, two thousand four, relating to the Board of Examiners for Registered Professional Nurses (fees for services rendered by the Board, 19 CSR 12), is authorized, with the following amendments:

11 On page one, subsection 2.9., by striking out the subsection in its entirety and inserting in lieu thereof the following:

13 "2.9. Reinstatement of Lapsed License ............... $50.00";

14 And,

15 On page two, by striking out subsections 2.23. and 2.24., in their entirety and inserting in lieu thereof the following:

17 "2.23. Midwife License ................................ $20.00

18 2.24. Midwife License Renewal ........................ $10.00."

§64-9-14. **Secretary of State.**

1 The legislative rule filed in the state register on the twenty-seventh day of August, two thousand four, authorized under the authority of section thirteen, article two, chapter three, of this code, relating to the Secretary of State (agencies designated to provide voter registration services, 153 CSR 28), is authorized.

§64-9-15. **Board of Examiners for Speech-Language Pathology and Audiology.**
The legislative rule filed in the state register on the ninth day of August, two thousand four, under the authority of section ten, article thirty-two, chapter thirty, of this code, modified by the Board of Examiners for Speech-Language Pathology and Audiology to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the thirteenth day of December, two thousand four, relating to the Board of Examiners for Speech-Language Pathology and Audiology (speech-language pathology and audiology assistants, 29 CSR 2), is authorized, with the following amendment:

On page one, subsection 2.5., after the word "licensure", by inserting the words "and who assumes legal responsibility for services provided by an assistant".


The legislative rule filed in the state register on the eighteenth day of August, two thousand four, under the authority of section six, article three-a, chapter twelve, of this code, modified by the State Treasurer to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the seventh day of February, two thousand five, relating to the State Treasurer (procedures for fees in collections by charge, credit or debit card or by electronic payment, 112 CSR 12), is authorized.

§64-9-17. Board of Veterinary Medicine.

(a) The legislative rule filed in the state register on the eleventh day of August, two thousand three, under the authority of section four, article ten, chapter thirty, of this code, modified by the Board of Veterinary Medicine to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the fourteenth day of June, two thousand four, relating to the Board of Veterinary Medicine (organization and operation, 26 CSR 1), is authorized, with the following amendments:
(b) The legislative rule filed in the state register on the
eleventh day of August, two thousand three, under the authority
of section nine, article ten-a, chapter thirty, of this code,
modified by the Board of Veterinary Medicine to meet the
objections of the Legislative Rule-Making Review Committee
and refiled in the state register on the fourteenth day of June,
two thousand four, relating to the Board of Veterinary Medicine
(certified animal euthanasia technicians, 26 CSR 5), is autho-
}

(c) The legislative rule filed in the state register on the ninth
day of August, two thousand three, under the authority of
section four, article ten, chapter thirty, of this code, modified by
the Board of Veterinary Medicine to meet the objections of the
Legislative Rule-Making Review Committee and refiled in the
state register on the twenty-first day of January, two thousandive, relating to the Board of Veterinary Medicine (schedule of
fees, 26 CSR 6), is authorized, with the following amendments:

On page one, by striking out all of subsections 2.1 through
2.8, and inserting in lieu thereof the following:

"2.1 Veterinarian application and examination fee .. $295.00
2.2 Veterinarian license fee .................. $5.00
2.3 Duplicate license ......................... $15.00
2.4 Annual renewal fee ..................... $225.00
2.5 Temporary permit ......................... $100.00
2.6 Temporary permit renewal fee .......... $25.00
2.7 Written confirmation of licensure, registration or
certification by West Virginia ............. $25.00
2.8 North American Veterinary License Exam (NAVLE)
eligibility processing fee .................. $50.00".

CHAPTER 156

(Com. Sub. for H. B. 2718 — By Delegates Mahan, Palumbo,
Cann, Pino, Armstead and Overington)

[Passed April 9, 2005; in effect from passage.]
[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact article 10, chapter 64 of the Code of
West Virginia, 1931, as amended, all relating generally to the
promulgation of administrative rules by the 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
recommended by the Legislative Rule-Making Review Committee and
as amended by the Legislature; authorizing the Economic
 Development Authority to promulgate a legislative rule relating
to the high-growth business investment tax credit; authorizing the
Bureau of Employment Programs to promulgate a legislative rule
relating to implementing the requirement that prohibits agencies
from granting, issuing or renewing contracts, licenses, permits,
certificates or other authority to conduct a trade, profession or
business; authorizing the Division of Labor to promulgate a
legislative rule relating to the Elevator Safety Act; authorizing the
Division of Labor to promulgate a legislative rule relating to
weights and measures calibration fees; authorizing the Division
of Labor to promulgate a legislative rule relating to the West
Virginia Manufactured Housing Construction and Safety Stan­
dards Board; authorizing the Division of Natural Resources to
promulgate a legislative rule relating to commercial whitewater
outfitters; authorizing the Division of Natural Resources to
promulgate a legislative rule relating to the commercial sale of
wildlife; and authorizing the Division of Natural Resources to
promulgate a legislative rule relating to the revocation of hunting
and fishing licenses.

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. Bureau of Employment Programs.
§64-10-3. Division of Labor.
§64-10-4. Division of Natural Resources.

§64-10-1. Economic Development Authority.

1 The legislative rule filed in the state register on the twenty-fourth day of August, two thousand four, under the authority of section nine, article thirteen-u, chapter eleven, 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 first day of February, two thousand five, relating to the Economic Development Authority (high-growth business investment tax credit, 117 CSR 5), is authorized, with the following amendments:

On page three, section three, line 4, by striking all of sections 3.2.b., 3.2.c. and 3.2.c.1 and inserting in lieu thereof the following:

"3.2.b. The Authority may not allocate more than fifty thousand dollars of this tax credit to an eligible taxpayer in a fiscal year."

3.2.c. Any unused portion of the tax credit may be carried forward to succeeding taxable years until the expiration of the fourth taxable year after the taxable year in which the investment was made. The tax credit remaining thereafter is forfeited."

And,

On page three, section three, line 18, following the word "The" by striking the word "Statute" and inserting in lieu thereof the word "tax credit".
§64-10-2. Bureau of Employment Programs.

The legislative rule filed in the state register on the nineteenth day of March, two thousand four, under the authority of section six, article two, chapter twenty-one-a, of this code, modified by the Bureau of Employment Programs to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the seventeenth day of June, two thousand four, relating to the Bureau of Employment Programs (implementing the requirement that prohibits agencies from granting, issuing or renewing contracts, licenses, permits, certificates or other authority to conduct a trade, profession or business, 96 CSR 1), is authorized, with the following amendment:

On page five, section five, line 1, following the word “The” by striking the word “authorizing” and inserting the word “approval”.

§64-10-3. Division of Labor.

(a) The legislative rule filed in the state register on the twelfth day of August, two thousand four, under the authority of section eleven, article three-c, chapter twenty-one, of this code, modified by the Division of Labor to meet the objections of the Legislative Rule-Making Review Committee and refiled in the state register on the sixteenth day of February, two thousand five, relating to the Division of Labor (Elevator Safety Act, 42 CSR 21), is authorized, with the following amendments:

On page three, subdivision 6.1., after the words “private inspector may not” by striking out the words “provide inspection services to an elevator on which the inspector, his or her employer or employee of his or her employer has made repairs or provided routine maintenance” and inserting in lieu thereof the words “inspect repairs or routine maintenance work
16 performed by the inspector, the inspector’s employer or another
17 employee of the inspector’s employer”;

18 And,

19 On page three, subdivision 6.1., after the words “may enter
20 into any” by inserting the words “state owned”.

21 (b) The legislative rule filed in the state register on the
22 twelfth day of August, two thousand four, under the authority
23 of section twenty, article one, chapter forty-seven, of this code,
24 modified by the Division of Labor to meet the objections of the
25 Legislative Rule-Making Review Committee and refiled in the
26 state register on the sixteenth day of February, two thousand
27 five, relating to the Division of Labor (weights and measures
28 calibration fees, 42 CSR 26), is authorized.

29 (c) The legislative rule filed in the state register on the
30 twenty-seventh day of August, two thousand four, under the
31 authority of section four, article nine, chapter twenty-one, of
32 this code, relating to the Division of Labor (West Virginia
33 Manufactured Housing Construction and Safety Standards
34 Board, 42 CSR 19), is authorized.

§64-10-4. Division of Natural Resources.

1 (a) The legislative rule filed in the state register on the
2 twenty-seventh day of August, two thousand four, under the
3 authority of section twenty-three-a, article two, chapter twenty,
4 of this code, relating to the Division of Natural Resources
5 (commercial whitewater outfitters, 58 CSR 12), is authorized.

6 (b) The legislative rule filed in the state register on the
7 twenty-third day of August, two thousand four, under the
8 authority of section seven, article one, chapter twenty, and
9 section eleven, article two, chapter twenty, of this code, relating
10 to the Division of Natural Resources (commercial sale of
11 wildlife, 58 CSR 63), is authorized.
(c) The legislative rule filed in the state register on the
twelfth day of August, two thousand four, 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 seventeenth day of
November, two thousand four, relating to the Division of
Natural Resources (revocation of hunting and fishing licenses,
58 CSR 23), is authorized.

CHAPTER 157

(S. B. 616 — By Senators Bowman, Kessler, McKenzie and Yoder)

[Amended and again passed April 16, 2005, as a result of the
objections of the Governor; in effect from passage.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §4-1-17 of the Code of West Vir­
ginia, 1931, as amended; and to amend said code by adding
thereto a new article, designated §4-1A-1, §4-1A-2, §4-1A-3,
§4-1A-4, §4-1A-5, §4-1A-6, §4-1A-7, §4-1A-8, §4-1A-9,
§4-1A-10, §4-1A-11, §4-1A-12, §4-1A-13, §4-1A-14, §4-1A-15
and §4-1A-16, all relating to legislative priorities and immunities
under statute, common law and constitutional law.

Be it enacted by the Legislature of West Virginia:

That §4-1-17 of the Code of West Virginia, 1931, as amended, be
amended and reenacted; and that said code be amended by adding
thereto a new article, designated §4-1A-1, §4-1A-2, §4-1A-3, §4-1A-
4, §4-1A-5, §4-1A-6, §4-1A-7, §4-1A-8, §4-1A-9, §4-1A-10, §4-1A-
11, §4-1A-12, §4-1A-13, §4-1A-14, §4-1A-15, and §4-1A-16 all to read as follows:

Article
1. Officers, Members and Employees; Appropriations; Investigations; Display of Flags; Records; Use of Capitol Building; Prefiling of Bills and Resolutions; Standing Committees; Interim Meetings; Next Meeting of the Senate.

1A. Legislative Immunity.

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-17. Priority of legislative business for members and designated employees.

1 (a) In accordance with the constitutional separation of powers and principles of comity, it is the purpose of this section to provide that members of the Legislature and certain designated legislative employees are not required to attend to matters pending before tribunals of the executive and judicial branches of government when the timing of those matters may present conflicts with the discharge of the public duties and responsibilities that are incumbent upon members or employees of the Legislature. During legislative sessions or meetings and for reasonable time periods before and after, the judicial and executive branches should refrain from requiring the personal presence and attention of a legislator or designated employee who is engaged in conducting the business of the Legislature.

(b) For the purposes of this section, the words or terms defined in this subsection have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.
(1) “Applicable time period” means and includes the following:

(A) The ten-day time period immediately before any regular or extraordinary session of the Legislature;

(B) The time period during any regular or extraordinary session of the Legislature;

(C) The thirty-day time period immediately following the adjournment sine die of any regular or extraordinary session of the Legislature;

(D) The four-day time period before any interim meetings of any committee of the Legislature or before any party caucus;

(E) The time period during any interim meetings of the Legislature or any party caucus; or

(F) The four-day time period following the conclusion of any interim meetings of any committee of the Legislature or party caucus.

(2) “Designated employee” means any legislative employee designated in writing by the Speaker of the West Virginia House of Delegates to the Clerk of the House of Delegates or by the President of the West Virginia Senate to the Clerk of the West Virginia Senate to be necessary to the operation of the Legislature, such that the legislative employee will be afforded the protections of this section.

(3) “Member” means a member of the West Virginia House of Delegates or the West Virginia Senate.

(4) “Tribunal” means a judicial or quasijudicial entity of the judicial or executive branch of government, or any legislative, judicial or quasijudicial entity of a political subdivision,
created or authorized under the Constitution or laws of this state.

(c) A notice filed with a tribunal pursuant to subsection (e) of this section operates as an automatic stay of a judicial or administrative action or proceeding commenced before or after the notice was filed. The automatic stay is in force for the applicable time period or periods described in the notice unless it is otherwise waived in accordance with the provisions of subsection (f) of this section. In the event a session or meeting of the Legislature is extended, the notice may be amended to reflect a longer applicable time period. The filing of the notice and the automatic stay do not prohibit the commencement of an action or proceeding, the issuance or employment of process or other preliminary procedures that do not require the presence or personal attention of the member or designated employee.

(d) During any applicable time period, a member or designated employee who does not otherwise consent to a waiver of the stay is not required to do any of the following:

(1) Appear in any tribunal, whether as an attorney, party, witness or juror;

(2) Respond in any tribunal to any complaint, petition, pleading, notice or motion that would require a personal appearance or the filing of a responsive pleading;

(3) File in any tribunal any brief, memorandum or motion;

(4) Respond to any motion for depositions upon oral examination or written questions;

(5) Respond to any written interrogatories, request for production of documents or things, request for admissions or
any other discovery procedure, whether or not denominated as such; or

(6) Appear or respond to any other act or thing in the nature of those described in subdivision (1), (2), (3), (4) or (5) of this subsection; or

(7) Make any other appearance before a tribunal or attend to any other matter pending in a tribunal that in the discretion of the member or designated employee would inhibit the member or designated employee in the exercise of the legislative duties and responsibilities owed to the public.

(e) A member or designated employee who desires to exercise the protections afforded by this section shall not be required to appear in any tribunal to assert the protections. In all cases, it shall be sufficient if the member or designated employee notifies the tribunal in question orally or in writing, stating that he or she is invoking the protections of this section, describing the action, proceeding or act to be stayed, and further identifying the applicable period or periods for which the notice will operate as a stay. An oral communication with the tribunal shall be followed by a written notice or facsimile transmission to the tribunal mailed or transmitted no later than two business days after the oral communication. From the time of the oral communication or the mailing or transmission of the written notice, whichever is earlier, the notice operates as a stay of all proceedings in the pending matter until the applicable time periods have passed and expired.

(f) Notwithstanding the filing of a notice that operates as a stay, a member or designated employee may later consent to waive the stay and make an appearance or attend to a matter that would otherwise be stayed. However, a waiver as to a particular appearance or act does not terminate, annul, modify or condition the stay for any other purpose.
(g) The deference afforded by this section to members and designated employees who are serving a client in a representative capacity is also fully and completely extended to their clients, so that no person whose representative before a tribunal is a member or designated employee may be required, during any applicable time period, to do anything that his or her representative is not required to do under subsection (d) of this section.

(h) Unless the member or designated employee consents thereto, no cocounsel, partner, associate, spouse or employee of the member or designated employee may be required to make any appearance or do any act during any applicable time period in the place and stead of the member or designated employee.

(i) Any sentence, judgment, order, decree, finding, decision, recommendation or award made contrary to the provisions of this section in any action or proceeding in any tribunal, without the consent of the member or designated employee, is void.

(j) Tribunals of the federal government and those of other states are requested to honor the spirit and purpose of this section pursuant to the doctrines of comity and federalism. Further, it is the policy of this state that tribunals of this state shall afford to legislators and staff personnel of the federal government and other states the protections afforded by the provisions of this section if the tribunals of the federal government and the other jurisdictions afford members or designated employees of the West Virginia Legislature the same protections in their tribunals.

ARTICLE 1A. LEGISLATIVE IMMUNITY.

§4-1A-1. Purpose; legislative findings and declarations.
§4-1A-2. Applicability of definitions.
§4-1A-3. Legislative act defined.
§4-1A-4. Legislative sphere defined.
§4-1A-5. Political act defined.
§4-1A-6. Scope of legislative immunity generally.
§4-1A-7. Legislative immunity in specific instances.
§4-1A-8. Actions taken without lawful authority are not immune.
§4-1A-9. Political acts are not privileged.
§4-1A-10. Administrative acts are not immune.
§4-1A-11. Certain offers of proof about legislative activities not prohibited.
§4-1A-12. Legislative acts of legislative staff, aides or assistants.
§4-1A-13. Legislative immunity from ultimate relief.
§4-1A-14. Testimonial immunity.
§4-1A-15. Right to interlocutory appeal.
§4-1A-16. Common law regarding legislative immunity not affected by the enactment of this article.

§4-1A-1. Purpose; legislative findings and declarations.

(a) The purpose of this article is to describe the scope and limitations of legislative immunity provided by:

(1) English common law;

(2) The Speech or Debate Clause of the United States Constitution, Article I, Section 6;

(3) Decisions regarding legislative immunity as developed in federal common law by the federal judiciary in interpreting the Speech or Debate Clause of the United States Constitution, Article I, Section 6;

(5) The Speech or Debate Clause of the West Virginia Constitution, Article VI, Section 17;

(6) The Separation of Powers Doctrine and the system of checks and balances embodied in the United States Constitution; and

(7) The Division of Powers set forth in the West Virginia Constitution, Article V, Section 1.
(b) The Legislature finds and declares as follows:

(1) That the privilege of Speech or Debate has been recognized as an important protection of the independence and integrity of the Legislature.

(2) That the ancestry of this privilege traces back to a clause in the English Bill of Rights of 1689 and the history traces even further back, almost to the beginning of the development of the English Parliament as an independent force.

(3) That in the American governmental structure, privileges arising under the Speech or Debate Clause reinforce the Separation of Powers Doctrine and the system of checks and balances that was so deliberately established by the founding fathers and was carried over into the West Virginia Constitution.

(4) That the protections provided by the Speech or Debate Clause and the Separation of Powers Doctrine were not written into the national and state Constitutions simply for the personal or private benefit of members of Congress, the state Legislatures and local governing bodies, but were intended to protect the integrity of the legislative process by insuring the independence of individual legislators.

§4-1A-2. Applicability of definitions.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

§4-1A-3. Legislative act defined.
“Legislative act” means an act that is generally to be performed by the Legislature in relation to the investigative, deliberative and decision-making business before it. A “legislative act”:

1. Is an integral part of the processes by which members participate in proceedings that come before the Senate or House of Delegates or a committee thereof; and

2. Relates to the consideration and passage or rejection of proposed legislation; or

3. Relates to other matters that constitutional law places within the jurisdiction of either the Senate, the House of Delegates or the legislative branch of state government as a whole.

§4-1A-4. Legislative sphere defined.

The “legislative sphere” includes all activities that are an integral part of the deliberative and communicative processes by which members of the Legislature participate in committee and house proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either house.

§4-1A-5. Political act defined.

“Political act” means an act, nonetheless legitimate, that is political in nature rather than being a legislative act as defined in section three of this article.

§4-1A-6. Scope of legislative immunity generally.

(a) Legislative immunity, affording protection under the Separation of Powers Doctrine and the Speech or Debate
privilege, extends to all of a legislator's legislative acts, as
defined in section three of this article.

(b) The Speech or Debate privilege, when it applies, is
absolute and has two aspects:

(1) A member of the Legislature has immunity extending
both to civil suits and criminal prosecutions for all actions
within the legislative sphere, even though the conduct, if
performed in other than a legislative context, would in itself be
unconstitutional or otherwise contrary to criminal or civil
statutes; and

(2) A member of the Legislature is provided a testimonial
privilege that operates to protect those to whom it applies from
being compelled to give testimony as to privileged matters and
from being compelled to produce privileged documents.

§4-1A-7. Legislative immunity in specific instances.

The scope of legislative immunity includes, but is not
limited to, the following legislative acts:

(1) Introducing and voting for legislation;

(2) Failing or refusing to vote or enact legislation;

(3) Voting to seat or unseat a member;

(4) Voting on the confirmation of an executive appoint-
ment;

(5) Making speeches;

(6) Enforcing the rules of the Senate or House of Delegates
or the joint rules of the Legislature;

(7) Serving as a member of a committee or subcommittee;
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(8) Conducting hearings and developing legislation;

(9) Investigating the conduct of executive agencies;

(10) Publishing and distributing reports;

(11) Composing and sending letters;

(12) Drafting memoranda and documents;

(13) Lobbying other legislators to support or oppose legislation;

(14) Abolishing personnel positions; and

(15) Hiring and firing employees.

§4-1A-8. Actions taken without lawful authority are not immune.

Legislative immunity does not extend to activities by legislators that are without lawful authority under constitutional law, statutory law or rules of the legislature, including, but not limited to, the following:

(1) Using an unconstitutional procedure to enact legislation;

(2) Conducting an illegal investigation or an unlawful search or seizure;

(3) Performing another otherwise valid legislative act without proper legislative authority;

(4) Filing a false or incomplete report, disclosure or claim regarding an otherwise valid legislative act; or

(5) Using legislative office for private gain in violation of the provisions of chapter six-b of this code that define and enforce governmental ethics.
§4-1A-9. Political acts are not privileged.

Legislative immunity does not extend to political acts, including, but not limited to, the following:

1. Communications to the press through letters, electronic mail, newsletters or news releases: Provided, That the release of pending legislation, committee reports, journals, acts and other official legislative reports and documents is a legitimate legislative activity;

2. Privately releasing a republication of a speech made within the legislative sphere;

3. Holding a press conference;

4. Making speeches or giving interviews outside of the legislative sphere; or

5. Assisting a constituent or supporter through constituent services, including, but not limited to, making appointments with government agencies, attempting to influence discretionary acts of a government officer or providing assistance in securing government contracts.

§4-1A-10. Administrative acts are not immune.

(a) Legislative immunity does not extend to activities by legislators that are administrative in nature rather than legislative. If the underlying facts on which a decision is based are legislative facts involving establishment of a general policy or state of affairs, then the decision is legislative. If the facts used in the decisionmaking are more specific, such as those that relate to particular individuals or situations, then the decision is administrative.

(b) With regard to legislative personnel matters, whether a personnel decision regarding a legislative employee is shielded
by legislative immunity depends upon the nature of the duties of the employee about whom the personnel decision is made. Personnel decisions regarding a legislative employee are afforded immunity if the employee’s duties are directly related to the functioning of the legislative process and the duties:

(1) Involve work that significantly informs or influences the shaping of laws, such as when the employee has an opportunity for meaningful input into the legislative process; or

(2) Are peculiar to a legislator’s work as a legislator or intimately cognate to the legislative process.

§4-1A-11. Certain offers of proof about legislative activities not prohibited.

(a) Proof of a person’s status as a member of the Legislature is not prohibited.

(b) A member of the Legislature who chooses to offer evidence of legislative acts as a defense to a criminal prosecution has not been “questioned”, even though the member thereby subjects himself or herself to cross-examination.

§4-1A-12. Legislative acts of legislative staff, aides or assistants.

Legislative immunity extends to legislative staff, aides or assistants working on behalf of a legislator. Inquiry is prohibited into things done as a legislator’s staff member, aide or assistant which would have been legislative acts if performed by the legislator personally.

§4-1A-13. Legislative immunity from ultimate relief.

Legislative immunity may be invoked to shield a legislator from judicially ordered relief, including, but not limited to, the following:
(1) Criminal prosecution for his or her legislative acts;

(2) Liability for damages for his or her legislative acts;

(3) Declaratory judgments with respect to his or her legislative acts;

(4) Injunctive relief with respect to his or her legislative acts; and

(5) Extraordinary writs with respect to his or her legislative acts.

§4-1A-14. Testimonial immunity.

(a) Testimonial immunity is an aspect of legislative immunity that protects a legislator from questioning elsewhere than in the legislative forum.

(b) When a legislator has been improperly questioned before a grand jury concerning legislative acts, the counts in a criminal indictment that are based on the testimony must be dismissed.

(c) When a legislator is found to be immune from a civil complaint, the relief to be granted is to have the complaint dismissed or to have a writ of prohibition issued to stop further proceedings.

(d) In the case of a subpoena that seeks to improperly question a legislator’s conduct as to legislative acts, to depose a legislator or to seek disclosure as to any matters pertaining to the memoranda, documents or actions by a legislator which are or were in connection with the legislative process, the subpoenas may be quashed or the court may grant a motion for a protective order.
§4-1A-15. Right to interlocutory appeal.

Denial of a claim of legislative immunity is immediately appealable under the collateral order doctrine because the Speech or Debate Clause is designed to protect legislators not only from the consequences of litigation’s results but also from the burden of defending themselves.

§4-1A-16. Common law regarding legislative immunity not affected by the enactment of this article.

The Legislature of the State of West Virginia, in codifying certain elements and doctrines of the common law regarding legislative immunity through the enactment of this article, does not intend to narrow the common law definition of legislative immunity that is afforded the Legislature under the speech or debate privilege and the separation or division of powers, and does not, with the enactment of this article, otherwise revoke or abrogate any portion of the common law. This article shall not be construed so as to narrow, restrict, revoke or abrogate the common law.

CHAPTER 158

(Com. Sub. for H. B. 2477—By Delegates Hrutkay, Beane, Craig, Webster and Amores)

[Passed April 6, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §38-8-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-2-136, all relating to exemptions from execution or other judicial process of certain personal property.
Be it enacted by the Legislature of West Virginia:

That § 38-8-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §46A-2-136 be amended and reenacted, all to read as follows:

Chapter 38. Liens.

46A. West Virginia Consumer Credit and Protection Act.

CHAPTER 38. LIENS.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-3. Method of claiming exemption on personal property.

When a debtor claims personal property as exempt under the provisions of this article, he or she shall deliver to the officer holding the execution or other process, a list by separate items with the fair market value of each item, according to the belief of the debtor, of all personal property and estate owned or claimed by the debtor, including money, bonds, bills, notes, claims and demands, along with the address of the person so indebted. The list shall also set forth with respect to each item of personal property and estate the name and address of the holder of and the current amount owing on each lien thereon other than judicial liens obtained by legal or equitable proceedings. The debtor shall verify such list, valuation and lien indebtedness by affidavit, which affidavit shall also show that the debtor is entitled to the exemption, and shall specify the character in which he claims to be so entitled, as for example, that he is a husband. If the value of the property named in the list exceeds, as stated therein, the maximum allowed amounts set forth in section one of this article, the debtor shall state at the foot thereof what part of the property he claims as exempt, but if such value does not exceed the allowed amount, as so stated, the claim of exemption shall be held to extend to the whole thereof without stating more; and if no appraisement
thereof be demanded, as hereinafter provided, the property so claimed shall be set apart to the debtor as exempt. If the husband, wife, parent or other head of a household owning such property be absent, or incapable of acting, or neglect or decline to act, the claim may be made, the list delivered, and the affidavit made by another member of the family, with the same effect as if made by the owner, and the claim may be made, the list delivered, and the affidavit made on behalf of infant children by the guardian thereof or someone standing in loco parentis thereto. The officer shall immediately, upon receipt of the list, exhibit the same to the creditor, his or her agent or attorney.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.


Any consumer residing in this state may set apart and hold personal property to be exempt from execution or other judicial process resulting from consumer credit transactions or consumer leases, except for the purchase money due on such property, in such amounts as follows: Children's books, pictures, toys and other such personal property of children; all medical health equipment used for health purposes by the consumer, his or her spouse and any dependent of such consumer; and personal property set apart and held as exempt pursuant to section one, article eight, chapter thirty-eight of this code. When a consumer claims personal property as exempt under the provisions of this section, he or she shall deliver a list containing all the personal property owned or claimed by him or her and all items of such property he or she claims as exempt hereunder, with the value of each separate item listed according to his or her best knowledge, to the officer holding the execution or other such process. Such list shall be sworn to by
affidavit. If the value of the property named in such list exceeds
the amounts specified in this section, the consumer shall state
at the foot thereof what part of such property he or she claims
as exempt. If such value does not exceed the amounts specified
in this section, the claim of exemption shall be held to extend
to the whole thereof without stating more and, if no appraise-
ment is demanded, the property so claimed shall be set aside as
exempt. Where the consumer owning exempt property is absent
or incapable of acting or neglects or declines to act hereunder,
the claim of exemption may be made, the list delivered and the
affidavit made by his or her spouse or by or on behalf of a
dependent of the consumer, with the same effect as if the owner
had done so. Upon receipt of such a list, the officer to whom it
is given shall immediately exhibit such list to the creditor or his
or her agent or attorney. The rights granted and procedures
provided in article eight, chapter thirty-eight of this code shall
apply to any proceeding under this section, except that the
provisions of section three of such article shall not apply.

CHAPTER 159

(Com. Sub. for S. B. 419 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §7-23-1, §7-23-2 and §7-
23-3, all providing that counties, municipalities and county
boards of education be allowed relief from certain policies, rules
and regulations.
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 §7-23-1, §7-23-2 and §7-23-3, all to read as follows:

ARTICLE 23. LOCAL GOVERNMENT FLEXIBILITY ACT.

§7-23-1. Short title.
This article may be cited as the Local Government Flexibility Act of 2005. No inference, implication or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section, provision or portion of this article. No legal effect shall be given to any descriptive matter or heading relating to any part, section, subdivision or paragraph of this article.

§7-23-2. Legislative intent and findings.
(a) Legislative intent. — It is the intent of the Legislature in enacting this article to provide a framework within which new ideas can be explored to see if they can or should be implemented on a statewide basis.

(b) Legislative findings. — The Legislature finds and declares that:

(1) County commissions, municipalities and county boards of education today face numerous challenges managing their budgets and other resources and delivering services required by federal or state law or demanded by their constituents.
(2) Local units of government are sometimes restricted by policies, rules and regulations that prevent them from carrying out their duties and responsibilities in a cost effective, efficient and timely manner. To address this concern, this pilot program includes a waiver program whereby county commissions, municipalities and county boards of education may apply to the Governor for waiver of a specific policy, rule or regulation.

§7-23-3. Flexibility for county commissions, municipalities and county boards of education.

(a) Application for waiver of policies, rules and regulations.

(1) The purpose of this section is to provide a procedure by which county commissions, municipalities and county boards of education may apply for waiver of a policy, rule or regulation the commission, municipality or board believes is preventing it from carrying out its duties and responsibilities in the most cost efficient, effective and timely manner.

(2) The chief executive officer of a county commission, municipality or county board of education may file with the Secretary of Commerce an application for waiver of a policy, rule or regulation he or she believes is preventing the commission, municipality or board from carrying out its duties in the most cost efficient, effective and timely manner.

(3) The application shall be made in writing and be in the form prescribed by the Secretary of Commerce for that purpose. The application shall, at a minimum, require the applicant to provide the official citation of the policy, rule or regulation for which waiver is sought. If there is no official citation, a copy of the policy or letter from which a waiver is sought shall be attached to the application. The applicant shall describe in sufficient detail the problem created by the policy, rule or regulation for which waiver is sought and describe in
sufficient detail how the waiver will allow the applicant to carry out the applicant’s duties in the most cost efficient, effective and timely manner.

(b) Review by Secretary of Commerce. — Upon receipt of an application as provided in subsection (a) of this section, the Secretary of Commerce may conduct an investigation or inquiry to gather any additional information necessary to evaluate the application. The Secretary of Commerce shall periodically submit to the Governor a written report summarizing the applications and any recommendations for applications the Secretary of Commerce determines in his or her discretion to forward to the Governor for disposition in accordance with this section. The Secretary of Commerce is granted no authority under this section to issue any waiver.

(c) Review by Governor. — Upon receipt of the summary and recommendations of the Secretary of Commerce, the Governor may take any action he or she considers appropriate under the circumstances that is within the authority granted to the Governor by the laws of this state. Whenever the Governor believes a statutory change is needed, the Governor shall bring the matter to the attention of the Speaker of the House of Delegates and the President of the Senate.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-5-11, relating to mental hygiene proceedings generally; authorizing implementation of a modified mental hygiene procedure in limited number of counties relating to persons who are medication-dependent and who have had at least one prior conviction for a crime of violence against the person within the previous twenty-four months related to mental illness or two prior hospitalizations within the previous twenty-four months due to mental illness; directing cooperation of Secretary of Department of Health and Human Resources and Supreme Court of Appeals in developing modified procedures; authorizing use of treatment compliance orders in certain judicial circuits; authorizing hospitalization and treatment for up to forty-eight hours prior to probable cause hearing for medication-dependent individuals who meet requirements; reporting requirements; expiration date; time limits; requirements of petitions; procedures; required findings; hearings; and forms required for procedures.

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 §27-5-11, to read as follows:

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-11. Modified procedures for temporary compliance orders for certain medication dependent persons with prior hospitalizations or convictions; to institute modified mental hygiene procedures; procedures; forms.

1 (a) The Supreme Court of Appeals shall, in consultation with the Secretary of the Department of Health and Human Resources and local mental health services consumers and providers, implement in at least four and no more than six
judicial circuits, beginning on the first day of July, two thousand six, modified mental hygiene procedures that are consistent with the requirements set forth in this section. The judicial circuits selected for implementing the modified procedures shall be circuits in which the Supreme Court of Appeals determines, after consultation with the Secretary of the Department of Health and Human Resources and local mental health consumers and service providers, that adequate resources will be available to implement the modified procedures. The Secretary of the Department of Health and Human Resources, after consultation with the Supreme Court of Appeals and local mental health services consumers and service providers, shall prescribe appropriate forms to implement the modified procedures and shall annually prepare a report on the use of the modified procedures and transmit the report to the Legislature on or before the last day of each calendar year. The Supreme Court of Appeals may, after consultation with the Secretary of the Department of Health and Human Resources and local mental health services consumers and providers during the pilot program period, further modify any specific modified procedures that are implemented: Provided, That the modified procedures must be consistent with the requirements of this chapter and this section. If the Secretary of the Department of Health and Human Resources determines that the use of any modified procedure in one or more judicial circuits is placing an unacceptable additional burden upon state mental health resources, the Supreme Court of Appeals shall, in consultation with the Secretary, modify the procedures used in such a fashion as will address the concerns of the Secretary, consistent with the requirements of this chapter. The provisions of this section and the modified procedures thereby authorized shall cease to have any force and effect on the thirtieth day of June, two thousand ten, unless extended by an Act of the Legislature prior to that date.
(b) (1) The modified procedures shall authorize that a verified petition seeking a treatment compliance order may be filed by any person alleging:

(A) That an individual, on two or more occasions within a 24-month period prior to the filing of the petition, as a result of mental illness, has been hospitalized pursuant to the provisions of this chapter; or that the individual has been convicted of one or more crimes of violence against the person within a 24-month period prior to the filing of the petition and the individual’s failure to take prescribed medication or follow another prescribed regimen to treat a mental illness was a significant aggravating or contributing factor in the circumstances surrounding the crime;

(B) That the individual’s previous hospitalizations due to mental illness or the individual’s crime of violence occurred after or as a result of the individual’s failure to take medication or other treatment as prescribed by a physician to treat the individual’s mental illness; and

(C) That the individual, in the absence of a court order requiring him or her to take medication or other treatment as prescribed, is unlikely to do so and that his or her failure to take medication or follow other regimen or treatment as prescribed is likely to lead to further instances in the reasonably near future in which the individual becomes likely to cause serious harm or commit a crime of violence against the person.

(2) Upon the filing of a petition seeking a treatment compliance order and the petition’s review by a circuit judge or mental hygiene commissioner, counsel shall be appointed for the individual if the individual does not already have counsel and a copy of the petition and all supporting evidence shall be furnished to the individual and their counsel. If the
72 circuit judge or mental hygiene commissioner determines on
73 the basis of the petition that it is necessary to protect the
74 individual or to secure their examination, a detention order may
75 be entered ordering that the individual be taken into custody
76 and examined by a psychiatrist or licensed psychologist. A
77 hearing on the allegations in the petition, which may be
78 combined with a hearing on a probable cause petition con-
79 ducted pursuant to the provisions of section two of this article
80 or a final commitment hearing conducted pursuant to the
81 provisions of section four of this article, shall be held before a
82 circuit judge or mental hygiene commissioner. If the individ-
83 ual is taken into custody and remains in custody as a result of
84 a detention order, the hearing shall be held within forty-eight
85 hours of the time that the individual is taken into custody.

(3) If the allegations in the petition seeking a treatment
86 compliance order are proved by the evidence adduced at the
87 hearing, which must include expert testimony by a psychiatrist
88 or licensed psychologist, the circuit judge or mental hygiene
89 commissioner may enter a treatment compliance order for a
90 period not to exceed six months upon making the following
91 findings:

(A) That the individual is eighteen years of age or older;

(B) That on two or more occasions within a 24-month
94 period prior to the filing of the petition an individual, as a
95 result of mental illness, has been hospitalized pursuant to the
96 provisions of this chapter; or that on at least one occasion
97 within a 24-month period prior to the filing of the petition has
98 been convicted of a crime of violence against any person;

(C) That the individual’s previous hospitalizations due to
99 mental illness occurred as a result of the individual’s failure to
100 take prescribed medication or follow a regimen or course of
101 treatment as prescribed by a physician or psychiatrist to treat
the individual’s mental illness; or that the individual has been
convicted for crimes of violence against any person and the
individual’s failure to take medication or follow a prescribed
regimen or course of treatment of the individual’s mental
illness was a significant aggravating or contributing factor in
the commission of the crime;

(D) That a psychiatrist or licensed psychologist who has
personally examined the individual within the preceding
twenty-four months has issued a written opinion that the
individual, without the aid of the medication or other pre-
scribed treatment, is likely to cause serious harm to himself or
herself or to others;

(E) That the individual, in the absence of a court order
requiring him or her to take medication or other treatment as
prescribed, is unlikely to do so and that his or her failure to
take medication or other treatment as prescribed is likely to
lead to further instances in the reasonably near future in which
the individual becomes likely to cause serious harm or commit
a crime of violence against any person;

(F) That, where necessary, a responsible entity or individ-
ual is available to assist and monitor the individual’s compli-
ance with an order requiring the individual to take the medica-
tion or follow other prescribed regimen or course of treatment;

(G) That the individual can obtain and take the prescribed
medication or follow other prescribed regimen or course of
treatment without undue financial or other hardship; and

(H) That, if necessary, a medical provider is available to
assess the individual within forty-eight hours of the entry of the
treatment compliance order.

(4) The order may require an individual to take medication
and treatment as prescribed and if appropriate to attend
135 scheduled medication and treatment-related appointments: 
136 Provided, That a treatment compliance order shall be subject 
137 to termination or modification by a circuit judge or mental 
138 hygiene commissioner if a petition is filed seeking termination 
139 or modification of the order and it is shown in a hearing on the 
140 petition that there has been a material change in the circum-
141 stances that led to the entry of the original order that justifies 
142 the order's modification or termination: Provided, however, 
143 That a treatment compliance order may be extended by a 
144 circuit judge or mental hygiene commissioner for additional 
145 periods of time not to exceed six months, upon the filing of a 
146 petition seeking an extension and after a hearing on the petition 
147 or upon the agreement of the individual. 

148 (5)(A) After the entry of a treatment compliance order in 
149 accordance with the provisions of subdivisions (3) and (4), 
150 subsection (b) of this section, if a verified petition is filed 
151 alleging that an individual has not complied with the terms of 
152 a medication and treatment compliance order and if a circuit 
153 judge or mental hygiene commissioner determines from the 
154 petition and any supporting evidence that there is probable 
155 cause to believe that the allegations in the petition are true, 
156 counsel shall be appointed for the individual and a copy of the 
157 petition and all supporting evidence shall be furnished to the 
158 individual and his or her counsel. If the circuit judge or mental 
159 hygiene commissioner considers it necessary to protect the 
160 individual or to secure his or her examination, a detention order 
161 may be entered to require that the individual be examined by 
162 a psychiatrist or psychologist. A hearing on the allegations in 
163 the petition, which may be combined with a hearing on a 
164 probable cause petition conducted pursuant to section two of 
165 this article or a final commitment hearing conducted pursuant 
166 to section four of this article, shall be held before a circuit 
167 judge or mental hygiene commissioner. If the individual is 
168 taken and remains in custody as a result of a detention order,
the hearing shall be held within forty-eight hours of the time that the individual is taken into custody.

(B) At a hearing on any petition filed pursuant to the provisions of paragraph (A), subdivision (5), subsection (b) of this section, the circuit judge or mental hygiene commissioner shall determine whether the individual has complied with the terms of the medication and treatment compliance order. If the individual has complied with the order, the petition shall be dismissed: Provided, That if the evidence presented to the circuit judge or mental hygiene commissioner shows that the individual has complied with the terms of the existing order, but the individual’s prescribed medication, dosage or course of treatment needs to be modified, then the newly modified medication and treatment prescribed by a psychiatrist who personally examined the individual may be properly incorporated into a modified order. If the order has not been complied with, the circuit judge or mental hygiene commissioner, after inquiring into the reasons for noncompliance and whether any aspects of the order should be modified, may continue the individual upon the terms of the original order and direct the individual to comply with the order or may modify the order in light of the evidence presented at the hearing. If the evidence shows that the individual at the time of the hearing is likely to cause serious harm to himself, herself or others as a result of the individual’s mental illness, the circuit judge or mental hygiene commissioner may convert the proceeding into a probable cause proceeding and enter a probable cause order directing the involuntary admission of the individual to a mental health facility for examination and treatment: Provided, however, That all applicable due process and hearing requirements of contained in sections two and three of this article have been fully satisfied.

(c) (1) The modified procedures may authorize that upon the certification of a qualified mental health professional, as
described in subdivision (2) of this subsection, that there is probable cause to believe that an individual who has been hospitalized two or more times in the previous twenty-four months because of mental illness is likely to cause serious harm to himself, herself or to others as a result of the mental illness if not immediately restrained and that the best interests of the individual would be served by immediate hospitalization, a circuit judge, mental hygiene commissioner or designated magistrate may enter a temporary probable cause order directing the involuntary hospitalization of the individual at a mental health facility for immediate examination and treatment.

(2) The modified procedures may authorize the chief judge of a judicial circuit, or circuit judge if there is no chief judge, to enter orders authorizing specific psychiatrists or licensed psychologists, whose qualifications and training have been reviewed and approved by the Supreme Court of Appeals, to issue certifications that authorize and direct the involuntary admission of an individual subject to the provisions of this section on a temporary probable cause basis to a mental health facility for examination and treatment: Provided, That the authorized psychiatrist or licensed psychologist must conclude and certify based on personal observation prior to certification that the individual is mentally ill and, because of such mental illness, is imminently likely to cause serious harm to himself or herself or to others if not immediately restrained and promotion of the best interests of the individual requires immediate hospitalization. Immediately upon certification, the psychiatrist or licensed psychologist shall provide notice of the certification to a circuit judge, mental hygiene commissioner or designated magistrate in the county where the individual resides.

(3) No involuntary hospitalization pursuant to a temporary probable cause determination issued pursuant to the provisions
of this section shall continue in effect for more than forty-eight hours without the filing of a petition for involuntary hospitalization and the occurrence of a probable cause hearing before a circuit judge, mental hygiene commissioner or designated magistrate. If at any time the chief medical officer of the mental health facility to which the individual is admitted determines that the individual is not likely to cause serious harm as a result of mental illness, the chief medical officer shall discharge the individual and immediately forward a copy of the individual's discharge to the circuit judge, mental hygiene commissioner or designated magistrate.

CHAPTER 161

(Com. Sub. for S. B. 147 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-2-212 of said code; to amend and reenact §60A-3-308 of said code; to amend and reenact §60A-4-401 and §60A-4-409 of said code; to amend and reenact §60A-9-4 and §60A-9-5 of said code; and to amend said code by adding thereto a new article, designated §60A-10-1, §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7, §60A-10-8, §60A-10-9, §60A-10-10, §60A-10-11, §60A-10-12, §60A-10-13, §60A-10-14 and §60A-10-15, all relating to limiting the purchase of substances used in the production of methamphetamine; providing that certain
substances containing ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of optical isomers are Schedule V substances; excepting Schedule V penalties from penalties of this act; providing legislative findings; defining terms; limiting access to such substances; providing procedures for purchasing such substances from pharmacists or pharmacy technicians; providing for the registration of every wholesaler, manufacturer or distributor of certain drug products containing such substances; providing for a supplemental list of drug products used in methamphetamine production; authorizing promulgation of rules; adding ephedrine, pseudoephedrine and phenylpropanolamine to controlled substances subject to controlled substances monitoring; requiring certain persons to report methamphetamine-related injuries; criminalizing exposure of children to methamphetamine production; criminalizing exposure and harm to first responders; creating offense of improper storage of anhydrous ammonia; allowing the State Police to leverage grant funds; requiring reporting by the State Police to the Legislative Oversight Commission on Health and Human Resources; and providing penalties.

Be it enacted by the Legislature of West Virginia:

That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §60A-2-212 of said code be amended and reenacted; that §60A-3-308 of said code be amended and reenacted; that §60A-4-401 and §60A-4-409 of said code be amended and reenacted; that §60A-9-4 and §60A-9-5 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §60A-10-1, §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7, §60A-10-8, §60A-10-9, §60A-10-10, §60A-10-11, §60A-10-12, §60A-10-13, §60A-10-14 and §60A-10-15, all to read as follows:
Article
1. Definitions.
2. Standards and Schedules.
3. Regulation of Manufacture, Distribution and Dispensing of Controlled Substances.
4. Offenses and Penalties.
9. Controlled Substances Monitoring.
10. Methamphetamine Laboratory Eradication Act.

ARTICLE 1. DEFINITIONS.


As used in this act:

(a) "Administer" means the direct application of a controlled substance whether by injection, inhalation, ingestion or any other means to the body of a patient or research subject by:

(1) A practitioner (or, in his presence, by his authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States Department of Justice" or its successor agency.

(d) "Controlled substance" means a drug, substance or immediate precursor in Schedules I through V of article two.
(e) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(f) "Imitation controlled substance" means: (1) A controlled substance which is falsely represented to be a different controlled substance; (2) a drug or substance which is not a controlled substance but which is falsely represented to be a controlled substance; or (3) a controlled substance or other drug or substance or a combination thereof which is shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed or priced so as to cause a reasonable person to believe that it is a controlled substance.

(g) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of: (1) A controlled substance, whether or not there is an agency relationship; (2) a counterfeit substance; or (3) an imitation controlled substance.

(h) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver, other than by administering or dispensing, a controlled substance, a counterfeit substance or an imitation controlled substance.
(k) "Distributor" means a person who distributes.

(l) "Drug" means: (1) Substances recognized as drugs in the official "United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States or official National Formulary", or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2) or (3) of this subdivision. It does not include devices or their components, parts or accessories.

(m) "Immediate precursor" means a substance which the "West Virginia Board of Pharmacy" (hereinafter in this act referred to as the State Board of Pharmacy) has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
81 (2) By a practitioner, or by his authorized agent under his
82 supervision, for the purpose of, or as an incident to, research,
83 teaching or chemical analysis and not for sale.

84 (o) "Marijuana" means all parts of the plant "Cannabis
85 sativa L.", whether growing or not; the seeds thereof; the resin
86 extracted from any part of the plant; and every compound,
87 manufacture, salt, derivative, mixture or preparation of the
88 plant, its seeds or resin. It does not include the mature stalks of
89 the plant, fiber produced from the stalks, oil or cake made from
90 the seeds of the plant, any other compound, manufacture, salt,
91 derivative, mixture or preparation of the mature stalks (except
92 the resin extracted therefrom), fiber, oil or cake, or the steril-
93 ized seed of the plant which is incapable of germination.

94 (p) "Narcotic drug" means any of the following, whether
95 produced directly or indirectly by extraction from substances
96 of vegetable origin or independently by means of chemical
97 synthesis, or by a combination of extraction and chemical
98 synthesis:

99 (1) Opium and opiate and any salt, compound, derivative
100 or preparation of opium or opiate.

101 (2) Any salt, compound, isomer, derivative or preparation
102 thereof which is chemically equivalent or identical with any of
103 the substances referred to in paragraph (1) of this subdivision,
104 but not including the isoquinoline alkaloids of opium.

105 (3) Opium poppy and poppy straw.

106 (4) Coca leaves and any salt, compound, derivative or
107 preparation of coca leaves and any salt, compound, isomer,
108 derivative or preparation thereof which is chemically equiva-
109 lent or identical with any of these substances, but not including
decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section two hundred one, article two of this chapter, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does not include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the species "Papaver somniferum L.", except its seeds.

(s) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(t) "Placebo" means an inert medicament or preparation administered or dispensed for its psychological effect, to satisfy a patient or research subject or to act as a control in experimental series.

(u) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(v) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.
(2) A pharmacy, hospital or other institution licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

(w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

(x) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof and any area subject to the legal authority of the United States of America.

(y) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-212. Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. — Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Buprenorphine.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture or preparation containing
any of the following narcotic drugs or their salts calculated as
the free anhydrous base or alkaloid in limited quantities as set
forth below, which shall include one or more nonnarcotic
active medicinal ingredients in sufficient proportion to confer
upon the compound, mixture or preparation valuable medicinal
qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100
milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per
100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per
100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not
less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100
milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less
than 25 micrograms of atropine sulfate per dosage unit.

(d) Stimulants. — Unless specifically exempted or ex-
cluded or unless listed in another schedule, any material,
compound, mixture or preparation which contains any quantity
of the following substances having a stimulant effect on the
central nervous system, including its salts, isomers and salts of
isomers:

(1) Pyrovalerone.

(e) Any compound, mixture or preparation containing as its
single active ingredient ephedrine, pseudoephedrine or
phenylpropanolamine, their salts or optical isomers, or salts of
optical isomers except products which are for pediatric use primarily intended for administration to children under the age of twelve.

ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

§60A-3-308. Prescriptions.

(a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the said appropriate department, board or agency, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescription shall be retained in conformity with the requirements of section three hundred six of this article. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under appropriate state or federal statute, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) (1) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medicinal purpose: Provided, That buprenorphine shall be dispensed only by prescription pursuant to subsections (a), (b) and (c) of this section: Provided, however, That the controlled substances included in subsection (c), section two hundred twelve, article
two of this chapter shall be dispensed, sold or distributed only by a physician, in a pharmacy by a pharmacist or pharmacy technician, or health care professional.

(2) If the substance described in subsection (e), section two hundred twelve, article two of this chapter is dispensed, sold or distributed in a pharmacy:

(A) The substance shall be dispensed, sold or distributed only by a pharmacist or a pharmacy technician; and

(B) Any person purchasing, receiving or otherwise acquiring any such substance shall produce a photographic identification issued by a state or federal governmental entity reflecting his or her date of birth.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

§60A-4-409. Prohibited acts — Transportation of controlled substances into state; penalties.

§60A-4-401. Prohibited acts A; penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other controlled substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be
imprisoned in the state correctional facility for not less than one year nor more than fifteen thousand dollars, or both;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen years, or fined not more than twenty-five thousand dollars, or both;

(ii) Any other counterfeit substance classified in Schedule I, II or III is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than five years, or fined not more than fifteen thousand dollars, or both;
(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under section four hundred seven of this article, subject to the limitations specified in said section, or upon conviction, such person may be confined in jail not less than ninety days nor more than six months, or fined not more than one thousand dollars, or both: Provided, That notwithstanding any other provision of this act to the contrary, any first offense for possession of less than 15 grams of marijuana shall be disposed of under said section.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute or deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess or sell or otherwise transfer any equipment with the intent that such equipment shall be used to
apply a trademark, trade name, or other identifying mark, 
imprint, number or device, or any likeness thereof, upon a 
counterfeit substance, an imitation controlled substance, or the 
container or label of a counterfeit substance or an imitation 
controlled substance.

(3) Any person who violates this subsection is guilty of a 
misdemeanor and, upon conviction, may be imprisoned in jail 
for not less than six months nor more than one year, or fined 
not more than five thousand dollars, or both. Any person being 
eighteen years old or more who violates subdivision (1) of this 
subsection and, in so doing, distributes or delivers an imitation 
controlled substance to a minor child who is at least three years 
younger than such person is guilty of a felony and, upon 
conviction, may be imprisoned in the state correctional facility 
for not less than one year nor more than three years, or fined 
not more than ten thousand dollars, or both.

(4) The provisions of subdivision (1) of this subsection 
shall not apply to a practitioner who administers or dispenses 
a placebo.

§60A-4-409. Prohibited acts — Transportation of controlled 
substances into state; penalties.

(a) Except as otherwise authorized by the provisions of this 
code, it shall be unlawful for any person to transport into this 
state a controlled substance with the intent to deliver the same 
or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, 
which is a narcotic drug, shall be guilty of a felony and, upon 
conviction, may be imprisoned in the state correctional facility 
for not less than one year nor more than fifteen years, or fined 
not more than twenty-five thousand dollars, or both;
(2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than fifteen thousand dollars, or both;

(3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction, may be imprisoned in the state correctional facility for not less than one year nor more than three years, or fined not more than ten thousand dollars, or both;

(4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction, may be confined in jail for not less than six months nor more than one year, or fined not more than five thousand dollars, or both: Provided, That for offenses relating to any substance classified as Schedule V in article ten of this chapter, the penalties established in said article apply.

(c) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

§60A-9-5. Confidentiality; limited access to records; period of retention; no civil liability for required reporting.

§60A-9-4. Required information.

(a) Whenever a medical services provider dispenses a controlled substance listed in the provisions of section two hundred six, article two of this chapter or whenever a prescription for the controlled substance is filled by: (i) A pharmacist or pharmacy in this state; (ii) a hospital, or other health care
facility, for out-patient use; or (iii) a pharmacy or pharmacist
licensed by the Board of Pharmacy, but situated outside this
state for delivery to a person residing in this state, the medical
services provider, health care facility, pharmacist or pharmacy
shall, in a manner prescribed by rules promulgated by the
Board of Pharmacy under this article, report the following
information, as applicable:

(1) The name, address, pharmacy prescription number and
Drug Enforcement Administration controlled substance
registration number of the dispensing pharmacy;

(2) The name, address and birth date of the person for
whom the prescription is written;

(3) The name, address and Drug Enforcement Administra-
tion controlled substances registration number of the practitio-
ners writing the prescription;

(4) The name and national drug code number of the
Schedule II, III and IV controlled substance dispensed;

(5) The quantity and dosage of the Schedule II, III and IV
controlled substance dispensed;

(6) The date the prescription was filled; and

(7) The number of refills, if any, authorized by the pre-
scription.

(b) The Board of Pharmacy may prescribe by rule promul-
gated under this article the form to be used in prescribing a
Schedule II, III and IV substance if, in the determination of the
Board, the administration of the requirements of this section
would be facilitated.
(c) Products regulated by the provisions of article ten of this chapter shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.

(d) Reporting required by this section is not required for a drug administered directly to a patient or a drug dispensed by a practitioner at a facility licensed by the state: Provided, That the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of seventy-two hours with no greater than two 72-hour cycles in any fifteen-day period of time.

§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 Administration, duly authorized agents of the Bureau for Medical Services and the Workers' Compensation Commission, 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.

ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION
ACT.

§60A-10-1. Short title.
§60A-10-2. Purpose; findings.
§60A-10-3. Definitions.
§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used
as precursor to manufacture of methamphetamine or another
controlled substance; offenses; exceptions; penalties.
§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products;
penalties.
§60A-10-6. Registration to sell, manufacture or distribute products; rule-making
authority.
§60A-10-7. Restricted products; rule-making authority.
§60A-10-8. Reporting requirements; confidentiality.
§60A-10-9. Persons mandated to report suspected injuries related to methamphet-
amine production; failure to report; penalty.
§60A-10-10. Authority of the Superintendent of the State Police to leverage grant
funds.
§60A-10-11. Reporting to the Legislative Oversight Commission on Health and
Human Resources Accountability.
§60A-10-12. Exposure of children to methamphetamine manufacturing; penalties.
§60A-10-13. Exposure of first responders to manufacture methamphetamine;
penalties.
§60A-10-15. Iodine solution greater than 1.5 percent; prescription or permit required;
offenses; penalties.

§60A-10-1. Short title.
§60A-10-2. Purpose; findings.

The Legislature finds:

(a) That the illegal production and distribution of methamphetamine is an increasing problem nationwide and particularly prevalent in rural states such as West Virginia.

(b) That methamphetamine is a highly addictive drug that can be manufactured in small and portable laboratories. These laboratories are operated by individuals who manufacture the drug in a clandestine and unsafe manner, often resulting in explosions and fires that can injure not only the individuals involved, but their families, neighbors, law-enforcement officers and firemen.

(c) That use of methamphetamine can result in fatal kidney and lung disorders, brain damage, liver damage, blood clots, chronic depression, hallucinations, violent and aggressive behavior, malnutrition, disturbed personality development, deficient immune system and psychosis. Children born to mothers who are abusers of methamphetamine can be born addicted and suffer birth defects, low birth weight, tremors, excessive crying, attention deficit disorder and behavior disorders.

(d) That in addition to the physical consequences to an individual who uses methamphetamine, usage of the drug also produces an increase in automobile accidents, explosions and fires, increased criminal activity, increased medical costs due to emergency room visits, increases in domestic violence, increased spread of infectious diseases and a loss in worker productivity.
(e) That environmental damage is another consequence of the methamphetamine epidemic. Each pound of methamphetamine produced leaves behind five to six pounds of toxic waste. Chemicals and byproducts that result from the manufacture of methamphetamine are often poured into plumbing systems, storm drains or directly onto the ground. Clean up of methamphetamine laboratories is extremely resource-intensive, with an average remediation cost of five thousand dollars.

(f) That it is in the best interest of every West Virginian to develop a viable solution to address the growing methamphetamine problem in the State of West Virginia. The Legislature finds that restricting access to over-the-counter drugs used to facilitate production of methamphetamine is necessary to protect the public safety of all West Virginians.

(g) That it is further in the best interests of every West Virginian to create impediments to the manufacture of methamphetamine by requiring persons purchasing chemicals necessary to the process to provide identification.

§60A-10-3. Definitions.

1 In this article:

2 (a) “Board of Pharmacy” or “Board” means the West Virginia Board of Pharmacy established by the provisions of article five, chapter thirty of this code.

3   (b) “Designated precursor” means any drug product made subject to the requirements of this article by the provisions of section seven of this article.

4   (c) “Distributor” means any person within this state or another state, other than a manufacturer or wholesaler, who sells, delivers, transfers or in any manner furnishes a drug product to any person who is not the ultimate user or consumer of the product;
(d) “Drug product” means a pharmaceutical product that contains as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or a substance identified on the supplemental list provided for in section seven of this article which may be sold without a prescription and which is labeled for use by a consumer in accordance with the requirements of the laws and rules of this state and the federal government.

(e) “Ephedrine” means ephedrine, its salts or optical isomers or salts of optical isomers.

(f) “Manufacturer” means any person within this state who produces, compounds, packages or in any manner initially prepares for sale or use any drug product or any such person in another state if they cause the products to be compounded, packaged or transported into this state.

(g) “Phenylpropanolamine” means phenylpropanolamine, its salts, optical isomers and salts of optical isomers.

(h) “Pseudoephedrine” means pseudoephedrine, its salts, optical isomers and salts of optical isomers.

(i) “Precursor” means any substance which may be used along with other substances as a component in the production and distribution of illegal methamphetamine.

(j) “Pharmacist” means an individual currently licensed by this state to engage in the practice of pharmacy and pharmaceutical care as defined in subsection (t), section one-b, article fifty, chapter thirty of this code.

(k) “Pharmacy” means any drugstore, apothecary or place within this state where drugs are dispensed and sold at retail or display for sale at retail and pharmaceutical care is provided
outside of this state where drugs are dispensed and pharmaceutical care is provided to residents of this state.

(l) "Pharmacy counter" means an area in the pharmacy restricted to the public where controlled substances are stored and housed and where controlled substances may only be sold, transferred or dispensed by a pharmacist or pharmacy technician.

(m) "Pharmacy technician" means a registered technician who meets the requirements for registration as set forth in article five, chapter thirty of this code.

(n) "Retail establishment" means any entity or person within this state who sells, transfers or distributes goods, including over-the-counter drug products, to an ultimate consumer.

(o) "Schedule V" means the schedule of controlled substances set out in section two hundred twelve, section two of this chapter.

(p) "Single active ingredient" means those ingredients listed on a drug product package as the only active ingredient in over-the-counter medication or identified on the Schedule maintained by the Board of Pharmacy as being primarily used in the illegal production and distribution of methamphetamine.

(q) "Superintendent of the State Police" or "Superintendent" means the Superintendent of the West Virginia State Police as set forth in section five, article two, chapter fifteen of this code.

(r) "Wholesaler" means any person within this state or another state, other than a manufacturer, who sells, transfers or in any manner furnishes a drug product to any other person in this state for the purpose of being resold.
§60A-10-4. Purchase, receipt, acquisition and possession of substances to be used as precursor to manufacture of methamphetamine or another controlled substance; offenses; exceptions; penalties.

(a) Any person who within any thirty-day period knowingly purchases, receives or otherwise possesses more than three packages of a drug product containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or more than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine in any form shall be guilty of a misdemeanor and, upon conviction, shall be confined in a jail for not more than one year, fined not more than one thousand dollars, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, any person convicted of a second or subsequent violation of the provisions of said subsection or a statute or ordinance of the United States or another state which contains the same essential elements shall be guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than twenty-five thousand dollars, or both.

(c) The provisions of subsection (a) of this section shall not apply to:

(1) Drug products which are for pediatric use primarily intended for administration to children under the age of twelve;

(2) Drug products which have been determined by the Board of Pharmacy to be in a form which is unamenable to being used for the manufacture of methamphetamine;

(3) Persons lawfully possessing drug products in their capacities as distributors, wholesalers, manufacturers, pharma-
(d) Notwithstanding any provision of this code to the contrary, any person who knowingly possesses any amount of ephedrine, pseudoephedrine, phenylpropanolamine or other designated precursor with the intent to use it in the manufacture of methamphetamine or who knowingly possesses a substance containing ephedrine, pseudoephedrine or phenylpropanolamine or their salts, optical isomers or salts of optical isomers in a state or form which is, or has been altered or converted from the state or form in which these chemicals are, or were, commercially distributed shall be guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than two nor more than ten years, fined not more than twenty-five thousand dollars, or both.

(e) (1) Any pharmacy, wholesaler, manufacturer or distributor of drug products containing as their single active ingredient ephedrine, pseudoephedrine, phenylpropanolamine, their salts or optical isomers or salts of optical isomers or other designated precursor shall obtain a registration annually from the State Board of Pharmacy as described in section six of this article. Any such pharmacy, wholesaler, manufacturer or distributor shall keep complete records of all sales and transactions as provided in section eight of this article. The records shall be gathered and maintained pursuant to legislative rule promulgated by the Board of Pharmacy.

(2) Any drug products possessed without a registration as provided in this section are subject to forfeiture upon conviction for a violation of this section.

(3) In addition to any administrative penalties provided by law, any violation of this subsection is a misdemeanor,
punishable upon conviction by a fine in an amount not more
than ten thousand dollars.

§60A-10-5. Restrictions on the sale, transfer or delivery of cer-
tain drug products; penalties.

(a) No pharmacy or individual may display, offer for sale
or place a drug product containing as its single active ingredi-
ent ephedriæ, pseudoephedrine or phenylpropanolamine or
other designated precursor where the public may freely access
the drug product. All such drug products or designated
precursors shall be placed behind a pharmacy counter where
access is restricted to a pharmacist, a pharmacy technician or
other pharmacy employee.

(b) All storage of drug products regulated by the provisions
of this section shall be in a controlled and locked access
location that is not accessible by the general public and shall
maintain strict inventory control standards and complete
records of quantity of the product maintained in bulk form.

(c) No pharmacy shall sell, deliver or provide any drug
product regulated by the provisions of this section to any
person who is under the age of eighteen.

(d) If a drug product regulated by the provisions of this
section is transferred, sold or delivered, the individual, phar-
mary or retail establishment transferring, selling or delivering
the drug product shall require the person purchasing, receiving
or otherwise acquiring the drug product to:

(1) Produce a government-issued photo identification
showing his or her date of birth; and

(2) Sign a form containing the information set forth in
subsection (b), section eight of this article and attesting to the
validity of such information. Any person who knowingly
makes a false representation or statement pursuant to the requirements of this section shall be guilty of a misdemeanor and, upon conviction, be confined in a jail for not more than six months, fined not more than five thousand dollars, or both.

(e) This section does not apply to drug products that are dispensed pursuant to a prescription, are pediatric products primarily intended for administration, according to label instructions, to children under twelve years of age.

(f) Any violation of this section is a misdemeanor, punishable upon conviction by a fine in an amount not more than ten thousand dollars.

§60A-10-6. Registration to sell, manufacture or distribute products; rule-making authority.

The State Board of Pharmacy shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to require that every wholesaler, manufacturer or distributor of any drug product containing as their single active ingredient ephedrine or pseudoephedrine or a substance identified on the supplemental list provided for in section seven of this article shall obtain a registration and permit issued by the State Board of Pharmacy to sell, distribute or transfer the product containing as their single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine.

§60A-10-7. Restricted products; rule-making authority.

(a) On or before the first day of July, two thousand five, the Board of Pharmacy shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement a program wherein the Board of Pharmacy shall consult with the Superintendent of the State
Police in identifying drug products which are a designated precursor, in addition to those that contain as their single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, that are commonly being used in the production and distribution of methamphetamine. Those drug products which the Superintendent of the State Police have demonstrated by empirical evidence are commonly used in the manufacture of methamphetamine shall be added to a supplemental list of controlled substances listed in subsection (e), section two hundred twelve, article two of this chapter and shall be subject to all of the restrictions of this article. These rules established pursuant to this section shall include:

(1) A process whereby pharmacies are made aware of all drug products that contain as their single active ingredient ephedrine, pseudoephedrine and phenylpropanolamine that will be listed as a Schedule V substance and must be sold, transferred or dispensed from behind a pharmacy counter;

(2) A process whereby pharmacies and retail establishments are made aware additional drug products added to Schedule V that are required to be placed behind the pharmacy counter for sale, transfer or distribution can be periodically reviewed and updated.

(b) At any time after the first day of July, two thousand five, the Board of Pharmacy, upon the recommendation of the Superintendent of the State Police, shall promulgate emergency and legislative rules pursuant to the provision of article three, chapter twenty-nine-a of this code to implement an updated supplemental list of products containing the controlled substances ephedrine, pseudoephedrine or phenylpropanolamine as an active ingredient or any other drug used as a precursor in the manufacture of methamphetamine, which the Superintendent of the State Police has demonstrated by empirical evidence is being used in the manufacture of methamphetamine.
§60A-10-8. Reporting requirements; confidentiality.

(a) Whenever there is a sale, retail, transfer or distribution of any drug product referred to in subsection (e), section two hundred twelve, article two of this chapter or another designated precursor, the pharmacist or pharmacy technician making the sale, transfer or distribution shall report the following information for inclusion in the central repository established pursuant to article nine of this chapter:

1. The date of the transaction;
2. The name, address and driver's license or state-issued identification number of the person; and
3. The name, the quantity of packages and total gram weight of the product or products purchased, received or otherwise acquired.

(b) The information required by this section shall be the property of the state and a pharmacy shall have no duty to retain a copy of the information in any format once the information has been reported to the Board of Pharmacy as required by this section.

§60A-10-9. Persons mandated to report suspected injuries related to methamphetamine production; failure to report; penalty.

(a) When any medical, dental or mental health professional, Christian Science practitioner, religious healer or emergency medical services personnel has reason to believe that an injury is the direct result of exposure to the production of methamphetamine such person shall immediately, and not
more than forty-eight hours after such suspicion arises, report the circumstances or cause a report to be made to a state, county or local law-enforcement agency.

(b) Any person required by this section to report a suspected methamphetamine-related injury who knowingly and intentionally fails to do so or knowingly and intentionally prevents another person acting reasonably from doing so shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned in jail not more than ten days, or both fined and imprisoned.

§60A-10-10. Authority of the Superintendent of the State Police to leverage grant funds.

The Superintendent of the State Police is encouraged to leverage available grant funds from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions, make and sign any agreement to and perform any act that may be necessary to effectuate these grants. The grant funds shall be dedicated toward a drug court, to provide training programs to state and local prosecutors and law-enforcement agents for the investigation and prosecution of methamphetamine offenses and to enhance funding available to jails.

§60A-10-11. Reporting to the Legislative Oversight Commission on Health and Human Resources Accountability.

On or before the first day of December, two thousand five, the Superintendent of the West Virginia State Police shall submit a report including findings, conclusions and recommendations, together with drafts of any legislation necessary, to improve the effectiveness of a reduction in illegal methamphetamine production and distribution to the Legislative Oversight
§60A-10-12. Exposure of children to methamphetamine manufacturing; penalties.

(a) Any person eighteen years of age or older who knowingly causes or permits a minor to be present in a location where methamphetamine is manufactured or attempted to be manufactured is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for not less than one nor more than five years, fined not more than ten thousand dollars, or both.

(b) Notwithstanding the provisions of subsection (a) of this section, the penalty for a violation of said subsection when the child suffers serious bodily injury as such is defined in the provisions of section one, chapter eight-b of this code shall be confined in a state correctional facility for not less than three nor more than fifteen years, fined not more than twenty-five thousand dollars, or both.

§60A-10-13. Exposure of first responders to manufacture methamphetamine; penalties.

Any person who, as a result of or in the course of unlawfully and intentionally manufacturing methamphetamine, causes a police officer, probation officer, humane officer, emergency medical service personnel, firefighter, state fire marshal or employee, division of forestry employee, county correctional employee or state correctional employee acting in his or her official capacity to ingest, inhale or be dermally exposed to a chemical, product, by-product, residue or substance involved in the manufacture or attempted manufacture of such controlled substance, without prior knowledge of such, and thereby causes bodily injury to such persons, shall be
guilty of a felony and, upon conviction thereof, shall be fined not less than five hundred nor more than five thousand dollars and confined in a correctional facility for not less than one year nor more than five years. A violation of this section shall constitute a separate offense from the manufacture or attempt to manufacture methamphetamine.


(a) Any person who stores or conveys anhydrous ammonia in a container that:

(1) Is not approved by the United States Department of Transportation to hold anhydrous ammonia; or

(2) Was not constructed to meet state and federal industrial health and safety standards for holding anhydrous ammonia is guilty of a felony and, upon conviction, shall be confined in a state correctional facility for a determinate period not to exceed five years, fined not more than ten thousand dollars, or both.

(b) The provisions of this section shall not apply to persons authorized by federal or state law, rule or regulation to handle and dispose of hazardous waste or toxic substances while engaged in such conduct.

(c) Any damages arising out of the unlawful possession of, storage of or tampering with anhydrous ammonia equipment shall be the sole responsibility of the person or persons unlawfully possessing, storing or tampering with anhydrous ammonia. In no case shall liability for damages arising out of the unlawful possession of, storage of or tampering with anhydrous ammonia or anhydrous ammonia equipment extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor or seller of the anhydrous ammonia or anhydrous ammonia equipment, unless such damages arise out of the acts or omissions of the owner, installer, maintainer,
designer, manufacturer, possessor or seller that constitute negligent misconduct to abide by the laws regarding anhydrous ammonia possession and storage.

§60A-10-15. Iodine solution greater than 1.5 percent; prescription or permit required; offenses; penalties.

(a) A person may offer to sell, sell or distribute an iodine matrix only:

(1) As a prescription drug, pursuant to a prescription issued by a veterinarian or physician licensed within the state; or

(2) To a person who is actively engaged in the legal practice of animal husbandry of livestock, as defined in section eight, article one, chapter four of this code.

(b) Prescriptions issued under this section:

(1) Shall provide for a specified number of refills;

(2) May be issued by any means authorized by the Board of Pharmacy; and

(3) May be filled by a person other than the veterinarian or physician issuing the prescription.

(c) A person offering iodine matrix for sale:

(1) Shall store the iodine matrix so that the public does not have access to the iodine matrix without the direct assistance or intervention of a retail employee;

(2) Shall keep a record, which may consist of sales receipts of each person purchasing iodine matrix; and

(3) Shall, if necessary to ascertain the identity of the purchaser, ask for proof of identification from the purchaser.
(d) A person engaging in a regulated transaction pursuant to the provisions of subsection (a) of this section is guilty of a misdemeanor if he or she offers to sell, sells or distributes an iodine matrix to a person who:

(1) Does not present a prescription or is not engaged in animal husbandry, as required under subsection (a) of this section; or

(2) Is not excepted under subsection (g) of this section.

(e) A person is guilty of a misdemeanor who:

(1) Possesses an iodine matrix without proof of obtaining the solution in compliance with subsection (a) of this section; or

(2) Offers to sell, sells or distributes an iodine matrix in violation of said subsection.

(f) The provisions of subdivision (1), subsection (e) of this section do not apply to:

(1) A chemistry or chemistry-related laboratory maintained by:

(A) A public or private regularly established secondary school; or

(B) A public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(2) A veterinarian licensed to practice pursuant to the provisions of article ten, chapter thirty of this code;

(3) A health care facility; or
(g) As used in this section, “iodine matrix” means iodine at a concentration greater than 1.5 percent, by weight, in a matrix or solution.
(a)(1) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater in order to record the motion picture that is being exhibited, without the written consent of the motion picture theater owner, and with intent to distribute, or cause the distribution of, multiple copies of the motion picture, for pecuniary gain, is guilty of a felony, and upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned in a correctional facility for not more than one nor more than ten years, or both fined and imprisoned.

(2) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater in order to record the motion picture that is being exhibited, without the written consent of the motion picture theater owner, and with intent to distribute, or cause the distribution of, multiple copies of the motion picture, but not for pecuniary gain, is guilty of a felony, and upon conviction thereof, shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in a correctional facility for not less than one year nor more than three years, or both fined and imprisoned, or, in the discretion of the court, be confined in a regional jail not more than one year and fined not more than one thousand dollars.

(3) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater in order to record the motion picture that is being exhibited, without the written consent of the motion picture theater owner, and without the intent to distribute, or cause the distribution of, multiple copies of the motion picture, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one hundred dollars.

(4) Any person who commits the acts described in subdivision (1) of this subsection is civilly liable for actual damages
arising from his or her distribution of copies of the motion
picture. A conviction for the offense described in subdivision
(1) of this subsection is not a prerequisite to the maintenance of
a civil action authorized by this subdivision.

(b) The term “audiovisual recording function” means the
capability of a device to record or transmit a motion picture or
any part thereof by means of any technology now known or
later developed.

(c) The term “motion picture theater” means a movie
theater, screening room, or other venue that is being utilized
primarily for the exhibition of a motion picture at the time of
the offense.

(d) The owner or lessee of a motion picture theater, or the
authorized agent or employee of the owner or lessee, who alerts
law-enforcement authorities of an alleged violation of this
section shall not be liable in any civil action arising out of
measures taken by the owner, lessee, agent or employee in the
course of subsequently detaining a person that the owner,
lessee, agent or employee in good faith believed to have
violated this section while awaiting the arrival of law-enforce-
ment authorities, unless the plaintiff can show by clear and
convincing evidence that such measures were manifestly
unreasonable or the period of detention was unreasonably long.

(e) This section does not prevent any lawfully authorized
investigative, law enforcement protective, or intelligence
gathering employee or agent, of the local, state or federal
government, from operating any audiovisual recording device
in a motion picture theater, as part of lawfully authorized
investigative, protective, law enforcement, or intelligence
gathering activities.

(f) Nothing in this section prevents prosecution, instead,
under any other provision of law providing for greater penalty.
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §47-17-1, relating to providing that a purchaser of motor fuel may by contract delay payment of reimbursement of federal taxes due on the motor fuel purchase to the vendor until one day before the federal taxes are due from the vendor.

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 §47-17-1, to read as follows:

ARTICLE 17. REGULATION OF MOTOR FUEL CONTRACTS.

§47-17-1. Contracts for the payment of manufactures’ excise taxes.

(a) If a contract requires one party to reimburse another party for taxes levied under Part III of Subchapter A of Chapter 32 of the federal Internal Revenue Code, the party making the reimbursement, at its option, shall not be required to reimburse the other party more than one business day before the other party is required to remit the taxes to the Internal Revenue Service.
(b) If a party chooses to exercise its option under subsection (a) of this section, and provision is not already provided in the contract, the party shall notify the other party in writing of its intention. The option may not be exercised until at least thirty days after the written notification or the beginning of the next federal tax quarter, whichever is later.

(c) The party to be reimbursed under subsection (a) of this section may require security from the reimbursing party for the payment of the taxes in proportion to the amount the taxes represent compared to the security required on the contract as a whole. The party to be reimbursed shall not change other payment terms of the contract due to the timing of the tax reimbursement, but may require the taxes to be reimbursed by electronic transfer of funds.

(d) This section applies to all continuing contracts now in effect that have no expiration date and all contracts entered into or renewed after the effective date of this section as enacted in two thousand five.
agreement; right of motor vehicle dealer to contest cancellation; grounds for contest of cancellation; effect of agreement pending judicial contest; stay of termination proceedings; conditions permitting cancellation; and effect on motor vehicle agreement of transfer of ownership.

Be it enacted by the Legislature of West Virginia:

That §17A-6A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLE­ SARERS AND MANUFACTURERS.


1 Notwithstanding any agreement, prior to the termination, cancellation, nonrenewal or discontinuance of any dealer agreement, the manufacturer or distributor shall furnish notice of the termination, cancellation, nonrenewal or discontinuance to the new motor vehicle dealer as follows:

2 (a) Except as otherwise provided in this section, notice shall be made not less than one hundred twenty days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance.

3 (b) Notice shall be by certified mail with restrictive delivery to the new motor vehicle dealer principal and shall contain the following:

4 (1) A statement of intention to terminate, cancel, not renew or discontinue the dealer agreement;

5 (2) A detailed written statement of all reasons for the termination, cancellation, nonrenewal or discontinuance. The statement shall include, at a minimum, a complete explanation
of each reason upon which the manufacturer or distributor relies to support its proposed action, along with all supporting documentation which is material to the proposed action and available to the manufacturer or distributor at the time of termination, cancellation, nonrenewal or discontinuance; and

(3) The date on which the termination, cancellation, nonrenewal or discontinuance takes effect.

(c) Notwithstanding subdivision (a) of this subsection, notice shall be made not less than thirty days prior to the effective date of the termination, cancellation, nonrenewal or discontinuance for any of the following reasons:

(1) Insolvency of the new motor vehicle dealer or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

(2) Failure of the new motor vehicle dealer to conduct his or her customary sales and service operations during his or her customary business hours for seven consecutive business days;

(3) Conviction of the new motor vehicle dealer or its principal owners of a crime, but only if the crime is punishable by imprisonment in excess of one year under the law under which the dealer was convicted or the crime involved theft, dishonesty or false statement regardless of the punishment;

(4) Revocation of a motor vehicle dealership license in accordance with section eighteen, article six of this chapter; or

(5) A fraudulent misrepresentation by the new motor vehicle dealer to the manufacturer or distributor, which is material to the dealer agreement.
(d) Notwithstanding subdivision (a) of this subsection, notice shall be made not less than twelve months prior to the effective date of a termination, cancellation, nonrenewal or discontinuance if a manufacturer or distributor discontinues production of the new motor vehicle dealer's product line or discontinues distribution of the product line in this state.

(e) Except as provided in subdivision (c) of this subsection, any motor vehicle dealer who receives a notice of intent to discontinue, cancel or not renew a dealer agreement may, within a one hundred twenty-day notice period, file a petition or complaint for a determination of whether such action is an unfair or prohibited discontinuation, cancellation or nonrenewal. Dealer agreements and certificates of appointment shall continue in effect until a final determination of the issues raised in such petition or complaint by the motor vehicle dealer. A discontinuance, cancellation or nonrenewal is unfair if it is:

(1) Not clearly permitted by the dealer agreement;

(2) Not undertaken for good cause; or

(3) Is based on an alleged breach of the franchise agreement which is not in fact a material and substantial breach.

(f) No replacement dealer shall be named for this point or location to engage in business and the dealer's agreement shall remain in effect until a final judgement is entered after all appeals are exhausted: Provided, That when a motor vehicle dealer appeals a decision upholding a discontinuation, cancellation or nonrenewal under subdivisions (f) and (g) of this section, the dealer agreement shall remain in effect pending exhaustion of all appeals only if the motor vehicle dealer establishes a likelihood of success on appeal and that the public
interest will not be harmed by keeping the dealer agreement in
effect pending entry of final judgement after such appeal.

(g) If a transfer of ownership is proposed after a notice to
discontinue, cancel or not renew a dealer agreement is received
but, prior to the final determination, including exhaustion of all
appellate remedies of a motor vehicle dealer's complaint or
petition contesting such action, the termination proceedings
shall be stayed, without bond, during the period the transfer is
being reviewed by the manufacturer or distributor. During the
period that the transfer is being reviewed by the manufacturer
or distributor, the dealer agreement shall remain in full force
and effect, and the motor vehicle dealer shall retain all rights
and remedies pursuant to the terms and conditions of the dealer
agreement and applicable law. This shall include, but is not
limited to, all rights of transfer under subdivision (2), section
ten, article six-a, chapter seventeen of this code until such time
as the manufacturer or distributor has accepted or rejected the
proposed transfer. If the proposed transfer is rejected, the
motor vehicle dealer shall retain all of its rights pursuant to
section sixteen of said article to a judicial determination as to
whether the manufacturer or distributor's rejection is in
compliance with the provisions of subdivision (2), section ten
of said article and during the pendency of such judicial
proceeding, and any related appellate proceedings, the termina-
tion proceedings shall remain stayed without bond, the dealer
agreement shall remain in full force and effect and the motor
vehicle dealer shall retain all rights and remedies pursuant to
the terms and conditions of the dealer agreement and applicable
law including all rights of transfer. If a transfer is approved by
the manufacturer or distributor or mandated by law, the
termination proceedings shall be dismissed with prejudice as
moot.
AN ACT to amend and reenact §17C-17A-3 and §17C-17A-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24A-1A-2 of said code, all relating to the regulation of the commercial transportation of coal; adding representatives to the commercial motor vehicle weight and safety enforcement advisory committee; authorizing the division to provide for special crossing permits by legislative rule; creating the Coal Resource Transportation Designation Committee and authorizing it to make recommendations to the Joint Committee on Government and Finance and to designate roads to the coal resource transportation road system under certain circumstances; and adding routes to the coal resource transportation road system in Braxton, Webster, Nicholas and Ohio counties.

Be it enacted by the Legislature of West Virginia:

That §17C-17A-3 and §17C-17A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24A-1A-2 of said code be amended and reenacted, all to read as follows:

Chapter
17C. Traffic Regulations and Laws of the Road.
24A. Commercial Motor Carriers.
ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTATION OF COAL.

§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 Braxton County, Braxton County route 19/29 from Mine 5 haulroad to intersection of county route 36/1, county route 36/1 to intersection of county route 36 and county route 36 to the Webster County line (Webster County route 9); in Ohio County, county route 1 from the intersection of county route 7 to intersection of Riley Delaplaine Road; 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 1/11, 16, 19, 19/2, 19/40, 20, 39, 41, 55 and 82; in Webster County, routes 9, 9/1, 9/2, 20, 32 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 commis-
sion 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.

(d) Notwithstanding any provisions of this code to the contrary, the division may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which would provide a process for approval by the commissioner of the division of a special crossing permit and renewals thereof. Special crossing permits authorized by this subsection would authorize the holder of the permit to operate or move a vehicle or combination of vehicles which exceed the maximum weight allowance specified in this chapter or are otherwise not in conformity with the provisions of this chapter on limited sections of public highways under specific circumstances specified in the permit: Provided, That no special crossing permit may allow the operation or movement of any vehicle or combination of vehicles on a public highway for more than one-half of a mile: Provided, however, That no special crossing permit may allow the operation or movement of any vehicle or combination of vehicles on a public highway if the Commissioner of the Division of Highways determines there is an existing alternate off-road route available. Each special crossing permit shall contain the specific section or mileage of the public highway where operation is authorized. Special crossing permits may not exceed a three-year period and may be renewed upon approval by the Commissioner of the Division of Highways as specified in legislative rule. The Commissioner of the Division may provide for fees for the processing of applications for special crossing permits. As a condition of approval of a special crossing permit, an applicant shall agree to pay for all actual expenditures incurred by the Department of Transportation for the upgrading or repair of the public highway, including traffic control devices, for which the applicant seeks the special crossing permit. In addition, all holders of special crossing permits shall pay for the restoration of the public highway to its
original condition after the permit has expired. The initial rule
filed by the division pursuant to this subsection shall be filed as
an emergency rule.

§17C-17A-12. Designating special coal resource transportation
roads, highways and bridges.

(a) From those counties and districts described in subsec-
tion (a), section three 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.

(e) Effective the first day of July, two thousand five, there is created the coal resource transportation designation committee, the purpose of which is to approve the designation of additional coal resource transportation roads pursuant to the provisions of this section: Provided, That the committee may only consider those applications for designation of roads, highways and bridges not located within those whole counties identified in section three of this article.

(f) The committee consists of the following members:

1. The Commissioner of Highways, or his or her designee;
(2) The Superintendent of the State Police, or his or her designee;

(3) One member who is representative of the coal industry, to be appointed by the Governor;

(4) One citizen member from the largest citizen action group, to be appointed by the Governor; and

(5) One member of the largest organization representing coal miners, to be appointed by the Governor.

(g) The Governor shall appoint members with the advice and consent of the Senate. Appointed members shall serve for terms of three years. No member may be appointed to serve more than two consecutive terms. The committee shall annually nominate from its members a chair, who shall hold office for one year.

(h) The public members of the committee may receive compensation for attendance at official meetings, not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law. Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner consistent with guidelines of the travel management office of the Department of Administration.

(i) The committee shall accept applications from any person for designation or decertification of public roads, highways and bridges, or segments thereof in any county in the state, which may be used as special coal haulage roads consistent with the authority contained in this article. The committee shall establish a process for the receipt and evaluation of public comment on the designations contained in applications: Provided, That, prior to any designation the committee shall first have held a public
hearing in the county wherein the public road, highway or bridge is located: Provided, however, That, where a public road, highway or bridge is located in more than one county, the hearing shall be conducted in the county containing the longest mileage under designation: Provided further, That prior to any public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal advertisement.

(j) Once an application has been approved by the committee and the public road, highway or bridge has become part of the coal resource transportation road system, such route must be used for coal haulage pursuant to the provisions of this article within one year of its designation. In the event any public road, highway or bridge that is part of the coal resource transportation road system ceases to be used for coal haulage for a period of time exceeding one year, then such route may be decertified by the committee upon application by any person: Provided, That prior to any decertification the committee shall first have held a public hearing in the county wherein the public road, highway, or bridge is located: Provided, however, That where a public road, highway or bridge is located in more than one county, the hearing shall be conducted in the county containing the longest mileage under decertification: Provided further, That prior to any public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal advertisement.

(k) Prior to rendering a final decision on any application for designation or decertification of a coal resource transportation road, the committee shall first report its findings and recommendations on each pending application to the Joint Committee on Government and Finance. The Joint Committee on Government and Finance may comment on the application which comments shall be considered by the committee. The committee may not make final any designation or decertification before thirty days after reporting its findings and recommendations on
121 an application to the Joint Committee on Government and
122 Finance.

123 (l) The coal resource transportation designation committee
124 created in this section shall report its activities to the Secretary
125 of Transportation who will provide the necessary staff to assist
126 the committee in the discharge of its functions pursuant to this
127 section.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

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

1 (a) There is created the commercial motor vehicle weight
2 and safety enforcement advisory committee, the purpose of
3 which is to study the implementation of the commercial motor
4 vehicle weight and safety enforcement program set forth in this
5 article.

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

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

9 (2) One member who is an employee of the Public Service
10 Commission, to be appointed by the Chairman of the Public
11 Service Commission;

12 (3) One member who is a state police officer, to be ap-
13 pointed by the Superintendent of the State Police;

14 (4) One member who is an employee of the Division of
15 Motor Vehicles, to be appointed by the Commissioner of Motor
16 Vehicles;
(5) One member who is an employee of the development office, to be appointed by the Governor;

(6) One member who is representative of the coal industry, to be appointed by the Governor;

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

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

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

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

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

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

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

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

(f) The public members of the committee may receive compensation for attendance at official meetings, not to exceed the amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law.
(g) Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner consistent with guidelines of the travel management office of the Department of Administration.

(h) On or before the first day of January, two thousand four, and each subsequent year thereafter, the committee shall submit to the Governor and to the Legislature a report of its recommendations for improving the effectiveness of the commercial vehicle weight and safety enforcement program.

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

CHAPTER 166

(Com. Sub. for H. B. 2417—By Delegates Amores and Kominar)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §17C-17-6a of the Code of West Virginia, 1931, as amended, relating to safe transport of compressed gas containers.

Be it enacted by the Legislature of West Virginia:
That §17C-17-6a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-6a. Vehicles transporting compressed gas containers.

1 It is unlawful for any person operating a vehicle transporting any container of compressed gas as a cargo or part of a cargo upon a highway in an open motor vehicle unless it is securely braced, equipped with an individual shutoff valve that must be tightly closed while in transit and its valves are protected by one of the following methods:

(1) By equipping the cylinder with securely attached metal caps of sufficient strength to protect valves from damage during transportation;

(2) By boxing or crating the cylinder with securely attached metal caps of sufficient strength so as to protect valves from damage during transportation; or

(3) By constructing the cylinder so that the valve is recessed into the cylinder or otherwise protected to the extent that it will not be subjected to a blow when the container is dropped onto a flat surface.

The requirements of this section are not applicable to propane gas used for household purposes or to respiratory health care products in use by the person operating the vehicle.

The Commissioner of the Division of Highways is hereby authorized and directed to propose a legislative rule governing the transportation of compressed gas containers by vehicles upon the highways for promulgation in accordance with the provisions of chapter twenty-nine-a of this code.
AN ACT to amend and reenact §17C-17-9a of the Code of West Virginia, 1931, as amended, relating to the regulation of truck trailer weights; providing for single unit trucks having one steering axle and four axles in quadem and setting a seventy-three thousand pound gross weight limit with a tolerance of ten percent for these trucks; providing that a single unit truck with one steering axle and two axles in tandem operating in combination with a trailer with two axles is limited to a maximum gross weight of eighty thousand pounds with a tolerance of ten percent; clarifying that registered weight includes the tolerance granted by law; and providing that a single unit truck with one steering axle and three axles in tridem operating in combination with a trailer with two axles is limited to a maximum gross weight of eighty thousand pounds with a tolerance of ten percent.

Be it enacted by the Legislature of West Virginia:

That §17C-17-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-9a. Gross weight of vehicles and loads.

1 (a) It is 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 that 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: Provided, That if any vehicle is operated within the tolerances established in this section for the gross weight of that vehicle, then that vehicle shall be deemed for all purposes to be operating at the gross weight for which it is registered and the registered weight is deemed to include the ten percent tolerance associated with it under this section.

(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 single unit truck having one steering axle and four axles in quadem arrangement shall be limited to a maximum gross weight of seventy-three thousand pounds with a tolerance of ten percent.

(4) A tractor-semitrailer combination with five axles, a tractor-semitrailer combination with six or more axles, a single unit truck having one steering axle and two axles in tandem in combination with a trailer with two axles and a single unit truck
35 having one steering axle and three axles in tridem in combination with a trailer with two axles, shall be limited to a maximum gross weight of eighty thousand pounds with a tolerance of ten percent.

CHAPTER 168

(H.B. 3018 — By Delegates Williams, Stemple, Beach, Poling, Stevens, Perry and Campbell)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]
The Mountaineer Challenge Academy, operated by the Adjutant General at Camp Dawson, is hereby acknowledged to be a program of great value in meeting the educational needs of at-risk youth throughout the state. Further, the Mountaineer Challenge Academy is hereby designated as a special alternative education program as is further provided pursuant to section six, article two, chapter eighteen of this code. It is, therefore, the intent of the Legislature that the Mountaineer Challenge Academy should enjoy the full cooperation of the executive agencies of state government in carrying out its program.

To this end, the State Board of Education shall, notwithstanding any other provision in this code to the contrary:

1. Include the Mountaineer Challenge Academy in the child nutrition program;

2. Provide the names and mailing addresses of all high school dropouts in the state to the director of the Mountaineer Challenge Academy annually; and

3. Provide for Mountaineer Challenge Academy graduates to participate in the adult basic education program.

Further cooperation with the Mountaineer Challenge Academy is encouraged by the Legislature for the purpose of assisting the Mountaineer Challenge Academy to achieve its
mission and help prepare young people for productive adult-
hood.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-6. Classification and standardization of schools; standards for degrees and diploma; certificates of proficiency; establishment of alternative education programs.

(a) The State Board shall promulgate rules for the accreditation, classification and standardization of all schools in the state, except institutions of higher education, and shall determine the minimum standards for the granting of diplomas and certificates of proficiency by those schools. The certificates of proficiency shall include specific information regarding the graduate's skills, competence and readiness for employment or honors and advanced education and shall be granted, along with the diploma, to every eligible high school graduate. The certificate of proficiency shall include the program of study major completed by the student only for those students who have completed the required major courses, or higher level courses, advanced placement courses, college courses or other more rigorous substitutes related to the major, and the recommended electives.

(b) An institution of less than collegiate or university status may not grant any diploma or certificate of proficiency on any basis of work or merit below the minimum standards prescribed by the State Board.

(c) A charter or other instrument containing the right to issue diplomas or certificates of proficiency may not be granted by the State of West Virginia to any institution or other associations or organizations of less than collegiate or univer-
sity status within the state until the condition of granting or
issuing such diplomas or other certificates of proficiency has
first been approved in writing by the State Board.

(d) The State Board shall promulgate a rule for the approval
of alternative education programs for disruptive students who
are at risk of not succeeding in the traditional school structure.
This rule may provide for the waiver of other policies of the
State Board, the establishment and delivery of a nontraditional
curriculum, the establishment of licensure requirements for
alternative education program teachers, and the establishment
of performance measures for school accreditation.

(e) If a student attends an approved alternative education
program or the Mountaineer Challenge Academy, which is
designated as a special alternative education program pursuant
to section twenty-four, article one-b, chapter fifteen of this
code, and the student graduates or passes the General Equiva-
leny Development (GED) tests within five years of beginning
ninth grade, that student shall be considered graduated for the
purposes of calculating the high school graduation rate used for
school accreditation and school system approval, subject to the
following:

(1) The student shall only be considered graduated to the
extent that this is not in conflict with any provision of federal
law relating to graduation rates;

(2) If the State Board determines that this is in conflict with
a provision of federal law relating to graduation rates, the State
Board shall request a waiver from the United States Department
of Education; and

(3) If the waiver is granted, notwithstanding the provisions
of subdivision (1) of this subsection, the student graduating or
passing the General Educational Development (GED) tests within five years shall be considered graduated.

(f) The State Board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General and known as the "Mountaineer Challenge Academy" which is designated as a special alternative education program pursuant to section twenty-four, article one-b, chapter fifteen of this code, for students who are at risk of not succeeding in the traditional school structure. The rule shall set forth policies and procedures applicable only to the Mountaineer Challenge Academy that provide for, but are not limited to, the following:

(1) Implementation of provisions set forth in section twenty-four, article one-b, chapter fifteen of this code;

(2) Precedence of the policies and procedures designated by the National Guard Bureau for the operation of the Mountaineer Challenge Academy special alternative education program;

(3) Consideration of a student participating in the Mountaineer Challenge Academy special alternative education program at full enrollment status in the referring county for the purposes of funding and calculating attendance and graduation rates, subject to the following:

(A) The student shall only be considered at full enrollment status for the purposes of calculating attendance and graduation rates to the extent that this is not in conflict with any provision of federal law relating to attendance or graduation rates;

(B) If the State Board determines that this is in conflict with a provision of federal law relating to attendance or graduation rates, the State Board shall request a waiver from the United States Department of Education;
(C) If the waiver is granted, notwithstanding the provisions of paragraph (A) of this subdivision, the student shall be considered at full enrollment status in the referring county for the purposes of calculating attendance and graduation rates; and

(D) Consideration of the student at full enrollment status in the referring county is for the purposes of funding and calculating attendance and graduation rates only. For any other purpose, a student participating in the Academy is considered withdrawn from the public school system.

(4) Articulation of the knowledge, skills and competencies gained through alternative education so that students who return to regular education may proceed toward attainment or attain the standards for graduation without duplication; and

(5) Consideration of eligibility to take the General Educational Development (GED) Tests by qualifying within the extraordinary circumstances provisions established by State Board rule of a student participating in the Mountaineer Challenge Academy special alternative education program who does not meet any other criteria for eligibility.

(g) Nothing in this section or the rules promulgated hereunder compels the Mountaineer Challenge Academy to be operated as a special alternative education program or to be subject to any other laws governing the public schools except by its consent.

(h) The State Board shall report to the Legislative Oversight Commission on Education Accountability on or before the first day of January of each year on its efforts to cooperate with and support the Mountaineer Challenge Academy pursuant to this section and section twenty-four, article one-b, chapter fifteen of this code.
AN ACT to repeal §8-24-86 and §8-24-87 of the code of West Virginia, 1931, as amended, relating to proffers and conditions for final plat approval sections that were superceded.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. PLANNING AND ZONING.

§1. Repeal of superceded sections dealing with proffers and conditions for final plat approval.

Sections eighty-six and eight-seven, article twenty-four, chapter eight, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, are hereby repealed.
AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended, relating to tuition and fees for guard members at institutions of higher education; and providing for continuation of tuition and fee payments to members after discharge from military service due to wounds or injuries received in the line of duty.

Be it enacted by the Legislature of West Virginia:

That §15-1B-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

(a) Any member of the National Guard who is enrolled in a course of undergraduate study and is attending any accredited college, university, business or trade school located in West Virginia or is attending any aviation school located in West Virginia for the purpose of taking college-credit courses, may be entitled to payment of tuitions and fees at that college, university, business or trade school or aviation school during the period of his or her service in the National Guard: Provided, That the Adjutant General may prescribe criteria of eligibility for payment of tuition and fees at the college, university, business or trade school or aviation school: Provided, however, That the payment is contingent upon appropriations being made by the Legislature for this express purpose.

(b) The amount of the payment for members attending a state-supported school shall be determined by the Adjutant General and may not exceed the actual amount of tuition and fees at the school. The amount of the payment for members attending a private school shall be determined by the Adjutant
General, but in no event may it exceed the highest amounts payable at any state-supported school.

(c) Any member of the National Guard who is enrolled in a course of postgraduate study and is attending any accredited college or university located in West Virginia, and is receiving payments under the Army continuing education system, may be entitled to payment of tuition and fees at that college or university during his or her period of service in the National Guard: Provided, That the sum of payments received under this subsection and the Army continuing education system may not exceed the actual amount of tuition and fees at the school and in no event may exceed the highest amounts payable at any state-supported school. The payments are contingent upon appropriations being made by the Legislature for this express purpose.

(d) The Adjutant General may, in lieu of the tuition payment authorized by this section, pay an amount equal to the amount of tuition which otherwise would have been paid, directly to members of the West Virginia National Guard who are participating in the PROMISE scholarship program provided in article seven, chapter eighteen-c of this code.

(e) A member of the West Virginia National Guard who is receiving payments for tuition and fees under this section, and is discharged from the military service due to wounds or injuries received in the line of duty, may continue to receive payments for tuition and fees under this section as if he or she were still a member of the West Virginia National Guard.

(f) The Adjutant General shall administer the tuition and fee payments authorized under this section and shall propose policies to implement the provisions of this section.
AN ACT to amend and reenact §20-1-2 of the Code of West Virginia, 1931, as amended, relating to adding and modifying definitions of certain terms relative to natural resources.

Be it enacted by the Legislature of West Virginia:

That §20-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-2. Definitions.

1 As used in this chapter, unless the context clearly requires a different meaning:

3 “Agency” means any branch, department or unit of the state government, however designated or constituted.

5 “Alien” means any person not a citizen of the United States.

6 “Bag limit” or “creel limit” means the maximum number of wildlife which may be taken, caught, killed or possessed by any person.
“Big game” means elk, deer, black bears, wild boars and wild turkeys.

“Bona fide resident, tenant or lessee” means a person who permanently resides on the land.

“Citizen” means any native born citizen of the United States and foreign born persons who have procured their final naturalization papers.

“Closed season” means the time or period during which it shall be unlawful to take any wildlife as specified and limited by the provisions of this chapter.

“Commission” means the Natural Resources Commission.

“Commissioner” means a member of the advisory commission of the Natural Resources Commission.

“Director” means the Director of the Division of Natural Resources.

“Fishing” or “to fish” means the taking, by any means, of fish, minnows, frogs or other amphibians, aquatic turtles and other forms of aquatic life used as fish bait.

“Fur-bearing animals” include: (a) The mink; (b) the weasel; (c) the muskrat; (d) the beaver; (e) the opossum; (f) the skunk and civet cat, commonly called polecat; (g) the otter; (h) the red fox; (i) the gray fox; (j) the wildcat, bobcat or bay lynx; (k) the raccoon; and (l) the fisher.

“Game” means game animals, game birds and game fish as herein defined.

“Game animals” include: (a) The elk; (b) the deer; (c) the cottontail rabbits and hares; (d) the fox squirrels, commonly
called red squirrels, and gray squirrels and all their color phases - red, gray, black or albino; (e) the raccoon; (f) the black bear; and (g) the wild boar.

"Game birds" include: (a) The anatidae, commonly known as swan, geese, brants and river and sea ducks; (b) the rallidae, commonly known as rails, sora, coots, mudhens and gallinule; (c) the limicolae, commonly known as shorebirds, plover, snipe, woodcock, sandpipers, yellow legs and curlews; (d) the galliformes, commonly known as wild turkey, grouse, pheasants, quails and partridges (both native and foreign species); (e) the columbidae, commonly known as doves; (f) the icteridae, commonly known as blackbirds, redwings and grackle; and (g) the corvidae, commonly known as crows.

"Game fish" include: (a) Brook trout; (b) brown trout; (c) rainbow trout; (d) golden rainbow trout; (e) largemouth bass; (f) smallmouth bass; (g) spotted bass; (h) striped bass; (i) chain pickerel; (j) muskellunge; (k) walleye; (l) northern pike; (m) rock bass; (n) white bass; (o) white crappie; (p) black crappie; (q) all sunfish species; (r) channel catfish; (s) flathead catfish; (t) sauger; and (u) all game fish hybrids.

"Hunt" means to pursue, chase, catch or take any wild birds or wild animals: Provided, That the definition of "hunt" does not include an officially sanctioned and properly licensed field trial, water race or wild hunt as long as that field trial is not a shoot-to-retrieve field trial.

"Lands" means land, waters and all other appurtenances connected therewith.

"Migratory birds" means any migratory game or nongame birds included in the terms of conventions between the United States and Great Britain and between the United States and United Mexican States, known as the "Migratory Bird Treaty Act" for the protection of migratory birds and game mammals
concluded, respectively, the sixteenth day of August, one thousand nine hundred sixteen, and the seventh day of February, one thousand nine hundred thirty-six.

"Nonresident" means any person who is a citizen of the United States and who has not been a domiciled resident of the State of West Virginia for a period of thirty consecutive days immediately prior to the date of his or her application for a license or permit except any full-time student of any college or university of this state, even though he or she is paying a nonresident tuition.

"Open season" means the time during which the various species of wildlife may be legally caught, taken, killed or chased in a specified manner and shall include both the first and the last day of the season or period designated by the Director.

"Person," except as otherwise defined elsewhere in this chapter, means the plural "persons" and shall include individuals, partnerships, corporations or other legal entities.

"Preserve" means all duly licensed private game farmlands, or private plants, ponds or areas, where hunting or fishing is permitted under special licenses or seasons other than the regular public hunting or fishing seasons.

"Protected birds" means all wild birds not included within the definition of "game birds" and "unprotected birds".

"Resident" means any person who is a citizen of the United States and who has been a domiciled resident of the State of West Virginia for a period of thirty consecutive days or more immediately prior to the date of his or her application for license or permit: Provided, That a member of the Armed Forces of the United States who is stationed beyond the territorial limits of this state, but who was a resident of this state at the time of his or her entry into such service and any
full-time student of any college or university of this state, even
though he or she is paying a nonresident tuition, shall be
considered a resident under the provisions of this chapter.

"Roadside menagerie" means any place of business, other
than a commercial game farm, commercial fish preserve, place
or pond, where any wild bird, game bird, unprotected bird,
game animal or fur-bearing animal is kept in confinement for
the attraction and amusement of the people for commercial
purposes.

"Small game" includes all game animals, fur-bearing
animals and game birds except elk, deer, black bears, wild
boars and wild turkeys.

"Take" means to hunt, shoot, pursue, lure, kill, destroy,
catch, capture, keep in captivity, gig, spear, trap, ensnare,
wound or injure any wildlife, or attempt to do so: Provided,
That the definition of "take" does not include an officially
sanctioned and properly licensed field trial, water race or wild
hunt as long as that field trial is not a shoot-to-retrieve field
trial.

"Unprotected birds" shall include: (a) The English sparrow;
(b) the European starling; and (c) the cowbird.

"Wild animals" means all mammals native to the State of
West Virginia occurring either in a natural state or in captivity,
except house mice or rats.

"Wild birds" shall include all birds other than: (a) Domestic
poultry - chickens, ducks, geese, guinea fowl, peafowls and
turkeys; (b) psittacidae, commonly called parrots and parakeets;
and (c) other foreign cage birds such as the common canary,
exotic finches and ring dove. All wild birds, either: (a) Those
occurring in a natural state in West Virginia; or (b) those
imported foreign game birds, such as waterfowl, pheasants,
partridges, quail and grouse, regardless of how long raised or
held in captivity, shall remain wild birds under the meaning of
this chapter.

"Wildlife" means wild birds, wild animals, game and
fur-bearing animals, fish (including minnows,) reptiles,
amphibians, mollusks, crustaceans and all forms of aquatic life
used as fish bait, whether dead or alive.

"Wildlife refuge" means any land set aside by action of the
Director as an inviolate refuge or sanctuary for the protection
of designated forms of wildlife.

CHAPTER 172

(H. B. 2990 — By Mr. Speaker, Mr. Kiss, and Delegates Michael,
Tabb, Pino, Varner, Stemple and Beach)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §20-1-17 of the Code of West
Virginia, 1931, as amended, relating to permitting the Director of
the Division of Natural Resources to set the time and date of the
meeting for the convenience of the public.

Be it enacted by the Legislature of West Virginia:

That §20-1-17 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.
§20-1-17. Natural Resources Commission — Organization and services.

(a) Members of the Natural Resources Commission shall take and subscribe to the public officer’s oath prescribed by the Constitution before entering upon the duties of their office. All such executed oaths shall be filed in the office of the Secretary of State. Members of the Commission shall receive no compensation as such, but each shall be reimbursed for his or her actual and necessary traveling expenses incurred in the performance of his or her official duties.

(b) The Director of the Division shall be ex officio a member of the Commission and its presiding officer. A majority of the Commission shall constitute a quorum for transaction of business. Four regular meetings of the Commission shall be held each year. One meeting shall be held in each quarter of the calendar year. The date of the meeting shall be at the discretion of the Director of the Division of Natural Resources. Special meetings may be convened by the Governor, the Director or by a majority of the Commission. The meetings of the Commission shall be regularly held at locations designated by the Director. The time and place of the meeting shall be announced in accordance with section one, article nine-a, chapter six, et seq., of this code. The Director shall furnish all articles and supplies required by the Commission in the performance of its duties and shall provide necessary stenographic, secretarial and clerical assistance therefor. All such materials and services shall be paid for from Department funds.

The Director, at any regular or special meeting of the Commission, may submit to the Commission any program or policy matters on which he or she wishes to obtain the advice, counsel and opinion of the Commission and may consult with members of the Commission on functions, services, policies
and practices of the Department at any time. The Commission shall serve as a body advisory to the Director and shall perform all other duties assigned to it by law. It shall have the following powers and duties:

(1) To consider and study the entire field of legislation and administrative methods concerning the forests and their maintenance and development, the protection of fish and game, the beautification of the state and its highways, and the development of lands, minerals, waters and other natural resources;

(2) To advise with the Director concerning the conservation problems of particular localities or districts of the state;

(3) To recommend policies and practices to the Director relative to any duties imposed upon him or her by law;

(4) To investigate the work of the Director, and for this purpose to have access at reasonable times to all official books, papers, documents and records;

(5) To advise or make recommendations to the Governor relative to natural resources of the state;

(6) To keep minutes of the transactions of each session, regular or special, which shall be public records and filed with the Director; and

(7) To fix by regulation which it is hereby empowered to promulgate, in accordance with the provisions of chapter twenty-nine-a of this code, the open seasons and the bag, creel, size, age, weight and sex limits with respect to wildlife in this state.
AN ACT to amend and reenact §11-13J-12 of the Code of West Virginia, 1931, as amended, relating to "The Neighborhood Investment Program Act"; requiring an independent review of the Neighborhood Investment Program every two years; and extending the termination date of the act.

Be it enacted by the Legislature of West Virginia:

That §11-13J-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlement.

1 Beginning on the fifteenth day of December, two thousand five, and every second year thereafter, the Director shall secure an independent review of the neighborhood investment program created by this article and present the findings to the Joint Committee on Government and Finance. Unless sooner terminated by law, the Neighborhood Investment Program Act shall terminate on the first day of July, two thousand eight. No entitlement to the tax credit under this article shall result from any contribution made to any certified project after the first day
of July, two thousand eight, and no credit shall be available to
any taxpayer for any contribution made after that date. Taxpay-
ers which have gained entitlement to the credit pursuant to
eligible contributions made to certified projects prior to the first
day of July, two thousand eight, shall retain that entitlement and
apply the credit in due course pursuant to the requirements and
limitations of this article.

CHAPTER 174

(H. B. 2478 — By Mr. Speaker, Mr. Kiss, and Delegates Craig,
Amores, Kominar and Varner)

[Passed March 21, 2005; in effect ninety days from passage.]  
[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §11-16-21 of the Code of West
Virginia, 1931, as amended, relating to removing the prohibition
against brewers of nonintoxicating beer requiring distributors to
submit certain financial documents.

Be it enacted by the Legislature of West Virginia:

That §11-16-21 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-21. Requirements as to franchise agreements between
brewers and distributors; transfer of franchise by
distributor; notice thereof to brewer; arbitration
of disputes as to such transfer; violations and
penalties; limitation of section.
(a) On and after the first day of July, one thousand nine hundred seventy-one, it shall be unlawful for any brewer to transfer or deliver to a distributor any nonintoxicating beer, ale or other malt beverage or malt cooler without first having entered into an equitable franchise agreement with such distributor, which franchise agreement shall be in writing, shall be identical as to terms and conditions with all other franchise agreements between such brewer and its other distributors in this state and which shall contain a provision in substance or effect as follows:

(1) The brewer recognizes that the distributor is free to manage his or her business in the manner the distributor deems best and that this prerogative vests in the distributor, subject to the provisions of this article, the exclusive right to establish his or her selling prices, to select the brands of beer he or she wishes to handle and to determine the efforts and resources which the distributor will exert to develop and promote the sale of the brewer’s products handled by the distributor. However, since the brewer does not expect that its products handled by the distributor will be sold by others in the territory assigned to the distributor, the brewer is dependent upon the distributor alone for the sale of such products in said territory. Consequently, the brewer expects that the distributor will price competitively the products handled by the distributor, devote reasonable effort and resources to the sale of such products and maintain a satisfactory sales level.

(2) Whenever the manufacturing, bottling or other production rights for the sale of nonintoxicating beer at wholesale of any brewer is acquired by another brewer, the franchised distributor of the selling brewer shall be entitled to continue distributing the selling brewer’s beer products as authorized in the distributor’s existing franchise agreement and the acquiring brewer shall market all the selling brewer’s beer products through said franchised distributor as though the acquiring
brewer had made the franchise agreement and the acquiring
brewer may terminate said franchise agreement only in accor-
dance with subdivision (2), subsection (b) of this section:
Provided, That the acquiring brewer may distribute any of its
other beer products through its duly authorized franchises in
accordance with all other provisions of this section.

(b) It shall also be unlawful:

(1) For any brewer or brewpub or distributor, or any officer,
agent or representative of any brewer or brewpub or distributor,
to coerce or persuade or attempt to coerce or persuade any
person licensed to sell, distribute or job nonintoxicating beer,
ale or other malt beverage or malt cooler at wholesale or retail,
to enter into any contracts or agreements, whether written or
oral, or to take any other action which will violate or tend to
violate any provision of this article or any of the rules, regula-
tions, standards, requirements or orders of the Commissioner
promulgated as provided in this section;

(2) For any brewer or brewpub or distributor, or any officer,
agent or representative of any brewer or brewpub or distributor,
to cancel, terminate or rescind without due regard for the
equities of such brewer or brewpub or distributor and without
just cause, any franchise agreement, whether oral or written,
and in the case of an oral franchise agreement, whether the
same was entered into on or before the eleventh day of June,
one thousand nine hundred seventy-one, and in the case of a
franchise agreement in writing, whether the same was entered
into on, before or subsequent to the first day of July, one
thousand nine hundred seventy-one. The cancellation, termina-
tion or rescission of any such franchise agreement shall not
become effective for at least ninety days after written notice of
such cancellation, termination or rescission has been served on
the affected party and the Commissioner by certified mail,
return receipt requested: Provided, That said ninety-day period
and said notice of cancellation, termination or rescission shall not apply if such cancellation, termination or rescission is agreed to in writing by both the brewer and the distributor involved; or

(c) In the event a distributor desires to sell or transfer his or her franchise, such distributor shall give to the brewer or brewpub at least sixty days’ notice in writing of such impending sale or transfer and the identity of the person, firm or corporation to whom such sale or transfer is to be made and such other information as the brewer may reasonably request. Such notice shall be made upon forms and contain such additional information as the Commissioner by rule or regulation shall prescribe. A copy of such notice shall be forwarded to the Commissioner. The brewer or brewpub shall be given sixty days to approve or disapprove of such sale or transfer. If the brewer or brewpub neither approves nor disapproves thereof within sixty days of the date of receipt of such notice, the sale or transfer of such franchise shall be deemed to be approved by such brewer. In the event the brewer or brewpub shall disapprove of the sale or transfer to the prospective franchisee, transferee or purchaser, such brewer or brewpub shall give notice to the distributor of that fact in writing, setting forth the reason or reasons for such disapproval. The approval shall not be unreasonably withheld by the brewer or brewpub. The fact that the prospective franchisee, transferee or purchaser has not had prior experience in the nonintoxicating beer business or beer business shall not be deemed sufficient reason in and of itself for a valid disapproval of the proposed sale or transfer, but may be considered in conjunction with other adverse factors in supporting the position of the brewer or brewpub. Nor may the brewer or brewpub impose requirements upon the prospective franchisee, transferee or purchaser which are more stringent or restrictive than those currently demanded of or imposed upon the brewer’s or brewpub’s or other distributors in the State of West Virginia. A copy of such notice of disapproval shall likewise be for-
warded to the Commissioner and to the prospective franchisee, transferee or purchaser. In the event the issue be not resolved within twenty days from the date of such disapproval, either the brewer, brewpub, distributor or prospective franchisee, transferee or purchaser shall notify the other parties of his or her demand for arbitration and shall likewise notify the Commissioner thereof. A dispute or disagreement shall thereupon be submitted to arbitration in the county in which the distributor’s principal place of business is located by a board of three arbitrators, which request for arbitration shall name one arbitrator. The party receiving such notice shall within ten days thereafter by notice to the party demanding arbitration name the second arbitrator or, failing to do so, the second arbitrator shall be appointed by the chief judge of the circuit court of the county in which the distributor’s principal place of business is located on request of the party requesting arbitration in the first instance. The two arbitrators so appointed shall name the third or, failing to do so within ten days after appointment of the second arbitrator, the third arbitrator may be appointed by said chief judge upon request of either party. The arbitrators so appointed shall promptly hear and determine and the questions submitted pursuant to the procedures established by the American Arbitration Association and shall render their decision with all reasonable speed and dispatch but in no event later than twenty days after the conclusion of evidence. Said decision shall include findings of fact and conclusions of law and shall be based upon the justice and equity of the matter. Each party shall be given notice of such decision. If the decision of the arbitrators be in favor of or in approval of the proposed sale or transfer, the brewer or brewpub shall forthwith agree to the same and shall immediately transfer the franchise to the proposed franchisee, transferee or purchaser unless notice of intent to appeal such decision is given the arbitrators and all other parties within ten days of notification of such decision. If any such party deems himself or herself aggrieved thereby, such
party shall have a right to bring an appropriate action in circuit
court. Any and all notices given pursuant to this subsection
shall be given to all parties by certified or registered mail,
return receipt requested.

(d) The violation of any provision of this section by any
brewer or brewpub shall constitute grounds for the forfeiture of
the bond furnished by such brewer or brewpub in accordance
with the provisions of section twelve of this article. Moreover,
any circuit court of the county in which a distributor’s principal
place of business is located shall have the jurisdiction and
power to enjoin the cancellation, termination or rescission of
any franchise agreement between a brewer or brewpub and such
distributor and, in granting an injunction to a distributor, the
court shall provide that the brewer or brewpub so enjoined shall
not supply the customers or territory of the distributor while the
injunction is in effect.

CHAPTER 175

(S. B. 240 — By Senators Foster, Sharpe, Prezioso, Fanning, Jenkins,
Unger, Sprouse, Hunter, Minear, Barnes and Yoder)

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §29-6-28, relating to
granting state employees thirty days of paid leave time for kidney
or liver donation and seven days of paid leave time for bone
marrow donation.
Be it enacted by the Legislature of West Virginia:

    That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new section, designated §29-6-28, to read as follows:

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-28. Leave time for organ donation.

1 (a) A full-time state employee shall receive up to one hundred twenty hours of leave with pay during each calendar year to use during those hours when the employee is absent from work because of the employee’s donation of any portion of an adult liver or because of the employee’s donation of an adult kidney.

2 (b) A full-time state employee shall receive up to fifty-six hours of leave with pay during each calendar year to use during those hours when the employee is absent from work because of the employee’s donation of adult bone marrow.

3 (c) An appointing authority shall compensate a full-time state employee who uses leave granted under this section at the employee’s regular rate of pay for those regular work hours during which the employee is absent from work.

4 (d) The Director of Personnel shall provide information about this section to full-time employees.

5 (e) The Legislature hereby encourages political subdivisions and private employers in this state to grant their full-time employees paid leave similar to the paid leave granted to full-time state employees under this section.
CHAPTER 176

(S. B. 491 — By Senators Love, Facemyer and Bailey)

[Passed April 6, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to repeal §28-6-1 and §28-6-2 of the Code of West Virginia, 1931, as amended, relating to the Compact for Out-of-State Parolee Supervision.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article establishing the Compact for Out-of-State Parolee Supervision.

1. Article six, chapter twenty-eight of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 177

(Com. Sub. for S. B. 261 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed February 25, 2005; in effect from passage.]
[Approved by the Governor on March 8, 2005.]

AN ACT to submit the Pension Bond Amendment to the Constitution of the State of West Virginia to the voters of the state for
ratification or rejection at a special election to be held throughout the state on the twenty-fifth day of June, two thousand five; calling the special election; directing that the proposed amendment be submitted to the voters of the state at the special election and how such amendment is to be numbered, designated and summarized; providing for publication of the proposed amendment and publication of notice of the special election and the form thereof; providing that no question or issue other than the ratification or rejection of the proposed amendment shall be voted upon at the special election; providing for an official paper ballot; providing for one board of election officials in each precinct and for recounts; providing for the conduct of and procedures for the special election; providing that the costs and expenses of the special election be paid out of the State Treasury; and providing for a proclamation of the result of the special election by the Secretary of State.

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

**SPECIAL ELECTION ON PROPOSED CONSTITUTIONAL AMENDMENT:**

§1. Calling a special election; when to be held.

§2. Proposed amendment to be submitted; how numbered, designated and summarized; publication of proposed amendment.

§3. Publication of notice of special election; form.

§4. Conduct of and procedures for the special election; official ballot; application of chapter three of the code; payment of costs.

**§1. Calling a special election; when to be held.**

Pursuant to the authority vested in it by section two, article fourteen of the Constitution of the State of West Virginia, the Legislature hereby calls a special election to be held throughout the state for the purpose of submitting a proposed amendment to the Constitution of the state to the voters of the state for ratification or rejection. The special election shall be held on the twenty-fifth day of June, two thousand five.
§2. Proposed amendment to be submitted; how numbered, designated and summarized; publication of proposed amendment.

The proposed amendment to the Constitution of the State of West Virginia to be submitted to the voters of the state for ratification or rejection at the special election herein provided shall be, and it shall be numbered, designated and summarized in accordance with the joint resolution adopted by the Legislature as follows:

Senate Joint Resolution No. 101, adopted by the Legislature the twenty-ninth day of January, two thousand five, authorizing the submission of a proposed amendment to the Constitution of the state numbered “Amendment No. 1”, designated the “Pension Bond Amendment”, and summarized as follows: “To amend the state Constitution to permit the issuance and sale of additional state general obligation bonds not exceeding five billion five hundred million dollars to help provide for the fiscal soundness of the State Teachers Retirement System, the Judges’ Retirement System and the Public Safety Death, Disability and Retirement System. These additional state general obligation bonds will help the state to fund the unfunded actuarial accrued liabilities of these systems.”

The Secretary of State shall cause the proposed amendment to be published in full compliance with the provisions of section three, article eleven, chapter three of the Code of West Virginia; one thousand nine hundred, thirty-one, as amended.

§3. Publication of notice of special election; form.

The Secretary of State shall cause notice of the special election herein provided to be published as a legal advertisement one time at least three months before the special election
NOTICE OF SPECIAL ELECTION FOR RATIFICATION OR REJECTION OF PROPOSED AMENDMENT TO THE CONSTITUTION OF THE STATE

A special election shall be held on the twenty-fifth day of June, two thousand five, for the ratification or rejection of the proposed amendment to the Constitution of the state.

Signed: ___________________________

Secretary of State

of the State of West Virginia.”

§4. Conduct of and procedures for the special election; official ballot; application of chapter three of the code; payment of costs.

No question or issue other than the ratification of the proposed amendment shall be voted upon at the special election herein provided for. The proposed official ballots shall be paper ballots. Such official ballot shall have the same form as the ballot on constitutional amendments provided in section four, article eleven, chapter three of the code. There shall be but one board of election officers in each precinct consisting of three commissioners and two poll clerks. Any person voting in the special election may demand a recount of the results thereof in the county wherein he or she voted. Every such person who demands such recount shall be required to furnish bond in a reasonable amount with good and sufficient surety to guarantee costs and expenses of such recount in the event the results of the special election be not changed by such recount, but the amount of the bond shall in no case exceed three hundred dollars. If the result of the special
17 election in such county be not changed by such recount, the
18 costs and expenses of such recount shall be paid by the person
19 or persons at whose insistence the same was made. The
20 Secretary of State shall declare by proclamation the result of
21 the special election in the manner provided in section six,
22 article eleven, chapter three of the code. The costs and
23 expenses of the special election throughout the state shall be
24 paid out of the state Treasury from funds appropriated therefor.

25 Except to the extent this act expressly provides otherwise,
26 the special election shall be superintended, conducted and
27 returned and the result thereof ascertained and certified by the
28 same officers and in the same manner as provided in chapter
29 three of the code for a general election. In any matter in which
30 no specific provision of this act applies for the conduct of any
31 phase of the special election, those pertinent provisions of said
32 chapter three which may furnish guidance and may be made
33 controlling shall be applied.

CHAPTER 178

(S. B. 104 — By Senator Love)

[Passed April 6, 2005; in effect from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to repeal §17-15-3 of the Code of West Virginia, 1931, as
amended, relating to working prisoners by county commissions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. COUNTY CONVICT ROAD FORCE.
§1. Repeal of section relating to working prisoners by county commissions.

Section three, article fifteen, chapter seventeen of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, is hereby repealed.

CHAPTER 179

(Com. Sub. for H. B. 2476 — By Delegates Perry, Beach, Hartman, Pino and Leach)

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §62-12-19 of the Code of West Virginia, 1931, as amended, relating generally to parole and parole proceedings; authorizing the Commissioner of the Division of Corrections to issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee’s parole.

Be it enacted by the Legislature of West Virginia:

That §62-12-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. PROBATION AND PAROLE.


(a) If at any time during the period of parole there is reasonable cause to believe that the parolee has violated any of the conditions of his or her release on parole, the parole officer
may arrest him or her with or without an order or warrant, or the Commissioner of Corrections may issue a written order or warrant for his or her arrest, which written order or warrant is sufficient for his or her arrest by any officer charged with the duty of executing an ordinary criminal process. The Commissioner's written order or warrant delivered to the sheriff against the paroled prisoner shall be a command to keep custody of the parolee for the jurisdiction of the Division of Corrections and during the period of custody, the parolee may be admitted to bail by the court before which the parolee was sentenced. If the parolee is not released on a bond, the costs of confining the paroled prisoner shall be paid out of the funds appropriated for the Division of Corrections.

(b) When a parolee is under arrest for violation of the conditions of his or her parole, he or she shall be given a prompt and summary hearing, at which the parolee and his or her counsel are given an opportunity to attend. If at the hearing it appears to the satisfaction of the Board that the parolee has violated any condition of his or her release on parole, or any rules or conditions of his or her supervision, the Board may revoke his or her parole and may require him or her to serve in prison the remainder or any portion of his or her maximum sentence for which, at the time of his or her release, he or she was subject to imprisonment: Provided, That if the violation of the conditions of parole or rules for his or her supervision is not a felony as set out in section eighteen of this article, the Board may, in its judgment the best interests of justice do not require revocation, reinstate him or her on parole. The Division of Corrections shall effect release from custody upon approval of a home plan. Notwithstanding any provision of this code to the contrary, when reasonable cause has been found to believe that a parolee has violated the conditions of his or her parole but the violation does not constitute felonious conduct, the Commissioner may, in his or her discretion and with the written consent of the parolee, allow the parolee to remain on parole
with additional conditions or restrictions. The additional conditions or restrictions may include, but are not limited to, participation in any program described in subsection (d), section five, article eleven-c of this chapter. Compliance by the parolee with the conditions of parole precludes revocation of parole for the conduct which constituted the violation. Failure of the parolee to comply with the conditions or restrictions and all other conditions of release is an additional violation of parole and the parolee may be proceeded against under the provisions of this section for the original violation as well as any subsequent violations.

(c) When a parolee has violated the conditions of his or her release on parole by confession to, or being convicted of, any of the crimes set forth in section eighteen of this article, he or she shall be returned to the custody of the Division of Corrections to serve the remainder of his or her maximum sentence, during which remaining part of his or her sentence he or she is ineligible for further parole.

(d) Whenever the parole of a paroled prisoner has been revoked, the Commissioner shall upon receipt of the Board’s written order of revocation, convey and transport the paroled prisoner to a state correctional institution. A paroled prisoner whose parole has been revoked shall remain in custody of the sheriff until delivery to a corrections officer sent and duly authorized by the Commissioner for the removal of the paroled prisoner to a state penal institution; the cost of confining the paroled prisoner shall be paid out of the funds appropriated for the Division of Corrections.

(e) When a paroled prisoner is convicted of, or confesses to, any one of the crimes enumerated in section eighteen of this article, it is the duty of the Board to cause him or her to be returned to this state for a summary hearing as provided by this article. Whenever a parolee has absconded supervision, the
Commissioner shall issue a warrant for his or her apprehension and return to this state for the hearing provided for in this article: Provided, That the Board may, if it determines the best interests of justice do not require revocation, cause the paroled absconder to be reinstated to parole.

(f) A warrant filed by the Commissioner shall stay the running of his or her sentence until the parolee is returned to the custody of the Division of Corrections and physically in West Virginia.

(g) Whenever a parolee who has absconded supervision or has been transferred out of this state for supervision pursuant to section one, article six, chapter twenty-eight of this code is returned to West Virginia due to a violation of parole and costs are incurred by the Division of Corrections, the Commissioner may assess reasonable costs from the parolee’s inmate funds or the parolee as reimbursement to the Division of Corrections for the costs of returning him or her to West Virginia.

(h) Conviction of a felony for conduct occurring during the period of parole is proof of violation of the conditions of parole and the hearing procedures required by the provisions of this section are inapplicable.

(i) The Commissioner of the Division of Corrections may issue subpoenas for persons and records necessary to prove a violation of the terms and conditions of a parolee’s parole either at a preliminary hearing or at a final hearing before the Parole Board. The subpoenas shall be served in the same manner provided in the Rules of Criminal Procedure. The subpoenas may be enforced by the Commissioner through application or petition of the Commissioner to the circuit court for contempt or other relief.